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ATTORNEYS FOR APPELLANT:

JASON A. CHILDERS
ANGELA WARNER SIMS
Hulse Lacey Hardacre Austin & Shine, P.C.
Anderson, Indiana

ATTORNEY FOR APPELLEE:

DAVID W. STONE IV
Stone Law Office & Legal Research
Anderson, Indiana

IN THE
COURT OF APPEALS OF INDIANA

BRIAN HOLTZLEITER,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 48A02-0810-CV-921
	)	
ANGELA HOLTZLEITER,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Special Judge
Cause No. 48C01-0712-DR-1148

June 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Brian Holtzleiter (Brian), appeals the trial court's Decree of Dissolution of Marriage, dissolving his marriage to Appellee-Petitioner, Angela Holtzleiter (Angela).

We affirm in part, reverse in part, and remand with instructions.

ISSUES

Brian raises two issues on appeal, which we restate as the following three issues:

(1) Whether Angela's motion to correct error pursuant to Ind. Trial Rule 59 set forth sufficient grounds for relief;

(2) Whether the trial court erred in calculating child support, other child related expenses, and parenting time in its Decree of Dissolution of Marriage; and

(3) Whether the trial court abused its discretion when it divided the marital property.

On cross-appeal, Angela raises two issues, which we restate as:

(1) Whether the trial court erred when it calculated Brian's parenting time credit; and

(2) Whether the trial court initially intended to make a 60/40 division of marital property, and then committed error when it ultimately failed to adhere to this division.

FACTS AND PROCEDURAL HISTORY

Brian and Angela were married on September 29, 2001. During the marriage, they had two children: Al., born on January 29, 2004, and As., born on March 27, 2007. On October 25, 2007, Angela filed her Verified Petition for Dissolution of Marriage. The trial court conducted a hearing on May 8 and 9, 2008. Thereafter, on August 22, 2008,

the trial court issued the following Findings of Fact, Conclusions of Law, Judgment, and Decree of Dissolution of Marriage:

> 17. During the parties' marriage, Angela, due to the fact that she was able to stay home with the children, was the primary care taker for the parties' two daughters. However, Brian participated with caretaking responsibilities when he was home and in fact had overnight care responsibilities for Al. when Angela was in the hospital pregnant with As.
>
> 18. The day after Angela filed her Petition for Dissolution of Marriage in this case, she also filed for an order for protection . . . and would not allow Brian to have contact and/or parenting time with the parties' minor children until the provisional hearing held in this matter in December 2007.
>
> 19. During the pendency of this dissolution, Brian has been permitted to exercise parenting time on Saturdays from 10:00 a.m. to 6:00 p.m. with Al. and 10:00 a.m. to Noon with As. Although the [c]ourt encouraged phased-in parenting time to occur at both the provisional hearing in December and in February, expansion of Brian's parenting time had not yet occurred at time of the final hearing, despite his numerous requests to do so.
>
> 20. The [c]ourt finds that while [Angela's] concerns of separation anxiety and breastfeeding with respect to As. are legitimate concerns in expanding Brian's parenting time, the [c]ourt is not persuaded that either of those concerns rise to the level that Brian should continue to be denied full parenting time rights as contemplated by the Indiana Parenting Time Guidelines with respect to both children.
>
> 21. Further, the [c]ourt finds that the children, being girls and close in age, should be together during Brian's parenting time. Therefore, the [c]ourt finds that although As. is under the age of 3, she should be treated for purposes of the Indiana Parenting Time Guidelines as a child of 3 years of age and older for regular parenting time, holiday, and extended parenting time after March 27, 2010.
>
> 22. The parties are directed to allow [Brian] increased parenting time after the youngest child stops nursing.
>
> . . .
>
> 27. During the marriage, Brian and Angela purchased real estate, also known as the marital residence located . . . at Lapel, Indiana 46051. The

marital residence was appraised during the pendency of this action and determined to have a fair market value of $189,900.00.

28. The marital residence had a mortgage balance of $177,500.00 at the time of filing. Brian has maintained this indebtedness since the date of filing.

29. During the pendency of this matter, Angela and the children have resided in the marital residence. Brian wants possession of the marital residence, to which Angela is agreeable.

