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IN THE
COURT OF APPEALS OF INDIANA

J.R.,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A02-0901-JV-63
	)	
M.B.,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION COUNTY CIRCUIT COURT
The Honorable Alicia A. Gooden, Judge
Cause No. 49C01-0211-JP-2608
49C01-0404-JP-1140

August 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

J.R. ("Father") appeals the trial court's grant of a petition to modify child support filed by M.B. ("Mother"). Father raises two issues, which we revise and restate as:

I. Whether the trial court erred by modifying Father's child support obligation; and

II. Whether the trial court erred by failing to reduce Father's arrearage based upon an alleged payment by Father to Mother.

Additionally, Mother raises one issue, which we restate as whether she is entitled to receive appellate attorney fees. We affirm in part, reverse in part, and remand.

The relevant facts follow. Father and Mother had two children together. As of April 2006, Father's support obligation for both children was $127.00 per week. On April 20, 2006, Mother filed a petition to modify child support alleging that "[a] substantial change in circumstance has occurred" because she "incurred day care costs for the parties' two children" and that Father's "present child support obligation differs by more than twenty percent from the amounts that would be ordered by applying the Indiana Child Support Guidelines." Appellant's Appendix at 17-18. On June 30, 2006, the trial court conducted a hearing regarding Mother's petition.

At the hearing, Father testified that he was a co-owner of an excavating business. Father also testified that he had a weekly gross salary of $810.00 from the excavating business. The trial court admitted into evidence Father's child support worksheet, which was unsigned and unverified, showing that his weekly gross income was $810.00.[1]

[1] Father also testified that he owned an F-350 truck which he used for work and personal transportation, and that the excavating business made the monthly payments for the truck and paid for Father's gas. It also appears from Father's testimony that he used credit cards in his name and in the name of the excavating business, that Father and other persons associated with the excavating business

Mother did not object to the admission of Father's worksheet. The trial court also admitted into evidence copies of Father's personal bank account activity showing Father's weekly deposit from the excavating company based upon his gross salary. Father also testified that he had a partial interest in an investment property and a vacant parcel of real property, and that he had an ownership interest in a bus rental company.

Father testified that he found child care providers in Brownsburg that would cost less than Colonial Village in Zionsville, where Mother had enrolled both children. Specifically, Father testified that both children could be enrolled at Brownsburg Christian Church for a cost of approximately $145.00 per week, and the children could be cared for by one of Father's two sisters for around $130.00 per week. Father also testified at the hearing that he believed that he had made a payment to Mother in the amount of $3,000.00 toward his support obligation. Father testified that the payment was made in connection with an agreement with Mother that was being discussed when she had a different attorney.

Mother testified that she was employed by a spa known as Mango Bay as a message therapist. Prior to working for Mango Bay, Mother had been self-employed as a massage therapist in Zionsville, Indiana. Mother began to work at Mango Bay in

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used both credit cards, and that the excavating business made payments in connection with both credit cards. See Transcript at 13 ("The . . . Visa is in my name. The company pays the bills because we use it as a company card. There are three or four of us there that actually uses that card. The MasterCard is in the company's name . . . but it has my name on the card."); Id. at 14-15 (Visa credit card balance was $171,162 in 2007 and $200,117 as of June 23, 2008); Id. at 20-21 (excavating business claimed $3,000 for business entertainment in 2007). Father testified that there was no way to tell which charges were attributable to him.

addition to her self-employment work in Zionsville in order to make additional money. Mother continued to earn money from both her employment with Mango Bay and as a self-employed message therapist. During cross-examination, Mother testified that she probably averaged about thirty hours per week at Mango Bay. When asked whether she "ever worked full time at Mango Bay, forty hours a week," Mother testified:

> I am not sure if I have or not, but my hours are low, but what happens is if I don't have clients scheduled, we are asked to you know, do stuff around the salon. If there is not anything to do, they ask that we clock out. And so, if I don't have clients, I am not allowed to just to sit around and read a magazine.

Transcript at 84-85.

