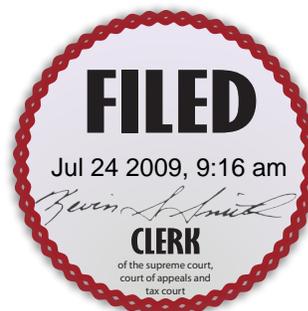


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DONNA DEMKO,

Appellant-Respondent,

vs.

JEFFREY P. DEMKO,

Appellee-Petitioner,

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No. 64A03-0811-CV-550

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Steven E. King, Special Judge
Cause No. 64D01-0109-DR-7382

July 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Following a hearing on numerous motions filed by Donna Demko and her former husband, Jeffrey P. Demko, the trial court issued an order leaving custody of the parties' son, J.E.D., with Jeffrey but imposing no child support obligation on Donna. It directed the parties to pay a set percentage of their daughter, M.D.'s, college expenses that were not covered by awards, grants, or loans, which the trial court listed as \$4,375.00. Donna appeals, arguing the findings of fact regarding calculation of her weekly adjusted income and the calculation of M.D.'s uncovered college expenses were not supported by the evidence. Jeffrey acknowledges the calculations are incorrect. Because the findings are clearly erroneous, we reverse and remand so the court may re-determine Donna's weekly income and enter M.D.'s total uncovered college expenses as \$5,930.00.

FACTS AND PROCEDURAL HISTORY¹

Donna and Jeffrey, who have five children, had their marriage dissolved in 2002. The dissolution order incorporated their Marital Settlement Agreement, which provided they would share joint legal custody of the five children. Donna would have physical custody of the children, and Jeffrey would pay \$420.00 per week in child support. The Agreement also included, among other things, a provision that Donna and the children would remain in the marital residence but Jeffrey could refinance the mortgage on the marital residence and borrow an additional \$44,000.00 "so long as the principal, interest,

¹ Donna's Appellant's Appendix does not contain a copy of the chronological case summary from the trial court. We direct counsel's attention to Indiana Appellate Rule 50(A)(2)(a), which provides, "The appellant's Appendix shall contain . . . the chronological case summary for the trial court . . ." We also note that some of the pleadings included in the Appellant's Appendix do not contain a file stamp from the trial court.

real estate taxes, and insurance premiums d[id] not require [Jeffrey] to pay more than \$2,400.00 per month.” (App. at 9.) Jeffrey was required to pay Donna “all monies due the Lender in said Refinancing Agreements,” (*id.* at 10), by paying her a monthly sum of \$2,400.00, which the parties designated as “a maintenance obligation on the part of [Jeffrey] in favor of [Donna] and represent[ed] the total of principal and interest, real estate taxes and insurance premiums connected with the marital residence.” (*Id.* at 11.)²

In June 2005, the trial court approved the parties’ Agreed Order, which addressed health care expenses, child support,³ and college expenses for two of the children, and rehabilitative maintenance-related payments to Donna.

In April 2007, Donna and Jeffrey stipulated that Jeffrey should be granted sole custody of their two youngest children, C.D. and J.E.D., and that Donna would have sole legal custody of M.D. The trial court entered an order reflecting the parties’ custody agreement and modified Jeffrey’s child support, ordering that he was no longer required to pay child support for C.D. and J.E.D. and reserving for a later time the issue of whether either parent would pay support for M.D. The trial court did not order Donna to pay weekly child support to Jeffrey for C.D. or J.E.D. because “the support credit due to her for parenting time [was] greater than the weekly obligation which would be required

² The Agreement also provided that Jeffrey would pay Donna rehabilitative maintenance for three years, including \$160.00 per week for Donna’s health insurance premiums and one-half of her student loans.

³ The parties agreed Jeffrey’s child support obligation would remain the same notwithstanding the fact two of their children, Ad.D. and Al.D., were in college.

of her.” (*Id.* at 34.) The trial court also found Jeffrey in contempt for being in arrears on his obligations for child support, rehabilitative maintenance, and mortgage payments.

In June 2007, Jeffrey moved to Michigan with J.E.D. Starting in August 2007, both parties filed various motions that led to the trial court’s August 2008 order currently being appealed by Donna. Among those motions, Jeffrey filed a notice of intent to relocate, and Donna filed an objection to relocation and a petition to modify custody of J.E.D. Jeffrey also filed a petition for modification, in which he asked for an order requiring Donna to pay child support for J.E.D. and C.D., emancipating M.D., and setting the parties’ contributions for C.D.’s college expenses.

