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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM ANDERSON,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 29A02-1104-DR-311
)	
ALICIA JONES,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE HAMILTON CIRCUIT COURT
The Honorable Paul Felix, Judge
The Honorable Todd Ruetz, Master Commissioner
Cause No. 29C01-9308-DR-467

October 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent William Anderson (“Father”) appeals from the trial court’s order following the dissolution of his marriage to Appellee-Petitioner Alicia Jones (“Mother”). Father contends that the trial court erred in apportioning educational expenses for the couple’s eldest daughter and uninsured medical expenses for the couple’s youngest child. We affirm.

FACTS AND PROCEDURAL HISTORY

Father and Mother were married on November 7, 1987, and were divorced on June 28, 1994. Two children were born of the marriage: E.A., born May 31, 1988, and A.A., born July 1, 1993. On May 22, 2001, an “Agreement for Modification of Support” was filed, which provided, in part, that Father would pay fifty percent of all uninsured medical expenses for the children and that he and Mother would share in college expenses pursuant to the educational support guidelines in effect at the time of matriculation. Appellant’s App. p. 25. On October 2, 2006, in response to Father’s petition to modify support, the trial court issued an order providing, *inter alia*, that he would be responsible for 32.7678% of E.A.’s college expenses. Father concedes that the calculation was consistent with guidelines in effect at the time.

At some point in 2008, it was determined that both daughters’ wisdom teeth needed to be extracted. Additionally, A.A.’s twelve-year molars were found to be “coming in crooked and they were going into her other teeth and destroying the roots on the bottom of her gum line ... [s]o they had to be pulled back up.” Tr. p. 10. To that end, an orthodontist recommended orthodontia. When told that A.A. required orthodontia, Father replied that “there was no way in hell he was paying for it [and to p]ull her teeth.”

Tr. p. 54. A dentist and orthodontist advised Mother that A.A. would “have to have false teeth before she was eighteen” if she did not have oral surgery and orthodontia. Tr. p. 54. Despite Father’s objections, the orthodontia was nonetheless completed, and, all told, half of E.A. and A.A.’s uninsured medical expenses for the relevant time period totaled \$5648.40.

On May 21, 2010, Mother filed a motion to determine medical and educational arrearages. At the hearing on the motion, Mother testified that E.A.’s college expenses totaled \$58,675.49, of which \$29,288.00 had been covered by scholarships, leaving a balance of \$29,387.49, all of which was paid using student loans, some in E.A.’s name and some in Mother’s name. In the trial court’s order regarding Father’s arrearages, it ordered that he was responsible for thirty-three percent of E.A.’s college expenses balance of \$29,387.49, or \$9697.87, against which would be credited \$812.00 already paid to E.A.. The trial court also ordered that Father was liable for a total of \$5648.40 in uninsured health expenses, against which would be credited \$527.07 in support overpayments. The trial court found that Father’s net total liability was \$14,820.20.

DISCUSSION AND DECISION

At the outset, we note that Mother has not filed an Appellee’s brief. In such cases, we do not need to develop an argument for Mother, and we apply a less stringent standard of review. *Fowler v. Perry*, 830 N.E.2d 97, 102 (Ind. Ct. App. 2005). We may reverse the trial court if Father is able to establish prima facie error, which is error at first sight, on first appearance, or on the face of it. *Id.*

When, as here, the trial court enters findings of fact and conclusions thereon, we apply the following two-tiered standard of review: we determine whether the evidence supports the findings and the findings support the judgment. *Clark v. Crowe*, 778 N.E.2d 835, 839 (Ind. Ct. App. 2002). The trial court’s findings of fact and conclusions thereon will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. *Id.* at 839-40. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.* at 840. This court neither reweighs the evidence nor assesses the credibility of witnesses, but considers only the evidence most favorable to the judgment. *Id.*

**I. Whether the Trial Court Erred in Determining
Father’s Liability for E.A.’s College Expenses**

“[W]hen the apportionment of college expenses is at issue, the clearly erroneous standard articulated in [*In Matter of Paternity of Humphrey*, 583 N.E.2d 133 (Ind. 1991)] governs appellate review.” *Carr v. Carr*, 600 N.E.2d 943, 945 (Ind. 1992). “[W]e will affirm the trial court unless the decision is clearly against the logic and effect of the facts and circumstances which were before it.” *Id.* (citing *Humphrey*, 583 N.E.2d at 134). “Although a parent is under absolutely no legal duty to provide a college education for his children, a court may nevertheless order a parent to pay part or all of such costs when appropriate.” *Gilbert v. Gilbert*, 777 N.E.2d 785, 793 (Ind. Ct. App. 2002). Indiana Code section 31-16-6-2(a) provides, in relevant part, that “[t]he child support order or an educational support order may also include, where appropriate[,] amounts for the child’s

education in elementary and secondary schools and at institutions of higher learning, taking into account[] the child's aptitude and ability[.]”

Father contends that the trial court erred in failing to take into account the fact that some of the college loans procured for E.A.'s college expenses were procured in her name. Father argues that the amount of any loans received by E.A. personally should be deducted from the overall parental liability, thereby reducing his liability. Father, however, provides us with no authority for this proposition, and we are aware of none. Moreover, we do not see how the nominal recipient of the loans is relevant, so long as the proceeds are applied to educational costs. Whether the loans for E.A.'s college expenses were in Mother's or E.A.'s name, the loans funded E.A.'s college education, and Father is liable for thirty-three percent of the cost of that education. The trial court did not err in apportioning E.A.'s college expenses.

II. Uninsured Medical Expenses

As previously mentioned, Father and Mother agreed to split their daughters' uninsured medical expenses equally. Father contends that he should not be liable for A.A.'s orthodontia because Mother has failed to establish that the expenses were reasonable and necessary. We held in *Tigner v. Tigner*, 878 N.E.2d 324 (Ind. Ct. App. 2007), that when uninsured medical expenses are challenged, the party seeking the contribution has the burden of showing that the expenses were reasonable and necessary. *Id.* at 328-29. In *Tigner*, we concluded that the trial court erred in allocating the burden of proof to the party opposing the contribution. *Id.* at 329.

Tigner does not require reversal in this case, however. First, there is no indication in the record that the trial court allocated the burden to Father to show that A.A.'s orthodontia was not reasonable and necessary. Second, we conclude that Mother has carried her burden to show that the expenses were reasonable and necessary. Mother presented evidence that A.A.'s twelve-year molars would destroy her other teeth and that she would require false teeth by the age of eighteen in the absence of orthodontia. In light of this evidence, we have little trouble concluding that the trial court was justified in concluding that the proposed treatment was reasonable and necessary.

Father also claims that Mother acted unilaterally in contravention of the parties' custody agreement, another circumstance that, although we did not find it dispositive, concerned us in the *Tigner* case. *Id.* While it is true that Mother obtained orthodontia for A.A. over Father's objection, *Tigner* requires only that the expenses be shown to be reasonable and necessary, not that complete agreement of the parties is necessary for any treatment to be undertaken. *Id.* We will not hold that one parent may prevent, delay, or escape liability for reasonable and necessary medical treatment for a child simply by objecting to it. The trial court did not err in allocating half of the cost of A.A.'s orthodontia to Father.

The judgment of the trial court is affirmed.

ROBB, C.J., and BARNES, J., concur.