. . .

31. The parties acquired three different vehicles during the course of the marriage, which include a 2005 Pontiac Vibe, valued at $9,500.00; a 2001 Chevrolet Venture Van, valued at $4,750.00; and a 1993 Ford Tempo valued at $300.00.

32. The 2005 Pontiac Vibe had an indebtedness owed in the amount of $10,070.00 as of the date of filing and indebtedness owed in the amount of $7,544.00 as of the final hearing, all of which was paid by Brian during the pendency of this case. The 2001 Chevrolet Venture Van had an indebtedness owed in the amount of $4,772.00 as of the date of filing and an indebtedness owed in the amount of $3,373.00 as of the date of the final hearing, all of which was paid by Brian during the pendency of this case.

33. During the pendency of this case, Angela has had possession of the 2005 Pontiac Vibe and Brian has had possession of the 2001 Chevrolet Venture Van. Brian testified at the final hearing that he desires to have the Pontiac Vibe primarily due to efficiency since he commutes back and forth to Kokomo for his job. Angela testified at the final hearing that she desires to keep the Pontiac Vibe primarily due to it being more reliable and newer vehicle than the 2001 Chevrolet Venture Van. However, Angela desires to have the Vibe providing that Brian pay the remaining indebtedness owed. Brian offered to give Angela the van and pay the remaining balance.

. . .

39. Angela incurred student loans prior to the marriage. Although Angela is not currently employed, the [c]ourt does find that she has an earning ability well above minimum wage. Due to her potential earning abilities given her business degree from Indiana University, the [c]ourt finds that

Angela should bear the responsibility of her student loans without contribution from Brian.

. . .

CONCLUSIONS OF LAW AND JUDGMENT OF THE COURT

. . .

2. [Angela] shall have custody of the children, Al. and As. Angela shall have physical custody of the children, with Brian having parenting time pursuant to the Indiana Parenting Time Guidelines. Both children shall be treated as being 3 years of age and older under the guidelines for regular parenting time, extended parenting time, and holiday parenting time. Brian's parenting time shall include overnights for both children after March 27, 2010.

3. Brian shall pay child support in the amount of $326.00 per week, beginning the first Friday after Angela vacates the marital residence. Brian's income is based on his current projected income for 2008, which is $1,716 gross per week. The [c]ourt imputes minimum wage ($234) to Angela at this time, but orders her to immediately report to this [c]ourt and to Brian when she becomes employed and as to her wages so that support can be reviewed at that time. Brian is given a 98 overnight credit for his parenting time with Al. and As. . . .

. . .

7. The [c]ourt finds that a deviation from the presumption of a 50/50 split is warranted in this case due to the following factors: the current economic circumstances of each of the parties, in that Angela is currently unemployed and Brian is gainfully employed with expected earnings in excess of $80,000 for 2008; and the parties' future earning abilities, in that Angela will likely take several years to reach her full earning potential given her temporary displacement from the workforce to be home with the children. Therefore, the [c]ourt divides the marital estate pursuant to the attached marital balance sheet. [The attached marital balance sheet indicates that Brian gets 40% of the marital estate and Angela gets 60%].

8. Brian shall have the marital residence and its fixtures… Angela is hereby ordered to vacate said residence on or before August 1, 2008. If she chooses to vacate earlier, she is to immediately notify Brian. . . .