The trial court held hearings on the various motions on March 12, 2008 and July 17, 2008. The portion of the transcript provided us does not include testimony from the parties regarding the amount of the Donna’s income for child support purposes or the amount of M.D.’s college expenses to be divided by the parties.⁴ The Exhibit Volume, however, does contain a copy of Donna’s paycheck, (*see* Resp. Ex. 6; App. at 80), a copy of M.D.’s financial aid award package, (*see* Resp. Ex. 8; App. at 82-85), and copies of the parties’ proposed Child Support Obligation Worksheets and Post-Secondary Education Worksheets, in which Donna suggested her weekly adjusted income was \$576.92 and M.D.’s uncovered college expenses were \$5,930.00 and Jeffrey suggested

⁴ In her notice of appeal, Donna did not request transcription of the entire hearing or inclusion of all the exhibits. This has impeded our ability to review this case, where Donna is challenging the findings of fact as unsupported by the evidence. Indiana Appellate Rule 9(F) provides, “If the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence.”

Donna's weekly adjusted income was \$1,021.50 and M.D.'s expenses totaled \$7,151.00. (See Resp. Ex. 9; Pet. Ex. E; App. at 87-89, 92-93). The parties did not sign their child support worksheets. The Exhibit Volume indicates the above-mentioned exhibits were admitted into evidence, but it does not reveal a corresponding page number in the transcript where they were admitted.

On August 4, 2008, the trial court entered an order denying Donna's motion to modify custody of J.E.D. and granting Jeffrey authority to relocate. The trial court's order also addressed child support for J.E.D. and M.D.⁵ and college expenses for M.D., who the parties stipulated was not emancipated, and provided in relevant part:

11. Effective with the fall semester of the 2008-2009 school year, Jeffrey Demko shall be responsible for sixty-six percent (66%) and [M.D.] [sic] shall be responsible for thirty-four percent (34%) of the total sum of four thousand three hundred seventy-five dollars (\$4,375.00) per school year which constituted the costs of [M.D.]'s educational expenses that are not covered by staff remissions, award, grants and loans for her matriculation at Purdue University. Each parent is ordered to timely pay their share of those billings issued by Purdue University in order to insure [M.D.]'s continuing ability to attend that institution.

12. Effective this date, no general support order should issue against either party for the support of [J.E.D.] or [M.D.]. That determination is entered consistent with the Indiana Child Support Guidelines based on the following factors.

- a) weekly adjusted income of Jeffrey Demko of two thousand eight hundred sixty-five dollars (\$2,865.00)[;]
- b) weekly adjusted income of one hundred four dollars and fifty cents (\$104.50) to Donna Demko;
- c) no health insurance premium for either party;

⁵ The parties reserved the issues relating to C.D.'s support and college expenses for a further hearing.

d) a sixty dollars (\$60.00) per week parenting time credit to Donna Demko;

e) a ten dollars (\$10.00) per week parenting credit for Jeffrey Demko for fourteen weeks each year; and

f) set-off of the general weekly support due from Donna Demko to Jeffrey Demko for the support due for J.E.D. for fifty-two (52) weeks against the general weekly support due from Jeffrey Demko to Donna Demko for fourteen (14) weeks per year.

(*Id.* at 43-44.)

Donna filed a motion to correct error in which she argued, among other things, there was no evidence to support the trial court's finding that her weekly adjusted income was \$104.50, stated her weekly adjusted income should be \$576.92, and suggested the trial court had erred if it had meant to include her \$2,400.00 monthly maintenance payments in her income calculation. Donna also argued that M.D.'s uncovered college expenses should be \$5,930.00 because M.D. did not get one of the loans listed on the financial aid award package exhibit and that the trial court erroneously ordered M.D., not Donna, to pay a percentage of the college expenses.⁶

During the motion to correct error hearing, Jeffrey acknowledged M.D. had not received one of her college loans and had no objection to the correction of the college expense amount. Jeffrey also acknowledged that the trial court had erred by dividing M.D.'s college expenses between Jeffrey and M.D., instead of Jeffrey and Donna. Finally, Jeffrey agreed that Donna's income of \$104.50 was erroneous and suggested that

⁶ Donna also argued the trial court had erred by ordering each party to be responsible for his or her own attorney fees because the parties had reserved the issue for a further hearing.

it was a “scrivener error” that was possibly supposed to have been \$1,450.00. (Tr. at 209.)

The trial court denied Donna’s motion to correct error.⁷ The trial court later entered a *nunc pro tunc* order, indicating there was no just reason for delay and directing entry of judgment on its August 2008 and October 2008 orders.

DISCUSSION AND DECISION

Donna contends the findings of fact regarding her weekly adjusted income and M.D.’s college expenses are erroneous.

Where, as here, the trial court enters findings and conclusions pursuant to Trial Rule 52, we will set aside the findings only if they are clearly erroneous. *Nowels v. Nowels*, 836 N.E.2d 481, 484 (Ind. Ct. App. 2005). In our review, we must determine whether the evidence supports the findings and whether the findings support the judgment. *Id.* Findings are clearly erroneous if the record contains no facts to support them, either directly or by inference. *Cox v. Cox*, 833 N.E.2d 1077, 1079 (Ind. Ct. App. 2005). A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. *Id.* In order to determine that a finding or conclusion is clearly erroneous, our review of the evidence must leave us with the firm conviction that a mistake has been made. *Id.* We neither reweigh the evidence nor reassess the credibility of the witnesses. *Nowels*, 836 N.E.2d at 484.