Mother had a third child in late May of 2008 with a man other than Father. Mother testified that she was on bed rest for approximately one month, did not earn any income during that time, and would be allowed to return to work in mid-July of 2008. Mother also testified that, because of her inability to work and earn money, she was in the process of applying for food stamps and she was behind in her childcare payments. During cross-examination, Mother testified that she worked between 13.47 and 25.71 hours per week during the five-week period in 2008 immediately before she was unable to work, and that her taxable gross pay during those weeks ranged from $217.83 to $550.52. Mother also testified that she worked fewer than full-time hours during that period of time in part because she was eight months pregnant.

The trial court admitted into evidence Mother's child support obligation worksheets, which were unsigned and unverified. Father did not object to the admission of Mother's worksheets. According to Mother's testimony, the weekly gross income

which she specified in her third worksheet was based upon her average weekly gross salary from January of 2008 through May of 2008, without making any adjustments or deductions for the fact that she was on bed rest for a portion of that time. The trial court admitted Mother's 2006 and 2007 tax returns, and Father did not object to their admission. Mother's paycheck history from March 29, 2008 to June 23, 2008 was also admitted into evidence by the trial court.

With respect to child care for her children, Mother testified that she placed both children in child care at Colonial Village because she was working in Zionsville. The hours of Colonial Village were 7:00 a.m. to 6:00 p.m., and the cost was $280.00 per week for both children as of June of 2008. Mother testified that Colonial Village had "a very good program" with qualified teachers, a kindergarten-type program, and a curriculum. Id. at 52-53. Mother testified that she did not think that Brownsburg Christian Church had a program like the one at Colonial Village. In addition, Mother testified that she did not think it was a good idea for the children to stay with Father's sisters:

> Well, if they have an opportunity to be with people who have gone to school that is specialized in the care of children, and have a curriculum and a program I think that is best for the children, then to send them to somebody in a two-bedroom apartment with five other people in it, and I have tried; and believe me, I have tried both of them, and it hasn't worked out.

Id. at 53. Mother testified there was a lack of reliability with one of Father's sisters and that neither of his sisters was trained in early childhood education. At the time of the hearing, one of the children had been attending Colonial Village for three years, and the other had been attending for two years.

With respect to the $3,000.00 payment that Father testified that he made to Mother, Mother testified during direct examination that she assumed any money she received from Father was a gift and should not be credited to Father's arrearages. During cross-examination, Mother testified that when she had a different attorney, she and Father were close to reaching an agreement which required in part for Father to pay her $3,000.00. Mother also testified: "It was actually two payments of fifteen hundred dollars, and I know that I got one of those, and I wasn't sure about the second one . . . ." Id. at 91. On redirect examination, Mother again testified that she viewed the $3,000.00 payment as a gift.

The trial court issued an order modifying Father's support obligation.[2] In its modification order, the trial court: (1) modified Father's child support to $293.00 per week effective June 1, 2008; (2) found that Father's total arrearage as of September 29, 2008 was $21,171.00 and ordered Father to pay Mother an additional $57.00 per week towards the arrearage; and (3) ordered Father "to contribute towards [Mother's] attorney fees in the amount of $3,000." Appellant's Appendix at 52. The trial court accepted Mother's proposal as to the children's child care expenses as reasonable and calculated Father's arrearage using $810.00 per week as Father's gross income during 2006 and using $830.00 per week as Father's gross income in 2007 and in the first five months of 2008. Father filed a motion to correct error alleging that the trial court calculated his

[2] The trial court issued a handwritten order in "Minutes of the Court" on September 22, 2008 setting forth its findings. On October 2, 2008, the trial court issued an Order Modifying Child Support, Arrearage Payment and Attorneys Fees, in which the court incorporated its findings in its September 22, 2008 minutes.

child support arrearage incorrectly by ordering weekly support in excess of fifty percent of his weekly adjusted income. Mother filed a response arguing that the trial court did not err and that Father miscalculated his weekly adjusted income in his motion. The trial court denied Father's motion and ordered Father to pay an additional $500.00 in attorney fees to Mother for her costs in responding to his motion.

I.

