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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MARRIAGE OF:)

DAVID A. BROWN,)

Appellant-Respondent.)

vs.)

No. 64A04-1012-DR-749

BRANDI (BROWN) WITTMER,)

Appellee-Petitioner.)

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Roger V. Bradford, Judge
The Honorable James A. Johnson, Magistrate
Cause Nos. 64D01-0705-DR-3929 & 64D01-1002-PO-2045

July 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

David Brown (“Father”) appeals the Porter Superior Court’s final order in the dissolution of his marriage with Brandi (Brown) Wittmer (“Mother”). Father contends that the trial court erred in its division of marital assets, ordering Father to make certain payments to Mother, calculating Father’s monthly payments to Mother, holding Father responsible for the second mortgage on the marital residence, ordering post-secondary educational expenses for their two children, failing to credit him for premiums he paid for the children’s health insurance, ordering tutoring expenses as a part of his basic child support obligation, restricting his parenting time, issuing a protective order against him, and ordering him to pay a portion of Mother’s attorney’s fees. We affirm in part, reverse in part, and remand.

Facts and Procedural History

Father and Mother were married in 1994 and have a daughter, T.B., born February 20, 1994, and a son, B.B., born October 23, 1997. Mother petitioned for dissolution of the marriage in May 2007. Father was hospitalized from May until the beginning of July. In the meantime, the trial court entered a provisional order awarding Mother sole legal and physical custody of T.B. and B.B. and possession of the marital residence. Upon Father’s release from the hospital, he exercised unsupervised overnight parenting time with T.B. and B.B.

In September, Father learned that Mother’s boyfriend had been convicted of child molesting. Father subsequently filed an emergency petition for custody of T.B. and B.B. The trial court denied the petition but “restrained and enjoined [Father and Mother] under

penalty of contempt of this Court from exposing the minor children to any person of the opposite sex who is not related by blood or marriage and with whom either party has a romantic interest during the remaining pendency of this action.” Appellant’s App. p. 44.

The trial court issued a protective order against Father in December stemming from an incident that occurred in the marital residence when Father went to pick up T.B. and B.B. for his parenting time. The protective order required Father’s parenting time to be supervised by Family House. Father began seeing T.B. and B.B. at Family House in June 2008. After one visit, Mother filed a police report because Father hurt T.B. and B.B. with a hairbrush. During another visit, Family House reports show that Father, T.B., and B.B. engaged in name-calling and that “[t]he children are not getting a good example of how to function as a family.” Tr. 6-16 p. 49.¹ At another visit, the staff had to talk to Father because he was “constantly putting down and teasing” T.B. *Id.*

The trial court dissolved the marriage in July 2009. The order indicated that supervised parenting time at Family House was to continue and contained other terms regarding Father’s parenting time and counseling. It also stated, “Mother’s significant other . . . shall not spend overnights or be left alone with the parties’ children until Father . . . has overnight visitation with the parties’ children.” Appellant’s App. p. 55.

Around the time the protective order expired in December 2009, T.B. refused to continue parenting time with Father. At some point, Father left a threatening message on Mother’s answering machine. Tr. 8-20 p. 34-35.

¹ The hearing on property division and supervised parenting time was held over two days: June 16 and August 20, 2010. Because the transcripts for the hearing are separately bound and paginated, we refer to them as “Tr. 6-16” and “Tr. 8-20.” We note that our appellate rules require transcripts to be consecutively paginated. *See* Ind. Appellate Rule 28(A)(2) (“The pages of the Transcript shall be numbered consecutively regardless of the number of volumes the Transcript requires.”).

In February 2010, Mother petitioned for a protective order and requested a hearing. Father filed a motion to dismiss and strike Mother's motion for a protective order in March. B.B.'s last visit with Father was later that month. Tr. 6-16 p. 20, 26. Father later petitioned for a temporary restraining order, requesting the court to "[r]estrain[] Mother from further violation of the parenting time order" Appellant's App. p. 77. Mother responded to Father's petition.

