

STATEMENT OF THE CASE

Gerry S. Hicks (“Father”) appeals the trial court’s order granting Rachel M. (Hicks) Villarreal’s¹ (“Mother”) motion to modify child support for their nineteen-year-old daughter, Lisa (“Daughter”).

We affirm.

ISSUE

Whether the trial court abused its discretion when it modified the amount of child support Father was required to pay without making an adjustment for the fact that Daughter had repudiated her relationship with Father.

FACTS

Father and Mother are the parents of one child, Daughter, who was born in December 1991. Father and Mother’s marriage was dissolved in 1999, and they agreed that Mother would have custody of Daughter while Father would have visitation and pay child support.² In 2001, after the parties stipulated to a modification of child support, Father was required to pay \$27.00 per week in child support. Father initially had visitation with Daughter, but visitation stopped around June 2005 because Daughter did not want to see Father anymore. Daughter graduated from high school in June 2010 and then enrolled in Harrison College. Daughter lives at home with Mother while attending college.

In August 2010, Father filed a motion to emancipate Daughter. Thereafter, in October 2010, Mother filed a motion to modify child support and to establish a post-

¹ At the time of the hearing on the motion to modify child support, Mother indicated that she had remarried and that her last name was now Rice.

² The record does not reveal the amount of child support Father was required to pay at that time.

secondary education order so that Father would contribute to Daughter's college expenses. The trial court held a hearing on these motions on December 28, 2010. At the time of the hearing, Daughter was nineteen years old. During the hearing, Daughter testified that she had not seen Father since before she was eighteen years old and that she did not want to have a relationship with Father. Although Mother introduced evidence of Daughter's college expenses and Mother and Father's income, neither she nor Father submitted a completed Child Support Obligation Worksheet ("CSOW") during the hearing.

Thereafter, the trial court issued an order³ in which it (1) denied Father's motion to emancipate Daughter; (2) denied Mother's motion for a post-secondary education order based on the trial court's determination that Daughter had repudiated her relationship with Father and, therefore, Father had no obligation to pay for any of Daughter's college expenses; and (3) granted Mother's motion to modify support and ordered Father to pay \$89.00 per week in child support.

Father filed a motion to correct error, arguing that Daughter's repudiation—in addition to removing his obligation to pay for college expenses—should reduce the amount of his child support obligation. Father argued that the trial court's failure to make an adjustment in the amount of child support Father was required to pay for Daughter while she lived at home and attended college equated to a requirement that he pay some of her educational expenses (i.e., room and board) and was inconsistent with the trial court's determination that Father had no responsibility to contribute to any of Daughter's

³ The trial court completed a CSOW and attached it to its order.

college expenses. The trial court denied Father's motion to correct error. Father now appeals.

DECISION

Father appeals the trial court's denial of his motion to correct error, which challenged the part of the trial court's order that granted Mother's motion to modify child support.

A trial court has discretion to grant or deny a motion to correct error, and we reverse its decision only for an abuse of that discretion. An abuse of discretion has occurred if the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law.

Consistent with that standard of review, decisions regarding child support likewise are generally reviewed for an abuse of discretion. In reviewing orders modifying child support, we consider only the evidence and reasonable inferences favorable to the judgment.

Bales v. Bales, 801 N.E.2d 196, 198 (Ind. Ct. App. 2004) (internal citations omitted).

Absent an abuse of discretion or a determination that is contrary to law, we will not disturb a trial court's order modifying child support. *Gilbert v. Gilbert*, 777 N.E.2d 785, 790 (Ind. Ct. App. 2002).

On appeal, Father does not necessarily challenge the fact that the trial court granted Mother's motion to modify child support. Instead, Father argues that the amount of the modified child support should have been adjusted or offset due to the trial court's finding regarding Daughter's repudiation. Specifically, Father contends that not only should his Daughter's repudiation remove his obligation to pay for college expenses but that it should also reduce the amount of his child support obligation. In other words,

Father seeks to extend the effect of his Daughter's repudiation to his child support obligation by arguing that his Daughter's housing expenses while living at home with Mother and attending college equate to "educational expenses" that Daughter's repudiation does not require him to pay. Father suggests that the trial court should have calculated such an adjustment to his child support obligation by using the adjustment similar to that contained in the Post-Secondary Education Worksheet ("PSEW").

First, any such argument that an adjustment should have been made to Father's child support obligation is waived because Father did not raise that argument during the hearing and raised it only in his motion to correct error. A party may not raise an issue for the first time in a motion to correct error or on appeal. *Troxel v. Troxel*, 737 N.E.2d 745, 752 (Ind. 2000) (waiving a due process claim by raising it for the first time in a motion to correct error). Additionally, Father has waived the issue on appeal because he failed to submit a worksheet⁴ reflecting an adjustment to his child support obligation. *See Butterfield v. Constantine*, 864 N.E.2d 414, 417 (Ind. Ct. App. 2007) (providing that Appellant's failure to produce a post-secondary education worksheet or any evidence relating to post-secondary expenses, Appellant's failure to object to Appellee's lack of a worksheet, and Appellant's tacit agreement to proceed without a verified worksheet constituted a waiver of his right to appeal the trial court's order).