The first issue is whether the trial court erred by modifying Father's child support obligation. "We place a 'strong emphasis on trial court discretion in determining child support obligations' and regularly acknowledge 'the principle that child support modifications will not be set aside unless they are clearly erroneous.'" Lea v. Lea, 691 N.E.2d 1214, 1217 (Ind. 1998) (quoting Stultz v. Stultz, 659 N.E.2d 125, 128 (Ind. 1995)). "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. Menard, Inc. v. Dage-MTL Inc., 726 N.E.2d 1206, 1210 (Ind. 2000), reh'g denied. We give due regard to the trial court's ability to assess the credibility of witnesses. Id. While we defer substantially to findings of fact, we do not do so to conclusions of law. Id. We do not reweigh the evidence; rather we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. Yoon v. Yoon, 711 N.E.2d 1265, 1268 (Ind. 1999).

The modification of a child support order is governed by Ind. Code § 31-16-8-1, which provides:

> (a) Provisions of an order with respect to child support . . . may be modified or revoked.
>
> (b) Except as provided in section 2 of this chapter, modification may be made only:
>
> (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or
>
> (2) upon a showing that:
>
> (A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and
>
> (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

Father appears to argue that the trial court erred when it modified his child support obligation for the following reasons: (A) the trial court relied upon Mother's unsigned and unverified worksheets; (B) the trial court declined to impute potential income to Mother; and (C) the trial court declined to find that Mother's choice of child care was not reasonable and to use a lower weekly cost of child care to determine Father's support obligation. We will address each argument separately.

A. <u>Mother's Unsigned and Unverified Worksheets</u>

Father first argues that the trial court erred by relying on Mother's unsigned and unverified worksheets. Mother contends that Father waived his argument "by failing to object to the trial court." Appellee's Brief at 9. Mother also points out that Father's worksheet was unsigned and unverified.

We agree with Mother. Neither Father nor Mother submitted signed or verified worksheets, and neither Father nor Mother objected to the trial court's admission of the other party's worksheets. While we have urged trial courts in the exercise of their discretion to require verified child support worksheets in every case, we conclude that Father's failure to object to the trial court's admission into evidence of Mother's unsigned and unverified worksheets, especially in light of the fact that he also submitted an unsigned and unverified worksheet to the trial court, constituted a waiver of his right to appeal the trial court's order on the grounds that Mother's worksheets were unsigned and unverified. See, e.g., Butterfield v. Constantine, 864 N.E.2d 414, 417 (Ind. Ct. App. 2007) (holding that the father waived his right to appeal the trial court's order on the grounds that the mother submitted an unverified worksheet because the father failed to produce a verified worksheet, failed to object to the mother's lack of a verified worksheet, and tacitly agreed to proceed without a verified worksheet); see also Page v. Page, 849 N.E.2d 769, 773 (Ind. Ct. App. 2006) (observing that the appellant had not objected to the appellee's worksheet which supported the trial court's judgment).

Waiver notwithstanding, we note that the trial court was able to consider and relied upon Father and Mother's lengthy verbal testimony regarding their respective gross incomes as well as various documents admitted into evidence relating to the parties' gross incomes, including Father and Mother's tax return documents, the bank account activity of Father, the credit card activity of Father and Father's excavating business, the payroll activity of Mother, and tax return and other financial documents related to Father's excavating business. Given the witness testimony and documentation admitted

into evidence without objection, we cannot say that the trial court erred in determining the parties' gross incomes for purposes of calculating child support obligations. See Page, 849 N.E.2d at 772 (holding that the trial court did not abuse its discretion when it relied on verbal testimony to support a modification of child support where a parent failed to submit verified documentation).[3]

B. Mother's Income

Father also appears to argue that the trial court erred by declining to impute potential income to Mother on the basis that Mother was unemployed or underemployed. Mother argues that she was not unemployed or voluntarily underemployed and therefore the trial court did not err by declining to impute potential income to her.

The Indiana Child Support Guidelines provide as follows for potential income:

> If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's work history, occupational qualifications, prevailing job opportunities, and earnings levels in the community.