T.B. and B.B. began seeing Dr. Tiffany Simpson, a licensed clinical psychologist, in April 2010. At the final hearing, Dr. Simpson testified that the children had witnessed altercations between Father and Mother and had to call the police several times. The children told Dr. Simpson that when they have tried to talk with Father, he denies incidents they have witnessed. For example, one of the children confronted Father during a Family House visit about him hitting Mother in the head with a phone. Although Father denied it, the children said they saw it happen. The children also told Dr. Simpson that Father accuses them of lying and tells them that Mother "is putting things in their head[s]." Tr. 6-16 p. 46. As a result, "they have trouble trusting him." *Id.* The children are "scared of his temper or getting hurt." *Id.* at 13.

T.B. described to Dr. Simpson two situations where Father was physical with her in a way she felt was aggressive. She believed that Father probably will not change and does not want a relationship with him. B.B. told Dr. Simpson that on the days of Family House visits, he gets upset, has trouble in school, and fights with people in anticipation of the visits. He stopped seeing Father after he finally had the courage to talk with him about his feelings. B.B. told Dr. Simpson that Father said "he was lying and that his

feelings didn't matter." *Id.* at 25. B.B. is afraid of having a relationship with Father but would like one.

Dr. Simpson did not believe T.B. and B.B. were coached. She could not recall the exact dates of incidents that had occurred between Father and the children but stated that they are "still very impactful to the children today." *Id.* at 24. She recommended therapeutic intervention with Father and the children.

At some point, Father deleted all pictures of T.B. on his Myspace account. He changed his account to state that he was "the proud father of one child and he would do anything for him." *Id.* at 84. T.B. saw the change in Father's account.

As to marital assets, Father's pension was valued at \$18,249. Father claimed the value of Mother's pension was \$27,000 while Mother claimed it was \$22,748.70. Mother's pension account summary shows a vested balance of \$22,748.70 and a total value of \$27,289.80. Petitioner's Ex. 4. Mother and Father each owned a life insurance policy. Father's was valued at \$1165. Father claimed Mother's policy was worth \$1165 but Mother testified that it was worth less. Mother requested that the court allow each party to keep his or her own policy. Mother has a 1995 Dodge Neon that she valued at \$500 and Father valued at \$1000.

Mother and Father testified regarding other marital assets. Sometime after Mother filed for dissolution, she sold a Tennessee Walker horse for \$4000, llamas for \$700, and several miniature animals for \$2500. Father submitted a list of marital assets that included values for a pony, ferrets, and chickens. Father's list also included, among other things, values for Mother's checking account and a state tax refund. Mother submitted a

list of property retained by Father that includes, among other things, a utility trailer and work tools. Although Father submitted evidence showing the values of some of these items, Mother did not include values for any of them.

At some point, Mother and Father filed for Chapter 7 bankruptcy. Father was not working at the time but promised Mother that he would pay for half of the bankruptcy fees. The bankruptcy was discharged before the final hearing. Mother submitted an exhibit showing the total bankruptcy fees to be \$1411. *See* Petitioner's Ex. 10.

The marital residence had two mortgages. At the time Mother and Father filed for bankruptcy, they intended to reaffirm both mortgages and in fact signed reaffirmation papers for both. Somehow the paperwork was lost and the first mortgage was discharged. *See* Tr. 6-16 p. 81. Mother and Father had a debt of \$26,446.69 on the second mortgage. Mother testified that Father "failed to cooperate in any efforts [she] made to save the home; and, in fact, directly sabotaged the programs [she] was trying to work out with the mortgage company." *Id.* at 77. Father refused to sign the final paperwork regarding Mother's refinancing of the second mortgage even though it was approved based on her own income and she would have been responsible for the payment of the second mortgage. Father did not help pay the mortgage. The lender began foreclosure proceedings in June 2010.

