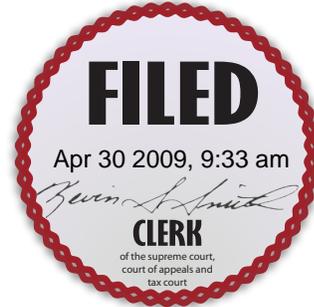


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SUSAN KERKHOFF,)
)
Appellant-Respondent,)
)
vs.) No. 79A02-0809-CV-811
)
JERRY KERKHOFF,)
)
Appellee-Petitioner.)

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0712-DR-187

April 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

On appeal, Appellant-Respondent Susan Kerkhoff (“Former Wife”) contends that the trial court abused its discretion in finding the income of her former husband Jerry Kerkhoff (“Former Husband”) to be \$600.00 per week for child support purposes.¹ Former Wife further contends that the trial court abused its discretion in allocating the dependent child federal income tax exemption for their child, A.K., to Former Husband. Concluding that the trial court did not abuse its discretion in finding Former Husband’s income to be \$600.00 per week or allocating the dependent child federal income tax exemption to Former Husband, we affirm.

FACTS AND PROCEDURAL HISTORY

Former Husband and Former Wife were married and are the parents of one child, A.K., who was born on August 2, 1994. At some point, on or before June 19, 1997, Former Husband filed for dissolution of the parties’ marriage. On December 29, 1997, the trial court entered an order dissolving the parties’ marriage. Pursuant to the dissolution order, Former Husband and Former Wife were to share joint custody of A.K., with Former Husband having primary physical possession and Former Wife having visitation, and Former Husband was to maintain health insurance for A.K. The parties agreed that due to Former Wife’s financial situation at the time, there would be no support obligation until further order by the trial court. On November 17, 1999, the trial court ordered Former Wife to pay child support in

¹ We observe that Appellant’s counsel failed to comply with Indiana Appellate Rule 46(A)(10) which requires the inclusion of the appealed order in her brief. *See* Ind. Appellate Rule 46(A)(10) (providing that the appellant’s “brief shall include any written opinion, memorandum of decision or finding of fact and conclusions thereon relating to the issues raised on appeal”).

the amount of \$50.00 per week and to maintain health insurance for the benefit of A.K. so long as it was available through her employer.

On September 18, 2007, Former Wife filed a verified petition to modify the trial court's prior custody and child support orders. Former Wife alleged that there had been a substantial change in the parties' circumstances and that A.K. now lived with Former Wife. On June 25, 2008, following a hearing on Former Wife's motion, the trial court entered the following findings:

1. By agreement custody of the parties' minor child shall be with the former Wife.

3. The former husband's weekly income is \$600.00.

4. The former husband has no net income from his farming operation.

5. The former wife's income is \$378 per week.

6. The former husband carries medical insurance on the parties' minor child[] ... at a cost of \$29.45 per week.

9. The former husband shall pay as support for the parties['] minor child[] the sum of \$73.10 each Friday [e]ffective September 18, 2007.

10. The [former] husband shall maintain medical insurance on the parties' minor child.

13. The former husband shall be entitled to take the tax exemption of the parties' minor child.

Appellant's App. pp. 14-15. Former Husband's farming operation involves renting the 454 acres of farmland owned by Former Husband to area farmers.

Former Wife filed a motion to correct errors on July 24, 2008. On August 11, 2008, the trial court granted Former Wife's motion as it related to Paragraph 6 for the purpose of correcting a typographical error and denied the remainder of Former Wife's motion. Former Wife now appeals.

DISCUSSION AND DECISION

Initially, we note that the purpose of child support payments is to protect the best interests of the children. *Fields v. Fields*, 749 N.E.2d 100, 105 (Ind. Ct. App. 2001), *trans. denied*.

Indiana places a strong emphasis on trial court discretion in determining child support obligations. We will not reverse a trial court's decision regarding the modification of a child support order unless it is clearly erroneous. On appeal, we do not reweigh evidence or judge witness credibility. We will consider only the evidence and reasonable inferences from that evidence favorable to the judgment.

Carpenter v. Carpenter, 891 N.E.2d 587, 592 (Ind. Ct. App. 2008) (citations and quotations omitted).

Here, the trial court found Former Husband's weekly income to be \$600.00 per week. The trial court additionally found that Former Husband has no net income from his farming operation. As previously mentioned, Former Husband's farming operation involves the rental of the 454 acres of farmland owned by Former Husband to area farmers. Former Husband inherited 290 of these acres of farmland from his father, and purchased the remaining 164 acres for \$688,800. In order to finance this purchase, Former Husband received a mortgage loan, on which his annual obligation is \$74,000. The record also establishes that Former Husband receives \$54,000 annually from the rental of his farmland.

Former Wife argues that the trial court abused its discretion in finding that Former Husband has no net income from his farming operation because the only expense allegedly incurred by Former Husband in connection with the farmland is his mortgage loan obligation of \$74,000 per year. Indiana Child Support Guideline 3(A)(2) provides that "Weekly Gross

Income from ... rent ... is defined as gross receipts minus ordinary and necessary expenses. There was no evidence before the trial court that the \$54,000 annual rental income was not fully off-set by the \$74,000 annual mortgage loan obligation.

Furthermore, while a panel of this court has determined payments on the principal of a mortgage loan should not be deducted when calculating rental income, that same panel determined that interest payments on the mortgage loan should be deducted when calculating rental income. *See Saalfrank v. Saalfrank*, 899 N.E.2d 671, 677 (Ind. Ct. App. 2008). Again, there was no evidence before the trial court allocating any portion of the \$74,000 annual mortgage loan obligation to either principal or interest. In absence of such evidence, we conclude that the trial court did not abuse its discretion in determining that Former Husband's farm operation generates no net income at this time.

In addition, Former Wife argues that the trial court abused its discretion in allocating the dependent child income tax exemption to Former Husband. The commentary to Indiana Child Support Guideline 6 recommends, with respect to the dependent child federal income tax exemption, that each case be reviewed on an individual basis and that courts consider the following factors: "(1) the value of the exemption at the marginal tax rate of each parent; (2) the income of each parent; (3) the age of the child(ren) and how long the exemption will be available; (4) the percentage of the cost of supporting the child(ren) borne by each parent; and (5) the financial burden assumed by each parent under the property settlement in the case." Considering these factors, we conclude that Former Wife has failed to demonstrate an

abuse of discretion by the trial court in allocating the dependent child income tax exemption to Former Husband.

The judgment of the trial court is affirmed.

CRONE, J. concurs.

BROWN, J. dissenting with separate opinion.

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BROWN, Judge dissenting

I respectfully dissent. In light of the Former Husband’s clear statement that the tax exemption should be alternated, and his acknowledgement that his weekly gross income was \$1,120.00, I believe it was an abuse of discretion for the trial court to deny the Former Wife’s petition to modify the order pertaining to the tax exemption, and for the court to utilize \$600.00 as opposed to \$1,120.00 per week as the Former Husband’s gross income for the purpose of calculating child support.