Ind. Child Support Guideline 3(A)(3). The Commentary to this Guideline provides:

> When a parent has some history of working and is capable of entering the work force, but voluntarily fails or refuses to be employed in a capacity in

[3] In support of his argument, Father cites to this court's decision in DeBoer v. DeBoer, 669 N.E.2d 415 (Ind. Ct. App. 1996). In DeBoer, we reversed the trial court's determination of child support in part because the trial court relied upon conflicting unverified and unsigned worksheets, and also because of the large discrepancy between reported income in previous years and the trial court's determination of present income potential. 669 N.E.2d at 424-425. The evidence in this case is distinguishable from the evidence in DeBoer. Here, the evidence does not reveal large discrepancies between the gross income amounts contained in the various worksheets submitted by the parties, and the evidence does not reveal large discrepancies between previous years' reported income of the parties and the trial court's determination of the present incomes of the parties.

> keeping with his or her capabilities, such a parent's potential income should be determined to be a part of the gross income of that parent. The amount to be attributed as potential income in such a case would be the amount that the evidence demonstrates he or she was capable of earning in the past.

Ind. Child Supp. G. 3(A), Commentary 2(c). However, the Guidelines caution that a trial court must employ "a great deal of discretion" in its potential income determination. Apter v. Ross, 781 N.E.2d 744, 763 (Ind. Ct. App. 2003) (quoting Child Supp. G. 3(A) Commentary 2(c)), trans. denied. Indeed, "child support orders cannot be used to 'force parents to work to their full economic potential or make their career decisions based strictly upon the size of potential paychecks.'" Thompson v. Thompson, 868 N.E.2d 862, 869 (Ind. Ct. App. 2007) (quoting In re E.M.P., 722 N.E.2d 349, 351-352 (Ind. Ct. App. 2000)). The guidelines are not meant to force persons to change careers or work up to their full economic potential. Matter of Paternity of Buehler, 576 N.E.2d 1354, 1356 (Ind. Ct. App. 1991). See also Terpstra v. Terpstra, 588 N.E.2d 592, 593-595 (Ind. Ct. App. 1992) ("Many variables may be considered, depending upon the facts peculiar to each case. In some situations young children may be in the home, and in others, the parent may be incapable of earning enough to even cover the cost of day care. Each case is fact sensitive and must be weighed by the trial court on a case-by-case basis.").

Here, the trial court stated the following in connection with Mother's income: "The Court accepts [Mother's] income as proposed by her except from June of 2008 forward. The evidence supports an income of $407.00 for this time period." Appellant's Appendix at 42. The record reveals that Mother had been self-employed as a massage therapist in Zionsville, Indiana. In order to make additional money, Mother obtained

employment with Mango Bay as a message therapist. After Mother obtained employment with Mango Bay, she continued to earn income as a self-employed message therapist.

Mother also testified that she probably averaged about thirty hours per week of work at Mango Bay. When asked during cross-examination whether she "ever worked full time at Mango Bay, forty hours a week," Mother testified:

> I am not sure if I have or not, but my hours are low, but what happens is if I don't have clients scheduled, we are asked to you know, do stuff around the salon. If there is not anything to do, they ask that we clock out. And so, if I don't have clients, I am not allowed to just to sit around and read a magazine.

Transcript at 84-85.

Mother had her third child in about May of 2008. Mother was on bed rest for approximately one month and did not earn any money during that time. Mother acknowledged that she worked between 13.47 and 25.71 hours per week during the five weeks before she was unable to work, and she testified that she worked fewer hours during that period of time in part because she was eight months pregnant. The trial court also heard testimony that Mother's third worksheet covering January of 2008 through May 31, 2008 used a gross income for Mother of $327.00 per week, which was based upon her average weekly gross salary during those months without making any adjustments or deductions for the fact that she was on bed rest for approximately one of the five months covered by that worksheet. Mother's fourth worksheet covering the time after June 1, 2008 also specified Mother's gross weekly income as $327.00, reflecting no change in future earnings.

The trial court accepted Mother's proposed gross income amounts for those periods covered by her first three worksheets, which covered from 2006 through May 31, 2008. With respect to its calculations of Father's support obligation beginning on June 1, 2008, the trial court elected not to use Mother's proposed weekly gross income of $327.00, but instead calculated Father's support obligation using an amount of $407.00 per week for Mother's gross income. The trial court stated that "[t]he evidence supports an income of $407.00 for this time period." Appellant's Appendix at 42.