Mother borrowed \$14,288 from her family after she filed for dissolution to keep up with her bills. The exhibit she submitted on this point shows that she borrowed the money for car repairs, attorney's fees for both protective order and dissolution proceedings, mortgage payments, and "Therapy & Tutoring." Petitioner's Ex. 14. At

some point, Father cashed in the children's savings bonds, which were valued at \$3064. Mother has made payments for tutoring B.B., who has a learning disability. Both parties submitted child support obligation worksheets differing on whether Mother, Father, or both parties paid for the children's health insurance premiums.

Mother submitted evidence showing that Father's weekly gross income is \$1385.61 while Mother's weekly gross income is \$574.43 as well as an affidavit from her attorney stating that Mother's attorney's fees are \$21,388.50. Mother also testified that Father "intentionally drug out the bankruptcy [proceedings] by failing to disclose all of his assets until it was about to close in 2008; which, in turn, has drug out these proceedings." Tr. 6-16 p. 73.

The trial court held an in camera interview with T.B. and B.B. before it issued its final order in November 2010. In its order, the court appointed Dr. Simpson as the counselor for Father, T.B., and B.B. and continued, "Father's visitation and contact with [T.B.] and [B.B.] is suspended, except during counseling, until such time that Dr. Simpson recommends visitation is to resume." Appellant's App. p. 21. The court also ordered Father to continue providing health insurance for the children and ordered Mother and Father to be responsible for a portion of the children's college expenses.

The court gave Mother her pension, the 1995 Dodge Neon, and all personal property in her possession. Father received his pension, his life insurance policy, and all personal property in his possession. The court found, "Father intentionally interfered with Mother's good faith efforts to keep the marital residence and as such Father is solely responsible for the second mortgage" *Id.* at 22. In addition, Father was ordered to

pay Mother \$8721 for maintenance during the pendency of the proceedings, \$2797.68 for Mother's loan remodification payment, \$730.50 in bankruptcy fees, \$14,288 for Mother's post-petition loans from her family, and \$3064 for the children's savings bonds, with which Mother was ordered to set up a secondary education savings account for the children. To make these payments, the court ordered Father to make monthly payments of \$359.13 to Mother for 120 months.

Finally, the court ordered Father to pay \$15,000 of Mother's attorney's fees "[d]ue to his superior earnings, as well as the fact that Father caused the dissipation of marital assets." *Id.* at 24.

The trial noted in its final order that it was entering a protective order against Father. The protective order, filed the same day, found that domestic or family violence had occurred and indicated that Father was to refrain from contact with Mother, T.B., and B.B. except during office visits with Dr. Simpson.

Father now appeals.

Discussion and Decision

Father contends that the trial court erred in its division of marital assets, ordering Father to make certain payments to Mother, calculating Father's monthly payments to Mother, holding Father responsible for the second mortgage on the marital residence, ordering post-secondary educational expenses for their two children, failing to credit him for premiums he paid for the children's health insurance, ordering tutoring expenses, restricting his parenting time, issuing a protective order against him, and ordering him to pay a portion of Mother's attorney's fees.

I. Division of Marital Assets

Father contends that the trial court abused its discretion by ordering an unequal division of the marital assets.

It is well-established in Indiana that all marital property goes into the marital pot for division. *Beard v. Beard*, 758 N.E.2d 1019, 1025 (Ind. Ct. App. 2001), *trans. denied*. By statute, the trial court must divide the property of the parties in a just and reasonable manner, including property owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a); *Webb v. Schleutker*, 891 N.E.2d 1144, 1153 (Ind. Ct. App. 2008). An equal division of marital property is presumed to be just and reasonable. Ind. Code § 31-15-7-5; *Webb*, 891 N.E.2d at 1153. This presumption may be rebutted by a party who presents relevant evidence, including evidence of the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
 - (A) before the marriage; or
 - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
- (5) The earnings or earning ability of the parties as related to:
 - (A) a final division of property; and
 - (B) a final determination of the property rights of the parties.

