

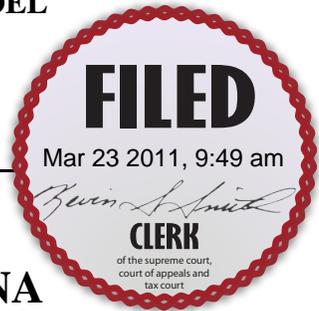
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ATTORNEYS FOR APPELLANT:

STEVEN K. RAQUET
DERICK W. STEELE
Raquet & Vandebosch
Kokomo, Indiana

ATTORNEY FOR APPELLEE:

KATHERINE J. NOEL
Noel Law
Kokomo, Indiana



IN THE
COURT OF APPEALS OF INDIANA

LINDA (FRITTS) CHRISTOPHER,)
)
Appellant,)
)
vs.)
)
RONALD FRITTS,)
)
Appellee.)

No. 34A04-1008-DR-508

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable George A. Hopkins, Judge
Cause No. 34D04-0807-DR-809

March 23, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Linda Fritts Christopher (“Christopher”) appeals from the trial court’s order dividing marital property and determining child support issues in the dissolution of her marriage to Ronald Fritts (“Fritts”). Christopher raises the following issues for our review:

1. Did the trial court err when it divided the marital estate?
2. Did the trial court err when it decided certain child support issues?

We affirm.

Christopher and Fritts were married on August 27, 1993 and separated on June 25, 2008. During their marriage, Fritts adopted Christopher’s daughter, K.F. Christopher filed her petition for dissolution of marriage on July 16, 2008.

The trial court entered its first provisional order on August 28, 2008, granting physical custody of K.F. to Christopher with Fritts receiving parenting time. The trial court also ordered Fritts to pay \$230.00 per week in child support. Fritts filed a petition to modify provisional order on September 11, 2008. A hearing was held and the matter was taken under advisement. On April 2, 2009, the trial court entered a second provisional order granting legal and physical custody of K.F. to Fritts and ordered Christopher to pay \$80 per week in child support. Christopher was granted parenting time according to the parenting time guidelines.

On September 21, 2009, the trial court, which had bifurcated the issues of dissolution of the marriage from property and child custody issues, held a hearing and found that the parties’ marriage would be dissolved upon the submission of an appropriate decree of dissolution. The decree of dissolution was approved by the trial court on December 14, 2009. Another hearing to modify provisional orders was held on December 22, 2009, and the

matter was taken under advisement. On December 29, 2009, the trial court entered an order requiring Fritts to pay one-half of the monthly payment on the first and second mortgages on the marital residence beginning in January 2010 until further order of the court.

A second hearing was held on March 18, 2010 and was continued to April 19, 2010, at which time the trial court took the matters of property distribution and child-related issues under advisement. On May 28, 2010, the trial court entered its written findings and ruling on those issues. Christopher filed a motion to correct error, which was denied by the trial court on July 21, 2010. Christopher now appeals. Additional facts will be supplied.

1.

Christopher argues that the trial court abused its discretion in the selection of the date used for valuation of certain assets, in particular Fritts's tax-deferred investment account. Prior to their marriage, Fritts and Christopher each had investment accounts. The trial court asked Christopher and Fritts to submit valuation evidence of those assets for the date of separation and September of 2009 because of the fluctuation in investment values. Ultimately, the trial court used September of 2009 as the valuation date for those assets. Christopher claims that the trial court's choice of valuation date "unjustly devalue[d] the marital estate". *Appellant's Brief* at 8.

"Subject to the statutory presumption that an equal distribution of marital property is just and reasonable, the disposition of marital assets is committed to the sound discretion of the trial court." *Augsburger v. Hudson*, 802 N.E.2d 503, 512 (Ind. Ct. App. 2004).

An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances, or the reasonable, probable, and actual deductions to be drawn therefrom. An abuse of discretion also

occurs when the trial court misinterprets the law or disregards evidence of factors listed in the controlling statute. The presumption that a dissolution court correctly followed the law and made all the proper considerations in crafting its property distribution is one of the strongest presumptions applicable to our consideration on appeal. Thus, we will reverse a property distribution only if there is no rational basis for the award and, although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court.

Id. (citations, quotation marks, and brackets omitted). Further, the trial court has discretion when valuing marital assets to select any date between the date of filing of the dissolution petition and the date of the final hearing. *Quillen v. Quillen*, 671 N.E.2d 98 (Ind. 1996). “The selection of the valuation date for any particular marital asset has the effect of allocating the risk of change in the value of that asset between the date of valuation and date of the hearing.” *Id.* at 103. A valuation must be within the scope of the evidence and within the range of values supported by the evidence. *Skinner v. Skinner*, 644 N.E.2d 141 (Ind. Ct. App. 1994).

The trial court specifically found as follows:

While this matter was pending both parties made expenditures and financial decisions that were not in accordance with the rulings of the Court. The parties did not readily share financial information with each other. The parties did not present an accurate accounting of their activities to the Court. The Court is not able to unravel this tangled financial web.

Appellant’s Appendix at 17.

In this case, Christopher presented evidence to the trial court suggesting that the marketplace for investments had improved since the date of valuation. This evidence was not persuasive, however, because it reflected a general upswing in the market since the valuation date and did not illustrate changes in the values of the parties’ actual investments.