It was within the trial court's discretion to find that Mother's income need not have included imputed potential income. See Apter, 781 N.E.2d at 763; Terpstra, 588 N.E.2d at 595. By declining to impute additional income to Mother, the trial court in essence avoided punishing her for not working forty or more hours per week, having a third child, or declining to seek career changes. See Thompson, 868 N.E.2d at 869 (noting that child support orders cannot be used to force parents to work to their full economic potential); Buehler, 576 N.E.2d 1354, 1356 (noting that the guidelines are not meant to force persons to change careers). Based upon the record, we cannot say that the trial court erred by declining to include any potential earnings in Mother's weekly gross income for purposes of calculating Father's support obligation.[4] See, e.g., Terpstra, 588

[4] We also note that the trial court considered but declined to impute income to Father based upon the evidence. The trial court observed:

> Much of the evidence surrounded [Father's] income and current business. While [Mother] has alleged that [Father] earns a great deal more than his financial documents reflect, and it is clear that [Father] "co-owns" a multi-million dollar business, [Mother] has not substantiated her claim for imputation of $2,700/wk in income. While the Court does believe that [Father] has a greater financial capacity than he admits, and he clearly uses his company credit card for personal benefit, it is difficult for the Court to draw

N.E.2d at 596 (concluding that trial court did not abuse its discretion in deciding not to impute additional income to father).

C. Child Care Expenses

Father appears to argue that the trial court erred by basing its support determination on "weekly work-related child care costs of $216 to $280 . . . ." Appellant's Brief at 10. Mother argues that "there was ample evidence to support the trial court's conclusion on utilizing the evidence provided by Mother as to daycare costs in calculating the child support . . . ." Appellee's Brief at 18.

The trial court stated: "The Court also accepts [Mother's] proposals as to daycare costs. [Mother] has sole legal custody and can therefore select the children's daycare and schools. The amounts for Colonial Daycare are reasonable, especially for two children." Appellant's Appendix at 42-43.

Indiana Child Support Guideline 3(E)(1), which governs work-related child care expenses, provides:

> Child care costs incurred due to employment or job search of both parent(s) should be added to the basic obligation. It includes the separate cost of a sitter, day care, or like care of a child or children while the parent works or actively seeks employment. *Such child care costs must be reasonable and should not exceed the level required to provide quality care for the children*. Child care costs required for active job searches are allowable on the same basis as costs required in connection with employment.

> conclusions from this evidence for purposes of income imputation. Therefore, the Court utilizes [Father's] salary in all of its worksheets: $810.00/wk for 2006, and $830.00 (supported by [Father's] tax returns) per week from Jan of 2007 forward.

Appellant's Appendix at 41-42.

Ind. Child Supp. Guideline 3(E) (emphasis added). Work-related child care expense is an income-producing expense of the parent. Ind. Child Supp. G. 3(E), Commentary 1. Childcare expenses are limited to those established by the evidence in the record. Bass v. Bass, 779 N.E.2d 582, 594 (Ind. Ct. App. 2002) (finding that the trial court erred in assessing weekly childcare expenses according to Mother's calculation where evidence established a different weekly average of childcare), trans. denied.

Here, Mother's worksheets listed her weekly childcare expenses at $206.00 for 2006, $250.00 for 2007, $250.00 for January 2008 through May 31, 2008, and $280.00 beginning on June 1, 2008 and thereafter. Father did not object to any of the child care expense amounts contained in Mother's four worksheets. Father's worksheet listed Mother's weekly childcare expenses at $135.00. Mother testified that she placed both children in child care at Colonial Village because she was working in Zionsville. According to Mother's testimony and a letter from Colonial Village which was admitted into evidence, the cost for both children to attend Colonial Village was $280.00 per week as of June of 2008. Mother also testified that Colonial Village had "a very good program" with qualified teachers, a kindergarten-type program, and a curriculum. Transcript at 52-53.

Father testified at the modification hearing that he found child care providers in Brownsburg that would cost less than Colonial Village. Specifically, Father testified that Brownsburg Christian Church would cost approximately $145.00 per week, and that his sisters could care for the children for around $130.00 per week. However, Mother testified that she did not think that Brownsburg Christian Church had a program like the

one at Colonial Village. With respect to care provided by Father's sisters, Mother testified:

> Well, if they have an opportunity to be with people who have gone to school that is specialized in the care of children, and have a curriculum and a program I think that is best for the children, then to send them to somebody in a two-bedroom apartment with five other people in it, and I have tried; and believe me, I have tried both of them, and it hasn't worked out.