Waiver notwithstanding, we reject Father's argument that Daughter's repudiation should have been used to adjust or reduce his child support payment and his

⁴ Father failed to submit both a CSOW and a PSEW.

corresponding argument that the trial court's order that he pay child support equated to an order to pay educational expenses.

First, Daughter's repudiation did not require the trial court to adjust Father's child support obligation. While a trial court is required to consider an adjustment to a parent's child support obligation when that parent is ordered to pay both child support and a portion of the child's college expenses, *see Carter v. Dayhuff*, 829 N.E.2d 560, 566 (Ind. 2005); Ind. Code § 31-16-6-2(b); Ind. Child Support Guideline 3(G)(1), it is not required to make an adjustment to child support for a child's repudiation. Indeed, our court has explained that "repudiation is not an acceptable justification to abate support payments for a child less than twenty-one years of age." *Bales*, 801 N.E.2d at 200.

Indiana law recognizes that a child's repudiation of a parent, that is a complete refusal to participate in a relationship with his or her parent, under certain circumstances will obviate a parent's obligation to pay certain expenses, including college expenses. However, no case has extended that release of a parent's financial responsibility to the payment of child support, and, under the current law, it cannot.

Id. at 199 (internal citations omitted). A parent's "duty to pay child support continues, regardless of the lack of contact, communication or emotional connection" between the parent and child. *Id.* at 199. Thus, the trial court did not err by failing to make an adjustment to Father's child support obligation based on Daughter's repudiation.

Furthermore, the trial court's order requiring Father to pay child support did not equate to an order to pay Daughter's educational expenses. Our court has clarified that the "[p]ayment of child support is not the legal equivalent of contributing to a child's college expenses." *Id.* at 199. Based on the statutory provisions relating to child support,

a trial court must first determine the reasonable amount of support required to furnish the child's basic needs and to maintain the child's general welfare (child support order); thereafter, a trial court may inquire into the appropriateness of including additional sums for the child's elementary, secondary, and post-secondary education (education support order). *McKay v. McKay*, 671 N.E.2d 194, 197 (Ind. Ct. App. 1996) (citing prior version of the child support statute Indiana Code sections 31-1-11.5-12(a) & 31-1-11.5-12(b), now found at Indiana Code sections 31-16-6-1 & 31-16-6-2). However, "[t]he two provisions [child support order and educational support order], no matter how interrelated, are not interchangeable. *Id.* at 197. Nor can a determination [of child support] be transformed into [an educational support] order for educational needs merely by wishing it so." *Id.*

The trial court has discretion to determine what is included in educational expenses. *Warner v. Warner*, 725 N.E.2d 975, 979 (Ind. Ct. App. 2000). Indiana Child Support Guideline 8 offers guidance on items included in educational expenses and provides that "[a] determination of what constitutes educational expenses will be necessary and will generally include tuition, books, lab fees, supplies, student activity fees and the like. Room and board will also be included when the student resides on campus or otherwise is not with the custodial parent." (Emphasis added).

In support of Father's argument that Daughter's housing expenses while living at home with Mother and attending college constitute "educational expenses," Father cites to *Carson v. Carson*, 875 N.E.2d 484 (Ind. Ct. App. 2007). In *Carson*, we addressed the propriety of including room and board as an educational expense for a child who chose to

live at home with her mother while attending college. In that case, the child was over twenty-one years old and the father was no longer obligated to pay child support. We noted the provision contained in the Indiana Child Support Guidelines that room and board would be included as an educational expense when the student resides on campus but explained that “[t]he purpose of educational support orders is to permit the trial court to address the educational needs of a child even after she has turned twenty-one.” *Carson*, 875 N.E.2d at 486. We concluded that, under the specific circumstances of the case, the father was obligated to pay a portion of his child’s housing expenses as educational expenses. *Id.* at 487.

Unlike the circumstances in *Carson*, here, Daughter is under the age of twenty-one and Father is still obligated to pay child support. *See Cubel v. Cubel*, 876 N.E.2d 1117, 1119 (Ind. 2007); I.C. § 31-16-6-6. The trial court—after finding that Daughter had repudiated her relationship with Father—concluded that Father “should not be responsible for any expense of [Daughter’s] college education.” (App. at 12). The trial court then ordered Father’s child support to be modified to \$89.00 per week based on the evidence presented regarding the parties’ weekly income and after making an adjustment for Father’s payment of a health premium for Daughter. Given the facts presented in this case, we conclude that the child support order issued by the trial court upon Mother’s petition to modify support did not include additional sums for Daughter’s college expenses. Accordingly, we affirm the trial court’s order modifying Father’s child support obligation.

Affirmed.

RILEY, J., and BARNES, J., concur.