> 9. The real estate located at 401 West Broadway in Alexandria shall be sold. Brian shall be responsible for the indebtedness thereon and hold Angela harmless. Upon the sale of said residence, the parties shall divide the proceeds[,] if any, 60% to Angela and 40% to Brian after selling costs, realtor fees, necessary repairs recommended by the realtor in preparation of sale, and mortgage are paid. In determining Angela's equitable portion of the proceeds, the balance of $34,718.00 (balance as of date of filing) shall be used as the mortgage payoff, since Brian had made all mortgage payments on said property since separation and shall continue to do so until the house is sold.
>
> 10. Brian is hereby adjudged the sole and individual owner of the 1993 Ford Tempo and 2005 Pontiac Vibe. Brian shall be responsible for the indebtedness on the Vibe and hold Angela harmless thereon. Brian shall be responsible for the insurance on said vehicles forthwith.
>
> 11. Angela is hereby adjudged the sole and individual owner of the Chevrolet Venture Van. Brian shall be responsible for the indebtedness on the Ventura Van and hold Angela harmless thereon. Angela shall be responsible for the insurance on said vehicle forthwith.
>
> . . .
>
> 14. Brian is hereby adjudged the sole and individual owner of the personal property items that Angela is agreeable for him to have as outlined on Petitioner's Exhibit #8 (circled items or as noted); any items currently in his possession; and the following items from the items found to be disputed: power washer, dining room table w/ chairs, Al.'s toy box (made by Brian), living room suite (couch and loveseat), wood high chair (family heirloom), Canon Rebel digital camera, and Thomas Kincaid Painting. The value of the personal property being awarded to Brian is $9,140. Brian shall have the option of retrieving his personal property items still located at the marital residence forthwith or request that Angela leave his items at the residence upon her vacating.
>
> . . .

(Appellant's App. pp. 11-21).

On September 10, 2008, Brian filed his motion to correct error. The next day, Angela, likewise, filed her own motion to correct error. On September 18, 2008, the trial

court conducted a hearing on the parties' respective motions. On October 6, 2008, the trial court issued its Order on the motions to correct error, thereby amending its Decree of Dissolution, in pertinent part, as follows:

> 1. The Decree of Dissolution should be amended to make it clear that [Brian] does not get overnight visitation with As. until she is three (3) years of age.
>
> 2. Further, the [c]ourt finds, based on the respective incomes, that [Brian] shall be responsible for 90% of the children's preschool expenses and other child rearing expenses.
>
> . . .
>
> 5. Court having reviewed the notes and the testimony of the final hearing finds that the [c]ourt was in error and it was the [c]ourt's intention that [Angela] should get the 2005 Pontiac Vibe and [Brian] should receive the Ford and Chevrolet automobiles. While the distribution originally called for in the decree might be equitable, the [c]ourt made this mistake and is correcting it at this time.
>
> 6. Court finds that [Angela's] equity in the marital real estate is [f]orty-three thousand four hundred and eighty dollars ($43,480.00). However, [Brian] is granted one hundred and twenty (120) days to effectuate a sale of the real estate and if the real estate is not sold it's [Brian's] responsibility to make arrangements to pay [Angela] her equitable share of the marital real estate.
>
> . . .
>
> 10. As an additional matter of personal property, the [c]ourt overlooked notes and [c]ourt believes that [Angela] should have as her personal property the refrigerator, the Kansas Kincaid Painting, the Cannon Rebel Digital Camera and the dining room table and chairs that was her birthday gift.

(Appellant's App. pp. 8-9).

Brian now appeals and Angela cross-appeals. Additional facts will be provided as needed.

DISCUSSION AND DECISION

APPEAL

I. *Motion to Correct Error*

Prior to turning to the merits of Brian's appeal, we need to dispose of a procedural issue. Throughout his brief, Brian makes numerous references that Angela's motion to correct error was flawed. Specifically, he asserts that the motion did not refer to any newly discovered evidence that would dictate a different outcome or point to any errors in the trial court's reasoning. In essence, Brian characterizes Angela's motion to correct error as a request to revisit the trial court's decision because she did not like its outcome, rather than as an opportunity for the trial court to correct its errors. Brian now maintains that because the trial court acted upon Angela's invitation, the trial court's Order on her motion to correct error is clearly erroneous.

Indiana Trial Rule 59(D), describing the content of a motion to correct error, states, in pertinent part, that

> Any error raised however shall be stated in specific rather than general terms and shall be accompanied by a statement of facts and grounds upon which the error is based. The error claimed is not required to be stated under, or in the language of the bases for the motion allowed by this rule, by statute, or by other law.