Id. at 53. Mother also testified that one of Father's sisters was unreliable, and that neither of his sisters was trained in early childhood education. Also according to Mother, one of the children had been attending Colonial Village for three years at the time of the hearing, and the other had been attending for two years.

While Father did testify that his children could have been cared for at Brownsburg Christian Church or by his sisters, the trial court was able to hear both Father and Mother's testimony relating to Father's proposed alternative child care options. Father did not object to any of the child care expense amounts contained in Mother's support worksheets or the trial court's admission of evidence of the cost of Colonial Village. Father did not submit any documentary evidence in support of his proposed alternative child care arrangements. The trial court heard testimony that Colonial Village had "a very good program." Id. at 52-53.

The trial court was required only to ensure that the cost of Colonial Village was "reasonable" and did "not exceed the level required to provide quality care for the children." Ind. Child Supp. G. 3(E). Under the circumstances, and in light of the fact that whether or not to increase child support to offset child care expenses is a matter for

the trial court's discretion, we cannot say that the trial court erred in determining that the cost of child care at Colonial Village was reasonable for two children or by declining to accept and use Father's proposed child care costs to determine Father's support obligation. See Thomas v. Orlando, 834 N.E.2d 1055, 1059 (Ind. Ct. App. 2005) (observing that the father's argument that there was no evidence to support the mother's child care expenses failed in part because the father did not object to the amount of child care expenses as calculated by the mother and submitted to the trial court); Simpson v. Simpson, 650 N.E.2d 333, 337 (Ind. Ct. App. 1995) (observing that whether child care expenses are reasonable or exceed the level required to provide quality care is a determination that "lies within the sound discretion of the trial court" and finding that evidence existed to support the trial court's decision as to such expenses). In summary, we cannot say that the trial court erred by modifying Father's child support obligation.

II.

The next issue is whether the trial court erred by failing to reduce Father's arrearage based upon an alleged payment by Father to Mother. Father argues that the trial court failed to reduce his arrearage by $3,000.00 for a payment he made to Mother and requests us to direct the trial court "to include this $3,000.00 payment as a support payment to apply or credit it to reduce [Father's] arrearage . . . ." Appellant's Brief at 11-12. Father also argues: "Alternatively, this Court should remand to the trial court with directions for that court to correct this omission by making findings and ruling on it." Id. at 12. Mother argues that the trial court was not required to make written findings regarding the $3,000.00 payment because Father did not request written findings pursuant

to Trial Rule 52. Mother also argues that the payment was either a gift or a non-conforming payment and that therefore the trial court did not err when it failed to reduce Father's arrearage by the amount of the payment.

As a preliminarily matter, we note that Trial Rule 52(A) provides that in a case tried without a jury, "[u]pon its own motion, or the written request of any party filed with the court prior to the admission of evidence," the trial court "shall find the facts specially and state its conclusions thereon." Ind. Trial Rule 52(A). However, the trial court is required to make special findings of fact without request "in any other case provided by these rules or by statute." Ind. Trial Rule 52(A)(3). Here, the trial court issued findings, but did not make any specific findings regarding the alleged payment of $3,000.00 by Father to Mother. However, Father does not argue, nor does the record appear to reflect, that Father ever requested the trial court to enter findings of fact and conclusions thereon with respect to this or any other issue, and Father does not direct us to any other rule or statute which required the trial court to enter findings with respect to the alleged $3,000.00 payment. Thus, we cannot say that the trial court erred when it declined to enter findings with respect to Father's alleged $3,000.00 payment by Father to Mother. See, e.g., Warner v. Warner, 534 N.E.2d 752, 754-755 (Ind. Ct. App. 1989) (concluding that the trial court did not err by failing to make specific findings where appellant did not claim to have requested specific findings pursuant to Trial Rule 52).[5]

[5] Father also points out that he argued in his motion to correct error that the trial court's "minute sheet does not credit [Father] for this payment [$3,000.00] and he now asks the Court to apply this amount either to the arrearage due or to the $3,000.00 in attorney fees awarded to [Mother]." Appellant's Appendix at 56. In his reply brief, Father argues that, because he argued in his motion to correct error