I.C. § 31-15-7-5; *Webb*, 891 N.E.2d at 1153. If the trial court deviates from the presumption of equal division, the court must enter findings explaining its reasons for doing so. *Kirkman v. Kirkman*, 555 N.E.2d 1293, 1294 (Ind. 1990). 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. *Hill v. Hill*, 863 N.E.2d 456, 462-63 (Ind. Ct. App. 2007).

When dividing marital property, the trial court must, at a minimum, be sufficiently apprised of the approximate gross value of the marital estate. *Montgomery v. Faust*, 910 N.E.2d 234, 238 (Ind. Ct. App. 2009); *see also Howland v. Howland*, 166 Ind. App. 572, 337 N.E.2d 555, 559 (1975) (“A trial court commits an abuse of discretion if it orders a property distribution without knowing the value of the property it is distributing.”).

Father argues that the trial court gave Mother more than half of the marital assets without explaining why it deviated from the presumption of equal division. Mother concedes that she received more assets, Appellee's Br. p. 9-10 (“[Father] requests the Appellate Court to overturn the trial court's decision simply because it awarded more assets to [Mother].”), but argues that the evidence supports the trial court's disposition of the property.

The trial court gave Mother her pension, the car, and all personal property in her possession. Father received his pension, his life insurance policy, and all personal property in his possession. Although the parties apparently agree that this division was

unequal, the trial court did not enter findings explaining its deviation from an equal division. This alone is error. Further, the trial court failed to assign values to the pensions, the car, Father's life insurance policy, or any of the personal property in each party's possession. We thus have no way of reviewing the trial court's property division. *See Montgomery*, 910 N.E.2d at 238 (“Appellate courts are ill-equipped to determine the value of specific assets or of the total marital estate in the first instance, so it is vital to our review to have the trial court do so.”).

We remand to the trial court for a careful consideration of what items are included in the marital pot, the values of such items, and how they are to be divided. We also remind the court that if it deviates from the presumption of equal division, it must enter findings explaining its reasons for doing so.

II. Post-Filing Debt

Father also contends that the trial court abused its discretion by ordering him to pay Mother \$14,288 for the money she borrowed from her family after she filed for dissolution to keep up with her bills. We note that this \$14,288 is above and beyond what the trial court ordered Father to pay Mother for maintenance owed during the pendency of the dissolution proceedings. *See* Petitioner's Ex. 10 (Mother's exhibit indicating Father owed \$6070 and \$2651 for maintenance during the pendency of the proceedings); Appellant's App. p. 23 (final order directing Father to pay Mother “\$8,721.00 (6,070.00 + 2,651.00) for maintenance”).

Generally, the marital estate closes on the date the dissolution petition was filed, and debts incurred by one party after that point are not to be included in the marital

estate. *Thompson v. Thompson*, 811 N.E.2d 888, 913 (Ind. Ct. App. 2004), *reh'g denied*, *trans. denied*.

Mother counters that “[t]he ‘doctrine of necessities’ is an exception to the rule that the marital estate generally closes at the date the dissolution petition is filed.” Appellee’s Br. p. 10. We disagree. In *Bartrom v. Adjustment Bureau, Inc.*, a creditor brought a collection action against a wife to recover debts related to medical expenses incurred by her late husband after the dissolution petition had been filed. 618 N.E.2d 1, 2-3 (Ind. 1993). Our Supreme Court held that a financially superior spouse has limited secondary liability for the necessary expenses the other spouse incurs during the separation period under the doctrine of necessities. *See id.* at 8-9.

We have held that the doctrine of necessities in *Bartrom*, a collection action, is inapplicable to dissolution actions. *See Fuehrer v. Fuehrer*, 651 N.E.2d 1171, 1174 (Ind. Ct. App. 1995) (“We do not interpret *Bartrom* as changing the long-standing, general rule, imposed by our legislature . . . , that, *in dissolution actions*, the marital pot closes on the date the dissolution petition is filed.”), *reh'g denied*, *trans. denied*; *see also Thompson*, 811 N.E.2d at 913; *Moore v. Moore*, 695 N.E.2d 1004, 1009 (Ind. Ct. App. 1998).