Christopher acknowledged that the valuation of her own investments would not fluctuate as much because of the conservative approach to her investments. Fritts's approach to his investments was less conservative, thus explaining the greater fluctuation in the values of his assets. We find that Christopher has failed to demonstrate that the trial court abused its discretion by selecting a date of valuation that more accurately reflected the values of the assets in the marketplace.

2.

Christopher contends that the trial court erred by failing to give her credit toward her child support obligation for overnight visitations with K.F. We note at the outset that the trial court specifically found that “[d]uring the course of the proceedings the Court made orders requiring the parties to pay child support. Neither party obeyed the Court’s orders.” *Id.* at 16. The trial court then found that Christopher was in arrears in child support in the amount of \$3920 and that Fritts was \$1610 in arrears in support. *Id.* The trial court then subtracted the difference from Christopher’s share of the marital estate.

“A trial court’s calculation of child support is presumptively valid.” *Saalfrank v. Saalfrank*, 899 N.E.2d 671, 674 (Ind. Ct. App. 2008). We will reverse the trial court’s decision regarding child support only if it is clearly erroneous or contrary to law. *Saalfrank v. Saalfrank*, 899 N.E.2d 671. We do not reweigh the evidence and consider only the evidence most favorable to the judgment. *Id.*

In the present case, Christopher is challenging the trial court’s decision to decline Christopher credit for K.F.’s overnight visits. Regarding credit for overnight visits, we have stated the following:

Indiana Child Support Guideline 3(G)(4) provides that trial courts “may grant the noncustodial parent a credit toward his or her weekly child support obligation . . . based upon the calculation from a Parenting Time Credit Worksheet.”

* * *

We do not believe language in the Child Support Guidelines must be interpreted “in a technical nature,” and accordingly hold the language “may grant the noncustodial parent a credit toward his or her weekly child support obligation” means what it says-such credit is not mandatory. . . . The Child Support Guidelines contain a formula for calculating parenting time credit based on the number of “overnights” per year that the noncustodial parent spends with the children The commentary to the guidelines provides an “overnight” “should include . . . the costs of feeding and transporting the child, attending to school work and the like. Merely providing a child with a place to sleep in order to obtain a credit is prohibited.” The rationale behind the parenting time credit is that overnight visits with the noncustodial parent may alter some of the financial burden of the custodial and noncustodial parents in caring for the children. Because calculating the amount of financial burden alleviated by an overnight visit is difficult, the guidelines provide a standardized parenting time credit formula. Not all visits in which a child stays overnight may qualify for the parenting time credit.

Vandenburg v. Vandenburg, 916 N.E.2d 723, 726-27 (Ind. Ct. App. 2009).

As noted by the parties, Child Supp. G. 3(G)(4) was amended subsequent to this Court’s decision in *Vandenburg* to read that “[t]he court *should* grant a credit toward the total amount of calculated child support. . . .” (emphasis supplied). Christopher argues that the meaning of the term “should” is more akin to the word “shall”, and that the trial court abused its discretion by failing to credit her for the overnight stays as now mandated. Fritts, on the other hand, contends that the term “should” still allows for trial court discretion. We agree.

The commentary to the guidelines provides that

[a]lthough application of the Guideline yields a figure that becomes a rebuttable presumption, there is room for flexibility. Guidelines are not immutable, black letter law. A strict and totally inflexible application of the

Guidelines to all cases can easily lead to harsh and unreasonable results. If a judge believes that in a particular case application of the Guideline amount would be unreasonable, unjust, or inappropriate, a finding must be made that sets forth the reason for deviating from the Guideline amount. The finding need not be as formal as Findings of Fact and Conclusions of Law; the finding need only articulate the judge's reasoning. . . .

Commentary to Ind. Child Support Guideline 1. The commentary continues to reflect that “[m]erely providing a child with a place to sleep in order to obtain a credit is prohibited.”

Commentary to Child Supp. G. 6.

Christopher testified that K.F. was eighteen years old, had her own vehicle, and spent time in each residence as she pleased. It was Christopher's initial position that K.F. was old enough to make the decisions with respect to visitation, and that visitation should not be set in order to allow K.F. to make the determination of when and where she would stay, i.e., at Christopher's house or Fritts's house. At that same hearing, Fritts testified that K.F. visited with Christopher a few hours one night during the week and approximately every other weekend for one night during that weekend. Fritts testified that he provided K.F. with the car she used for transportation and that he allowed K.F. to visit her mother as she pleased.

During the second hearing on child support issues, K.F. testified that she was currently spending weekdays at Fritts's house and weekends at Christopher's house. K.F. further testified that she works three or four nights a week, with one or two of those nights being weekend nights. Fritts agreed, at that hearing, that visitation was occurring as stated by K.F. and added that he provided K.F. with a car, maintenance on the car, insurance, taxes, clothing and other items, and spending money of approximately \$1,000 per month. Fritts noted that Christopher had failed to pay child support while K.F. was in his custody.

Based upon the record before us, we cannot conclude that the trial court abused its discretion or that its decision was clearly erroneous or contrary to law. Although the trial court was presented with differing testimony about the frequency of the overnight parenting time, the evidence did not establish that the overnights “alter[ed] some of the financial burden of the custodial and noncustodial parents in caring for [K.F.]”. See *Vandenburg v. Vandenburg*, 916 N.E.2d at 727. Christopher acknowledged that Fritts provided K.F. with a car, maintenance on the car, insurance, taxes, clothing, and spending money. The trial court did not abuse its discretion in refusing to give Christopher credit toward her child support obligation for overnight visits with K.F.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.