When a trial court enters findings, the specific findings control only as to the issues they cover, and a general judgment standard applies to any issue upon which the court has not entered findings. Brinkmann v. Brinkmann, 772 N.E.2d 441, 444 (Ind. Ct. App. 2002). We may affirm a general judgment on any theory supported by the evidence. Id. The judgment will be reversed only if clearly erroneous. Mullis v. Brennan, 716 N.E.2d 58, 62 (Ind. Ct. App. 1999). In determining whether the findings or judgment are clearly erroneous, we consider only the evidence most favorable to the judgment. Id. In addition, we neither reweigh evidence nor judge witness credibility. Id.

Here, Father testified at the hearing that he believed he made a payment to Mother in the amount of $3,000.00. During Father's cross-examination, the following exchange occurred:

> Q. This three thousand dollars or that you say you gave to [Mother], no Court ordered you to do that, did they?
>
> A. I don't believe so. I think we just had an agreement with her old attorney.

Transcript at 47.

During Mother's direct examination, Mother agreed that her proposed calculations of Father's arrearages did not include "any credit for the money [Father] says he gave [her]." Id. at 71. Mother further agreed that Father "wasn't ordered to give [her] that money" and that she "assume[d] those monies were a gift." Id. During cross-

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that his arrearage should be reduced, "this is a case where it is believed that the trial court could have, and should have made *sua sponte* findings on this $3,000.00 payment." Appellant's Reply Brief at 5. However, we note that Trial Rule 52(B) permits, but does not require, a trial court to make new findings of fact with or as part of a motion to correct errors by a party. Further, we note that Trial Rule 59 does not require a trial court to enter findings as part of its denial of a party's motion to correct error.

examination, Mother testified that when she had a different attorney, she and Father were "close to reaching an agreement" which required in part for Father to pay her $3,000.00. Id. at 90. The following exchange also occurred during Mother's cross-examination:

> Q. Okay. Now, the $3,000.00 that [Father] testified to earlier.
>
> A. Um . . . hmm.
>
> Q. Do you remember when Ms. Jameson was your attorney?
>
> A. Yes.
>
> Q. And there were a couple of times that we were close to reaching an agreement in this case?
>
> A. Yes.
>
> Q. And do you remember part of the; one of the agreements required him to make that payment of $3,000.00?
>
> A. Yes.
>
> Q. Do you remember there being a; [sic] part of the agreement was that he [Father] would pay, I think three or four thousand dollars in arrearages?
>
> A. [Mother] It was actually two payments of fifteen hundred dollars, and I know that I got one of those, and I wasn't sure about the second one, and we went ahead and admitted it anyway.
>
> Q. Okay.
>
> A. Just in case.

Id. at 90-91.

Based upon this testimony, we conclude that the trial court's decision not to reduce Father's total arrearage by at least $1,500.00, the amount which the parties agreed Father had paid to Mother in connection with his support obligation, was clearly

erroneous. Therefore, we instruct the trial court to modify Father's total arrearage to reflect Father's previous payment of $1,500.00 to Mother.

With respect to Mother's argument that Father's payment constituted a gift and thus should not reduce his arrearages, we have stated that "a valid inter vivos gift--i.e., an absolute gift--occurs when: (1) *the donor intends to make a gift*; (2) the gift is completed with nothing left undone; (3) the property is delivered by the donor and accepted by the donee; and (4) the gift is immediate and absolute. Fowler v. Perry, 830 N.E.2d 97, 105 (Ind. Ct. App. 2005) (emphasis added). We cannot say that Father intended to give Mother a gift where the testimony of both Mother and Father reveals that the $1,500.00 payment was made in connection with a support agreement that was being discussed even if the agreement was never consummated in its entirety.[6]

In summary, we conclude that the trial court's decision not to reduce Father's total arrearage by $1,500.00 was clearly erroneous and instruct the trial court to modify Father's total arrearage to reflect Father's previous payment of $1,500.00 to Mother.