Because Mother’s \$14,288 debt to her family arose after she filed her dissolution petition and that debt is not covered by the doctrine of necessities, the trial court abused its discretion by ordering Father to pay Mother for this debt. *See Thompson*, 811 N.E.2d at 913 (vacating trial court’s order for husband to pay wife \$9948 in medical expenses incurred by wife after she filed for dissolution); *Moore*, 695 N.E.2d at 1009 (finding no

abuse of discretion in trial court's decision not to award wife \$13,209 for debt she incurred during period of separation to pay for excess household expenses); *Fuehrer*, 651 N.E.2d at 1174 (reversing trial court's order to include in the marital pot wife's \$11,000 in medical bills and \$3000 in credit card debt for the purchase of clothing and other necessities). We reverse this portion of the trial court's order.

III. Loan Remodification Payment

Father also contends that the trial court abused its discretion by ordering him to pay Mother \$2797.68 for her loan remodification payment.

In Mother's proposed final order, she indicated that Father should pay her \$2797.68 for her loan remodification payment. However, we find no evidence in the exhibits or in the transcripts of the hearing regarding a loan remodification payment or its value. Notably, in Mother's appellate brief, the only citation she provides regarding such a payment and its value is to the trial court's final order directing Father to pay her \$2797.68 for her loan remodification payment. We can only conclude that such evidence was not in the record. The trial court thus abused its discretion by ordering Father to make this payment. We reverse this portion of the trial court's order.

IV. Calculation of Father's Monthly Payments

Father also contends that the trial court erred in its calculation of his monthly payments to Mother. These payments were for \$8721 in maintenance, \$2797.68 for Mother's loan remodification payment, \$730.50 for "½ of the bankruptcy fees," \$14,288 for Mother's loans from her family, and \$3064 for the children's savings bonds that Father cashed in. Appellant's App. p. 23. The sum of these amounts is \$29,601.18.

We agree with Father that the court-ordered monthly payments of \$359.13 for 120 months results in a total payment of \$43,095.60 and that this total payment far exceeds the sum he was ordered to pay. Mother consents to remand on this particular issue. Regardless of the miscalculation, however, the total sum owed by Father is less than \$29,601.18 because we have already determined that the trial court abused its discretion by ordering Father to pay Mother \$2797.68 for the loan remodification payment and \$14,288 for Mother's loans from her family. Further, the trial court stated that Father was to pay for half of the bankruptcy fees, which totaled \$1411, but ordered Father to pay \$730.50 instead of \$705.50. We therefore remand to the trial court for a calculation of Father's monthly payments for \$8721 in maintenance, \$705.50 for half the bankruptcy fees, and \$3064 for the children's savings bonds.

V. Second Mortgage

Father next contends that the trial court abused its discretion by ordering him to be solely responsible for the second mortgage. He argues that "[t]here was no evidence that supported the court's finding that [he] intentionally interfered with [Mother]'s good faith efforts to keep the marital residence." Appellant's Br. p. 13. We disagree.

The evidence most favorable to the judgment shows that Father "failed to cooperate" with Mother's efforts to save the home, "directly sabotaged" the programs she was working out with the mortgage company, refused to sign paperwork to refinance the second mortgage even though Mother would have been responsible for payment of the second mortgage, and failed to help pay the mortgage. In light of this evidence, we

cannot say that the trial court abused its discretion by ordering Father to be solely responsible for the second mortgage.

VI. Post-Secondary Educational Expenses

Father next contends that the trial court abused its discretion in ordering payment of post-secondary educational expenses absent any evidence in the record about such expenses. The trial court's order states:

3. Post Secondary Education Expenses. The parties' children shall be responsible for payment of one-third (1/3) of their college expenses. College expense is defined to include tuition, room and board (assuming the child resides on campus as opposed to being in the care of either party), books, lab fees[,] student activity fees, supplies, reasonable travel and spending money and parking fees. The child shall be required to apply for any and all reasonably available grants, aid, scholarships and loans for which they may qualify. The balance will be divided by the parents according to their respective income shares used in the calculation of their child support obligations at the time the child is attending college.