Our review of Angela's motion to correct error reflects that her motion is phrased in very general terms without alleging any specific errors made by the trial court as dictated by the trial rule; instead, Angela's motion reads as a wish list of items that were before the trial court during the evidentiary hearing but not granted by the trial court's Order. In

effect, Angela is re-litigating certain findings of the trial court's Order in an attempt to change them. Specifically, Angela claims among others,

> 6. [Angela] should receive the 2005 Pontiac Vibe; and [Brian] should receive the Ford and the Chevrolet van. [Brian] should be responsible for paying the debt on the Vibe, and hold [Angela] harmless on that debt. In addition, [Brain] should pay the insurance on the Vibe for [Angela] until she obtains full-time employment.
>
> . . .
>
> 11. The Protective Order should be made permanent; however, be modified only to allow the Parties to talk civilly with one another about the children.
>
> 12. [Brian] should be made responsible for any outstanding bill connected to the marital residence, which is being set over to him; and he should hold [Angela] harmless on any such bill.
>
> . . .
>
> 15. [Angela] should have the personal property that she requested including the refrigerator; the Kincaid Painting; the Cannon Rebel Digital Camera; and the dining room table that was purchased on [Angela's] birthday as a birthday gift to her.

(Appellant's App. pp. 42-43).

We agree with Brian that Angela's motion to correct error is patently flawed. However, we conclude that the trial court's Order based on Angela's motion to correct error is nonetheless valid. Indiana Trial Rule 52(B) provides that in a case tried without a jury, the trial court may, at any time before a motion to correct error is required to be made, or with or as part of a motion to correct error by any party, take additional testimony, amend or make new findings of fact and enter a new judgment, or any combination thereof. *See Hubbard v. Hubbard*, 690 N.E.2d 1219, 1221 (Ind. Ct. App.

1998); *W & W Equipment Co., Inc. v. Mink*, 568 N.E.2d 564, 570 (Ind. Ct. App. 1991), *reh'g denied*, *trans. denied*. Thus, at least up to and including the ruling on a motion to correct error, the trial court is permitted to alter, amend, or modify its judgment without limitation. *See State ex rel. Jackson v. Owen Circuit Court*, 314 N.E.2d 73, 76 (Ind. Ct. App. 1974) (trial court may change its record at any time until it rules on a motion to correct error).

Simply because the trial court amended findings which were not the subject of a valid motion to correct error does not mean there was no basis for the trial court's action. Despite Angela's defective motion to correct error, Brian's motion to correct error was still outstanding, and the trial court amended its findings as part of his motion. There was no error in the trial court's action.

II. *Child-Related Issues*

Brian first asserts that the trial court erred when it calculated his child support, other child related expenses, and his parenting time. The standard of review for child support awards is well settled. *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). We begin with the understanding that support calculations are made utilizing the income shares model set forth in the Indiana Child Support Guidelines. *Id*. These Guidelines apportion the cost of supporting children between the parents according to their means. *Id*. A calculation of child support under the Guidelines is presumed to be valid. *Id*. Therefore, we will not reverse a support order unless the determination is clearly against the logic and effect of the facts and circumstances. *Id*. When reviewing a

child support order, we do not revisit weight and credibility issues but confine our review to the evidence while reasonable inferences favorable to the judgment are considered. *Id*.

A. *Child Support*

Brian contends that the trial court erred when it imposed a weekly child support order of $326 and claims that, pursuant to the child support worksheet, his support obligation should be reduced to $317 per week. The trial court's Order based Brian's current projected income for 2008 at $1,716 gross per week and imputed minimum wage of $234 to Angela. The child support obligation worksheet, attached to the trial court's original Order, gives Brian credit for 98 overnights and added work-related child care expenses of $16. According to the worksheet, Brian's recommended support obligation amounts to $317 per week.

Ind. Child Support Rule 3 provides that "[i]f the court concludes from the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a written finding articulating the factual circumstances supporting that conclusion." Here, the trial court did not justify its deviation from the recommended child support obligation. As a result, we must conclude that the trial court erred in setting Brian's child support obligation at $326. We find that his child support obligation should be set at $317 per week.

B. *Child-Related Expenses*

Next, Brian complains that the trial court erred by requiring him to pay "90% of the children's preschool expenses and other child rearing expenses." (Appellant's App. p. 8). The child support worksheet, attached to the trial court's Order, apportions Brian's

and Angela's respective percentage shares of the weekly adjusted income as 88% and 12%. In its Order on the motion to correct error, the trial court did not elaborate on its reasons to deviate from the worksheet percentages. *See* Child Supp. R.3. As such we agree with Brian that the trial court erred in apportioning 90% of the child related expenses to him.