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[6] We also acknowledge that an obligated parent will not generally be allowed credit for payments not conforming to the support order. Decker v. Decker, 829 N.E.2d 77, 79 -80 (Ind. Ct. App. 2005) (citing Kaplon v. Harris, 567 N.E.2d 1130, 1133 (Ind. 1991)). However, Indiana courts have recognized the following exceptions to this general rule: "(1) *payments made directly to the mother*, (2) payments made via an alternative method agreed to by the parties and substantially complying with the existing decree, (3) payments covered when the non-custodial parent takes custody of the children with the other parent's consent, and (4) payments made toward the funeral expenses of a child." Id. (emphasis added); see also Payson v. Payson, 442 N.E.2d 1123, 1129 (Ind. Ct. App. 1982) (holding, where the father was ordered to make child support payments directly to the clerk of the court but instead made payments directly to the mother and to third parties for rent, that "[i]n a situation where, as here, the parties have agreed to and carried out an alternate method of payment which substantially complies with the spirit of the original support decree, we find it would be unfair to refuse to credit the non-custodial parent simply because the payments were not made through the clerk.") Here, according to Father and Mother's testimony, the $1,500.00 payment was made directly to Mother by Father. Hence, even if the payment was a non-conforming payment, Father may be credited for the payment because he made the payment directly to Mother.

III.

The next issue is whether Mother is entitled to appellate attorney fees. Mother argues that she is entitled to appellate attorney fees because "Father's appellate brief failed to comply with the Indiana Rules of Appellate Procedure" and because Father raised arguments that he "knowingly waived by failing to object" at trial. Appellee's Brief at 20.

Indiana Appellate Rule 66(E) states: "The Court may assess damages if an appeal . . . is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees." Although this rule provides us with discretionary authority to award damages, we must use extreme restraint because of the potential chilling effect upon the exercise of the right to appeal. Quigg Trucking v. Nagy, 770 N.E.2d 408, 413 (Ind. Ct. App. 2002) (citing Donaldson v. Indianapolis Pub. Transp. Corp., 632 N.E.2d 1167, 1172 (Ind. Ct. App. 1994)). We limit our discretion to award attorney fees under Appellate Rule 66 to occasions "when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." Novatny v. Novatny, 872 N.E.2d 673, 682 (Ind. Ct. App. 2007). In addition, we temper our determination to allow appellate attorney fees "so as not to discourage innovation or periodic reevaluation of controlling precedent." Id. (quoting Potter v. Houston, 847 N.E.2d 241, 249 (Ind. Ct. App. 2006)). A strong showing is required to justify an award of appellate attorney fees, and the sanction is not imposed to punish lack of merit unless an appellant's contentions and arguments are utterly devoid of all plausibility. Id. (citing Kuehl v. Hoyle, 746 N.E.2d 104, 110 (Ind. Ct. App. 2001)).

Here, while Mother argues that "Father's appellate brief failed to comply with the Indiana Rules of Appellate Procedure," Mother does not explain which appellate rules Father failed to comply with or how Father's brief was deficient. Nevertheless, even if Father's appellate brief did not comply with our appellate rules in all respects, Mother was able to identify and address the issues raised by Father. Father's alleged noncompliance with our appellate rules is not the type of flagrant violation that would support a finding of bad faith. See Novatny, 872 N.E.2d at 682; Quigg Trucking, 770 N.E.2d at 413. In addition, we cannot say that Father's argument that he was entitled to a reduction of his arrearage due to a payment that he had made to Mother was frivolous. Also, while we ultimately determined that Father waived his argument that the trial court erred by admitting Mother's unsigned and unverified child custody worksheets, we cannot say that Father was acting in bad faith by making an argument regarding the unsigned worksheets or that his argument was "utterly devoid of all plausibility." See, e.g. Quigg Trucking, 770 N.E.2d at 413 (concluding that the appellant's arguments, though unavailing, were certainly plausible). We cannot say that Father's conduct in this appeal or the claims he raises on appeal warrant the award of appellate attorney fees, and we deny Mother's request.

For the foregoing reasons, we affirm the trial court's order to modify Father's child support obligation, except to the extent that we reverse and direct the trial court to reduce Father's arrearage by $1,500.00, and deny Mother's request for appellate attorney fees.

Affirmed in part, reversed in part, and remanded.

CRONE, J., and MAY, J., concur.