Appellant's App. p. 21-22.

We review decisions to order the payment of post-secondary educational expenses for an abuse of discretion. *Snow v. Rincker*, 823 N.E.2d 1234, 1237 (Ind. Ct. App. 2005), *trans. denied*. A multitude of considerations impact a decision to order an award of post-secondary educational expenses. *Quinn v. Threlkel*, 858 N.E.2d 665, 670 (Ind. Ct. App. 2006). An educational support order must take into account the child's aptitude and ability; the child's reasonable ability to contribute to educational expenses through work, obtaining loans, and obtaining other sources of financial aid reasonably available to the child and each parent; and the ability of each parent to meet these expenses. Ind. Code § 31-16-6-2(a)(1); *Knisely v. Forte*, 875 N.E.2d 335, 341 (Ind. Ct. App. 2007), *reh'g denied*.

We find no evidence in the record, and Mother points to none, regarding any of these factors. In fact, college was not even mentioned at the hearing. The trial court thus abused its discretion by ordering payment of post-secondary educational expenses. We reverse this portion of the trial court's order.

VII. Health Insurance Payments

Father next contends that the trial court abused its discretion when calculating his child support obligation by failing to give him credit for his payment of the children's health insurance premiums.

Decisions regarding child support generally rest within the sound discretion of the trial court, and we will reverse the trial court's decision only for an abuse of discretion or if the trial court's determination is contrary to law. *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1261 (Ind. Ct. App. 2010). The Indiana Child Support Guidelines provide that, generally, a parent should receive a health insurance credit in an amount equal to the premium cost the parent actually pays for a child's health insurance. *Id.*; see Ind. Child Support Guideline 3(E)(2), (G)(3).

Mother agrees that Father makes weekly payments toward the premiums and further argues that the trial court failed to credit her for her own weekly payments toward the premiums. The evidence reveals a number of child support obligation worksheets. In Mother's worksheet, no credit is given to either party for payment of the children's health insurance premiums. Father submitted three different worksheets. In one worksheet Father is given a \$14.25 credit, in another worksheet Father is given a \$14.25 credit and Mother is given a \$26 credit, and in yet another worksheet Mother is given a \$26 credit.

It is thus unclear whether Father, Mother, or both paid health insurance premiums for the children and how much those premiums cost.

Nonetheless, in its final order, the trial court stated, “Father shall continue to provide health insurance for the parties’ children.” Appellant’s App. p. 20. In the trial court’s child support obligation worksheet attached as an exhibit to its final order, no credit was given to him for payment of the children’s health insurance premiums. Because Father is the only party now paying premiums for the children’s health insurance, Father is the only party entitled to credit. Mother points to no authority stating otherwise. We remand to the trial court to determine how much Father pays for the children’s health insurance premiums and to give Father credit for that expense.

VIII. Tutoring Expenses

Father then contends that the trial court abused its discretion when calculating his child support obligation by crediting Mother \$9.73 for work-related child care expenses.

Mother testified that B.B. has special needs and that she pays his summer tutoring expenses. She submitted a letter from B.B.’s special education teacher stating that B.B. has a learning disability and would benefit from two hours of tutoring per week during the summer. Mother also submitted a bill from that teacher charging \$23 per hour. Mother pays \$506 for B.B.’s summer tutoring, which, when spread across the year, results in \$9.73 per week.

In addition to basic child support obligations, a trial court may order additional support for extraordinary educational expenses. *Bass v. Bass*, 779 N.E.2d 582, 595 (Ind. Ct. App. 2002), *trans. denied*; *see* Ind. Child Support Guideline 8 (“Any extraordinary

educational expenses incurred on behalf of a child shall be considered apart from the total Basic Child Support Obligation.”). A trial court may order a parent to pay additional support for tutoring if the evidence demonstrates a particular educational need for such additional assistance. *Bass*, 779 N.E.2d at 595.