Additionally, Brian also argues that the trial court erred in ordering him to pay his share of the preschool expenses without giving him credit for his contribution towards work-related child care expenses. In particular, the worksheet specifies, in a separate entry, that work-related child care expenses amount to $16. Child Support Guideline 3(E)(1) defines work-related child care expenses as "child care costs incurred due to employment or job search" and includes the costs of "a sitter, day care, or like care of a child[.]" As work-related child care expenses amount to child care costs incurred due to a job search, they are fundamentally different from preschool expenses. Therefore, we deny Brian's request for a credit towards preschool expenses.

C. *Parenting Time*

With regard to parenting time, Brian asserts that the trial court erred in refusing to grant him overnight visitation with As., who was almost fourteen months old at the time of the trial court's final hearing and twenty-seven months old at the time of this court's opinion.

The Indiana Parenting Time Guidelines provide in Section II(A)(1) that "[u]nless it can be demonstrated that the non-custodial parent has not had regular care responsibilities for the child, parenting time shall include overnights. If the non-custodial

parent has not previously exercised regular care responsibilities for the child, then parenting time shall not include overnights prior to the child's third birthday, except as provided below." With respect to children younger than three, the guidelines specify that in these circumstances an overnight visit not to exceed one 24-hour period per week is appropriate. *See* Ind. Parenting Time G. II(A)(3)(B)(3). Furthermore, the Commentary to Section II clarifies that "when there are younger and older children, it will generally be appropriate to accelerate, to some extent, the time when the younger children move into overnight or weekend parenting time, to keep sibling relationships intact." Ind. Parenting Time G. II, Comm. (4).

Here, the trial court found that during the marriage, Brian participated in the care for the girls. He also took on overnight responsibilities for Al. when Angela was in the hospital pregnant with As. The trial court specifically noted that it was unpersuaded by Angela's concerns of separation anxiety and breastfeeding and wanted Brian to have parenting time as contemplated by the guidelines. The court equally found that both girls should remain together during Brian's parenting time and that therefore, As. should be treated as a child of three years of age and older for regular parenting time, with extended parenting time to begin after March 27, 2010. Despite these findings, the trial court nevertheless determined, as clarified in its Order on the motion to correct error, that As.'s overnight visits could not start until As. turned three years old on March 27, 2010.

The Indiana Parenting Time Guidelines are based on the premise that it is usually in a child's best interest to have frequent, meaningful and continuing contact with each parent. *See* Ind. Parenting Time G, preamble. It is assumed that both parents nurture

their child in important ways, significant to the development and well being of the child. *Id*. The trial court's findings do not support its ultimate conclusion which denied Brian overnight visits with As. On the one hand, the trial court indicates that Brian satisfies the Parenting Time Guidelines and qualifies for overnight visits with As. Additionally, the trial court noted that even an extended visitation schedule would be appropriate after As. turned three. On the other hand, in its conclusion, the trial court scales back its recommendation to the bare minimum by refusing to grant Brian overnight visits with As. We find the trial court's determination to be against the logic and effect of the facts and circumstances. Therefore, we reverse the trial court and conclude that both children should be treated as three years of age and older for regular parenting time, thereby granting Brian overnight visitation with As.

III. *Division of Marital Property*

Next, Brian disputes the trial court's division of marital property. He asserts that the trial court abused its discretion when it (1) distributed the couple's vehicles, (2) calculated the marital real estate's equity, and (3) reallocated personal property. In addition, Brian contests the trial court's determination of attorney fees.

A. *Standard of Review*

The disposition of marital assets is within the sound discretion of the trial court. *Bizik v. Bizik*, 753 N.E.2d 762, 766 (Ind. Ct. App. 2001), *trans. denied*. When a party challenges the trial court's division of marital property, he must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on

appeal. *Id*. In reviewing a trial court's disposition of the marital assets, we focus on what the court did, not what it could have done. *Id*. Therefore, when we review a claim that the trial court improperly divided marital property, we must decide whether the trial court's decision constitutes an abuse of discretion, considering only the evidence most favorable to the trial court's disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. *Id*. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id*. An abuse of discretion also occurs when the trial court has misinterpreted the law or disregards evidence of factors listed in the controlling statute. *Id*. Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. *Id*.