⁷ The trial court did, however, grant Donna’s motion regarding attorney fees and ordered the parties would be allowed to present evidence relating to attorney fees during a later hearing.

We will not reverse a trial court's calculation of income for each parent unless it is clearly erroneous. *Naggatz v. Beckwith*, 809 N.E.2d 899, 902 (Ind. Ct. App. 2004), *trans. denied*. If the calculation includes the forms of income our Child Support Guidelines require to be included and falls within the scope of the evidence presented at the hearing, we will not find clear error. *Id.* at 903. Additionally, we review a trial court's apportionment of college expenses for clear error. *Carr v. Carr*, 600 N.E.2d 943, 945 (Ind. 1992).

The trial court determined that neither party owed child support to the other, and in making this determination, the trial court found Donna's weekly adjusted income to be \$104.50. Donna asserts the finding is clearly erroneous and contends her weekly income should be \$576.92, which would represent her salary from her employment. Jeffrey agrees the \$104.50 amount is erroneous but suggests it was a typographical error and that the trial court may have meant to find Donna's income to be \$1,475.00.⁸ Jeffrey cites no evidence in the record to support this assertion but invites us to correct the typographical error.

We reject Jeffrey's invitation to correct Donna's income to a sum he believes the trial court might have intended. Because both parties agree the calculation is erroneous and because the limited evidence presented on appeal does not support an income

⁸ Jeffrey arrives at this \$1,475.00 income amount by taking the trial court's finding that Jeffrey's weekly income of \$2,865.00 represented 66% of the parties overall weekly income and then dividing the \$2,865.00 by 66% and then multiplying that sum by 34%.

calculation of \$104.50, we reverse the trial court's calculation of Donna's income and remand for the court to enter a new calculation supported by the evidence.⁹

Finally, as part of its determination of parental responsibility for M.D.'s college expenses, the trial court found that M.D.'s educational costs not covered by awards, grants, or loans to be \$4,375.00. Again, the parties agree that this finding is clearly erroneous and that the correct amount should be \$5,930.00, which is the amount of a Federal PLUS Loan that M.D. did not get, and the evidence presented supports this \$5,930.00 amount.¹⁰ Accordingly, we reverse the trial court's calculation of M.D.'s

⁹ We also reject Donna's suggestion that we should decide the trial court erred if it had meant to include maintenance payments in her income when computing child support. First, any such argument is waived because Donna did not raise that argument during the hearing and raised it only in her 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), *reh'g denied*. Furthermore, from the record before us, it is unclear what the trial court used to calculate Donna's income. Nothing in the record suggests the \$2,400.00 maintenance payments were to be included as part of Donna's income. Indeed, during the motion to correct error hearing, the trial court did not appear to be aware that Donna was receiving monthly maintenance payments. (*See* Tr. at 200-201.)

On remand, we also instruct the trial court to obtain signed child support worksheets from the parties. A child support worksheet must be completed and filed with the trial court, signed by the parties, and supported by documentation. *See* Ind. Child Support Guideline 3(B); *see also* *Payton v. Payton*, 847 N.E.2d 251, 253 (Ind. Ct. App. 2006) (explaining that since 1989, Indiana Child Support Guidelines have required, in all cases in which a court is requested to order support, both parents complete and sign, under penalty of perjury, a child support worksheet to be filed with the court verifying parents' incomes).

¹⁰ While there is some evidence to support the trial court's finding that the parental contribution of M.D.'s college expenses was \$4,375.00, (*see* App. at 83), we remand for a correction of the amount to \$5,930.00 because both parties agree this is the amount they should be required to pay for M.D.'s college expenses.

uncovered college expenses and remand for the court to enter an amount of \$5,930.00 for the uncovered expenses.¹¹

CONCLUSION

The parties agree the trial court's findings regarding Donna's income and M.D.'s uncovered college expenses are erroneous, and our review of the limited record before us reveals the evidence presented does not support the trial court's income calculation and does support the parties' agreed-upon college expense amount of \$5,930.00. Accordingly, we reverse and remand for the court to re-determine Donna's weekly income and to enter M.D.'s total uncovered college expenses as \$5,930.00.

Reversed and remanded.

BAKER, C.J., and BARNES, J., concur.

¹¹ The trial court should also correct its order to reflect that M.D.'s uncovered college expenses will be divided between Jeffrey and Donna, not Jeffrey and M.D. as the trial court's order currently provides. (*See App. at 43, paragraph 11.*)