We agree with Father that the trial court incorrectly included B.B.’s tutoring expenses as work-related child care expenses on the child support obligation worksheet. However, the trial court would have been well within its discretion to order Father to pay for half of B.B.’s tutoring expenses in addition to his basic child support obligation. That is, regardless of whether the tutoring expenses were included as a basic child support obligation or as additional support, the result is the same. We remand to the trial court to remove B.B.’s tutoring expense from the basic child support obligation and instead include half of B.B.’s tutoring expense as additional support to be provided by Father.

IX. Parenting Time Restriction

Father then contends that the trial court abused its discretion by restricting his parenting time.

Indiana recognizes that the right of a noncustodial parent to visit his or her children is a precious privilege. *D.B. v. M.B.V.*, 913 N.E.2d 1271, 1274 (Ind. Ct. App. 2009), *reh’g denied*. Although a court may modify a parenting time order when the modification would serve the best interests of the child or children, a parent’s visitation rights shall not be restricted unless the court finds that the parenting time might endanger the child’s physical health or significantly impair the child’s emotional development. *Id.*; *see* Ind. Code § 31-17-4-2. A party who seeks to restrict a parent’s visitation rights bears

the burden of presenting evidence justifying such a restriction. *Id.* at 1275. Decisions regarding parenting time are committed to the sound discretion of the trial court, and we reverse only upon an abuse of that discretion. *See Walker v. Nelson*, 911 N.E.2d 124, 130 (Ind. Ct. App. 2009).

The trial court ordered: “Father’s visitation and contact with [T.B.] and [B.B.] is suspended, except during counseling, until such time that Dr. Simpson recommends visitation is to resume.” Appellant’s App. p. 21. However, the trial court failed to make the requisite statutory finding of endangerment to the children’s physical health or significant impairment to the children’s emotional development. *See* I.C. § 31-17-4-2. We remand to the trial court with instructions to either: (1) enter an order containing findings sufficient to support a parenting time restriction under Indiana Code section 31-17-4-2 or (2) enter an order without the restriction. *See Walker*, 911 N.E.2d at 130; *see also D.B.*, 913 N.E.2d at 1275 (“On remand, should the trial court restrict Father’s parenting time upon entry of the requisite statutory finding of endangerment, we encourage the trial court to order that the parenting time be supervised.”).

Within this issue, Father argues, “It is in Mother’s custody where the children are in danger. By acting for her own romantic interests, she is putting the children in danger by having them live with her convicted child molester boyfriend.” Appellant’s Br. p. 19. Mother’s boyfriend is mentioned twice in the trial court’s order. Under its discussion of child custody, child support, and parenting time, the trial court states, “Any restrictions on Wife’s fiancé . . . shall be suggested by Dr. Simpson.” Appellant’s App. p. 22. At the end of the order, the trial court noted:

Likewise, there is grave concern about Mother's significant other His relationship with the children must be closely monitored and also be evaluated with Dr. Simpson. It is noted that the children are aware of [his] conviction and are not currently concerned. Certainly they are old enough to report any concerns that may arise.

Id. at 25. Father ensured that the record in this case included repeated references to Mother's boyfriend's conviction for child molesting. The trial court saw the evidence firsthand and was in the best position to evaluate it. We also note that the court held in camera interviews with T.B. and B.B. The trial court's order shows that it considered the evidence and directed Mother's boyfriend's relationship with the children to be evaluated with Dr. Simpson. Although Father questions the impartiality of Dr. Simpson, that issue was also brought before the trial court. We will not substitute our judgment for that of the trial court. We find no error with the trial court's order as it relates to Mother's boyfriend.