The division of marital property in Indiana is a two-step process. *Thompson v. Thompson*, 811 N.E.2d 888, 912 (Ind. Ct. App. 2004), *reh'g denied, trans. denied*. The trial court must first determine what property must be included in the marital estate. *Id*. Included within the marital estate is all the property acquired by the joint effort of the parties. *Id*. After determining what constitutes marital property, the trial court must then divide the marital property under the presumption that an equal split is just and reasonable. I.C. § 31-15-7-5. If the trial court deviates from this presumption, it must state why it did so. *In re Marriage of Lang*, 668 N.E.2d 285, 290 (Ind. Ct. App. 1996). A party who challenges the trial court's division of the marital estate must overcome a

presumption that the court considered and complied with the applicable statute. *Frazier v. Frazier*, 737 N.E.2d 1220, 1223 (Ind. Ct. App. 2000).

B. *Distribution of Vehicles*

First, Brian asserts that the trial court's modification of the vehicle distribution in its Order on the motion to correct error was clearly erroneous. Specifically, Brian contends that (1) there is no newly discovered evidence that would require the trial court to change the original distribution and (2) by changing the vehicles' ownership, the trial court also implicitly altered the 60/40 division of the marital property.

Initially, the trial court had awarded the 2005 Pontiac Vibe to Brian and the Chevrolet Van to Angela. In its Order on the motion to correct error, the trial court noted that "having reviewed the notes and the testimony of the final hearing, . . . the [c]ourt was in error and it was the [c]ourt's intention that [Angela] should get the 2005 Pontiac Vibe and [Brian] should receive the . . . Chevrolet[.]" (Appellant's App. p. 8). As we concluded above, pursuant to Indiana Trial Rule 52(B), the trial court may, at any time before a motion to correct error is required to be made, or with or as part of a motion to correct error by any party, take additional testimony, amend or make new findings of fact and enter a new judgment, or any combination thereof. Here, the trial court did exactly that with respect to the distribution of the vehicles. Realizing that a mistake was made, the trial court amended its findings of fact by re-assigning the vehicles.

We also note that the trial court elaborated that a deviation from the presumptive equal division of marital property was warranted and allocated 40% of the marital assets to Brian and 60% to Angela. Although the value of the respective cars alters the division

of the marital assets slightly, this change is so significantly minor that we need not remand to the trial court for recalculation. *See In re Marriage of Pulley*, 652 N.E.2d 528, 531 (Ind. Ct. App. 1995), *trans. denied* ("When dividing marital property, the trial court must come close to the attempted apportionment otherwise the findings will not support the judgment and we must remand.").

Nevertheless, we do remand to the trial court with instruction to clarify the parties' obligations with respect to the vehicles. As it stands, the parties are ordered to pay insurance on each other's vehicles.

C. *The Real Estate Equity*

Brian claims the trial court erred by determining in its Order on the motion to correct error that Angela's equity in the marital real estate amounted to $43,480.00. We agree with Brian that the trial court originally ruled that the equity in the marital residence is $12,400.00 based upon the residence's fair market value of $189,900.00 and a mortgage balance of $177,500.00.

However, it should be noted that the parties, during the marriage, also acquired real estate in Alexandria. The trial court, in its Order on the motion to correct error, took this additional real estate into account and amended its findings to reflect that the *marital real estate*—comprised of both the marital residence and the real estate in Alexandria—had an equity balance of $43,480.00. Therefore, we do not conclude that the trial court abused its discretion.

D. *Reallocation of Personal Property*

Next, Brian contests the trial court's reallocation of personal property in its Order on the motion to correct error. As we stated before, the trial court, indicating that it had overlooked some notes, amended its findings pursuant to Indiana Trial Rule 52(B). Thus, we cannot say that the trial court committed an error.

E. *Increase in Attorney Fees*

Lastly, Brian claims that the trial court abused its discretion when it increased Angela's attorney fee award from $2,500.00 in its original Order to $3,000.00 in its Order on the motion to correct error. Indiana Code section 31-15-10-1 provides that a trial court may order a party to pay a reasonable amount for the cost to the other party for defending or maintaining any action in dissolution proceedings. When making such an award, the trial court must consider the resources of the parties, their economic condition, the ability of the parties to engage in gainful employment and to earn adequate income and other factors that bear on the reasonableness of the award. *Hendricks v. Hendricks*, 784 N.E.2d 1024, 1028 (Ind. Ct. App. 2003). Also, misconduct that directly results in additional litigation expenses may be property taken into account in the trial court's decision to award attorney's fees. *Hanson v. Spolnik*, 685 N.E.2d 71, 80 (Ind. Ct. App. 1997), *trans. denied*. The trial court need not, however, give reasons for its determination. *Hendricks*, 784 N.E.2d at 1028. When reviewing an award of attorney's fees in connection with a dissolution decree, we only reverse the trial court for an abuse of discretion. *Id*.

In its original Order, the trial court found that Brian earned $141,841.76 in 2007. On the other hand, Angela is a homemaker and primary care giver to the couple's two daughters. The trial court established that when Angela was gainfully employed in 2003, her income was $31,400.00. Although she is planning to re-enter the workplace, the trial court determined that it would take Angela several years to reach her full earning potential. Based on this income disparity, the trial court properly included an attorney fee award of $2,500.00 in its original Order. Because of the continuous nature of the current litigation, we conclude that the trial court did not abuse its discretion when it increased the attorney fee award in its Order on the motion to correct error.

CROSS-APPEAL

In her cross-appeal, Angela raises two issues. She contends that the trial court erred when it calculated Brian's parenting time credit and it failed to make a 60/40 division of marital property.

I. *Parenting Time*

Angela first asserts that the trial court improperly calculated Brian's parenting time credit on his child support worksheet as he was given credit for 98 overnight visits with both children, whereas he was only granted overnight visits with Al. However, we note that Angela's proposed child support worksheet tendered to the trial court specifically credited Brian with 98 overnights. A party may not take advantage of an error that he commits, invites, or which is the natural consequence of his own neglect or misconduct. *Evans v. Evans*, 766 N.E.2d 1240, 1244 (Ind. Ct. App. 2002). Invited error

is not subject to review by this court. *Id*. Thus, as the error complained of was invited by Angela, her claim is not subject to our review.

II. *60/40 Division of Marital Property*

Lastly, Angela complains that by allocating the payment of her student loans to her share of the marital estate, the trial court did not adhere to its 60/40 division of marital property. As we already determined above, the trial court cited to several reasons to justify its deviation from the equal division of assets between both parties and to divide the marital estate 60-40.

In paragraph 39 of the trial court's findings in its original Order, the trial court specifically addressed the issue of Angela's student loans. It determined that these loans were incurred prior to the marriage. Due to Angela's potential earning abilities given her business degree from Indiana University, the trial court found that she should bear the responsibility of her student loans without contribution from Brian.

A trial court may, in appropriate circumstances, set aside to one party the value of a marital asset where the other party did not contribute to its acquisition. *In re Marriage of Pulley*, 652 N.E.2d at 530. This is similar to precisely what the trial court did here. By concluding that Angela incurred her student loans prior to the marriage, the trial court held her solely responsible for their repayment. Therefore, we conclude that the trial court did not err in its allocation.

CONCLUSION

Based on the foregoing, we conclude that (1) the trial court's Order in part based on Angela's flawed motion to correct error is valid; (2) Brian's child support should be

set at $317 per week; (3) Brian's child related expenses should be apportioned at 88% with no credit towards preschool expenses; (4) both children should be treated as three years of age and older for regular parenting time, thereby granting Brian overnight visits with his youngest daughter; (5) the trial court properly distributed the couple's vehicles but clarification is necessary with regard to the cars' insurance; (6) the trial court did not abuse its discretion in allocating the real estate equity; (7) the trial court properly amended its findings with respect to the reallocation of personal property; and (8) the increase in attorney fees was proper. With regard to Angela's cross-appeal, we conclude that (1) Angela's claim of miscalculated parenting time is not subject to our review; and (2) the trial court did not abuse its discretion by allocating to her the payment of her student loans.

Affirmed in part, reversed in part, and remanded with instructions.

KIRSCH, J., and MATHIAS, J., concur.