X. Protective Order

Father then contends that the trial court erred by issuing the protective order, which ordered that he was to refrain from contact with Mother, T.B., and B.B. except during office visits with Dr. Simpson.

The Indiana Civil Protection Order Act is to be construed to promote (1) the protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner and (2) the prevention of future domestic and family violence. Ind. Code § 34-26-5-1; *Moore v. Moore*, 904 N.E.2d 353, 357-58 (Ind. Ct. App. 2009). A person who is or has been a victim of domestic or family violence may file a protective order petition against a family or household member who commits an act of domestic or

family violence. Ind. Code § 34-26-5-2(a)(1). Domestic or family violence includes (1) attempting to cause, threatening to cause, or causing physical harm to another family or household member or (2) placing a family or household member in fear of physical harm. Ind. Code § 34-6-2-34.5.

To obtain an order of protection under the Civil Protection Order Act, the petitioner must establish by a preponderance of the evidence at least one of the allegations listed in the petition. *A.S. v. T.H.*, 920 N.E.2d 803, 806 (Ind. Ct. App. 2010). A trial court generally has discretion to grant protective relief according to the terms of the Civil Protection Order Act. *Moore*, 904 N.E.2d at 358. However, a finding by the trial court that domestic or family violence has occurred sufficient to justify the issuance of an order for protection means that the respondent represents a credible threat to the safety of the petitioner. *Id.* Therefore, upon a showing of domestic or family violence by a preponderance of the evidence, the trial court shall grant relief necessary to bring about a cessation of the violence or the threat of violence. *Id.*

One of the allegations in Mother's petition stated that Father hurt the children during a Family House visit: "[T.B. and B.B.] told me [Father] had pushed a hard plastic brush into both of their foreheads and [T.B.]'s arm. I could see visible marks o[n] both children." Appellant's App. p. 68. She attached a police report to the petition.

The trial court specifically found that Mother had shown by a preponderance of the evidence that domestic or family violence had occurred sufficient to justify the issuance of a protective order. *Id.* at 30.

The protective order, issued simultaneously with the final order in the dissolution, indicated that Father was to refrain from contact with Mother, T.B., and B.B. except during office visits with Dr. Simpson. The protective order thus ordered the same parenting time restriction contained in the final order without the requisite finding of endangerment to the children's physical health or significant impairment to the children's emotional development. We do not believe that the findings required to order restricted parenting time in a dissolution order may be circumvented by simultaneously issuing a protective order. Because we are remanding the parenting time restriction for an order with specific findings supporting the restriction or an order with no restriction at all, we remand the protective order for the same changes.

XI. Attorney's Fees

Father finally contends that the trial court abused its discretion by awarding Mother \$15,000 in attorney's fees.

Indiana statutory law pertaining to dissolution proceedings authorizes a court to order a party to pay the attorney's fees of the other party:

The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

Ind. Code § 31-15-10-1(a). The legislative purpose of this statute is to provide access to an attorney to a party in a dissolution proceeding who would not otherwise be able to afford one. *Webb*, 891 N.E.2d at 1156. We review a trial court's award of attorney's fees in connection with a dissolution decree for an abuse of discretion. *Id.* When making

such an award, the trial court must consider the resources of the parties, their economic conditions, the ability of the parties to engage in gainful employment, to earn adequate income, and other factors that are pertinent to the reasonableness of the award. *Thompson*, 811 N.E.2d at 927.

Here, the trial court ordered Father to pay \$15,000 of Mother's attorney's fees, which amounted to over \$20,000. Father's weekly gross income is \$1,385.61 while Mother's weekly gross income is \$574.43. Father therefore earns more than twice the amount as Mother. Moreover, Father intentionally interfered with Mother's efforts to refinance the second mortgage and save the marital residence from foreclosure. In addition, Father prolonged the bankruptcy proceedings, which in turn prolonged the dissolution proceedings. In light of this evidence, we cannot say that the trial court abused its discretion.

Affirmed in part, reversed in part, and remanded.

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