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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MARRIAGE OF	)	
	)	
G.M.,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 35A04-0909-CV-523
	)	
C.M.,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Thomas M. Hakes, Judge
Cause No. 35C01-0610-DR-599

December 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

G.M. ("Father") appeals the trial court's grant of a petition for modification of child custody filed by C.M. ("Mother") regarding their children, Z.M. and K.M. Father raises two issues, which we revise and restate as:

I. Whether the trial court abused its discretion by increasing Mother's parenting time; and

II. Whether the trial court erred by ordering the Mother to pay child support to Father, the custodial parent.

We reverse and remand.

The relevant facts follow. During their marriage, Mother and Father had a son, Z.M., who was born on January 14, 1999, and a daughter, K.M., who was born on November 2, 2002. On January 30, 2007, the trial court entered a decree of dissolution, which awarded Father the custody and control of Z.M. and K.M. The trial court granted Mother parenting time consistent with the Indiana Parenting Time Guidelines. The trial court ordered Mother to pay $62.85 per week in child support. The trial court ordered Father to pay "the first $726.96 of all uninsured medical, surgical, hospital, psychological, dental, optical and prescription drug expenses rendered and provided to or for the benefit of" Z.M. and K.M., and that "[a]ll remaining uninsured expenses shall be divided between the parties with [Father] paying 80% and [Mother] paying 20%." Appellant's Appendix at 15.

At the time of the dissolution, Mother and Father were residents of Huntington County. On February 26, 2009, Father filed a Verified Notice of Intent to Relocate to Seymour, Indiana, which is 157 miles or approximately two and a half hours from

Huntington County. Father stated that Mother's current parenting time with the children consisted of every other weekend, Wednesdays through the week, and all scheduled parenting time in accordance with the Indiana Parenting Time Guidelines.

Mother filed an Objection to Relocation and asked that the trial court restrain the relocation of the children and that she be granted full custody of the children. Mother also filed a Verified Petition for Change of Custody and a Motion for In Camera Interview. The trial court conducted a hearing and in camera interviews with the children.

On May 29, 2009, the trial court approved Father's move to Seymour and entered the following order:

> The court orders visits as per the Indiana Parenting Time Guidelines (including at a minimum, every other weekend) with the following modifications:
>
> 1. [Mother] shall have all of Spring break.
>
> 2. [Mother] shall have summer visits to begin the weekend after school ends to five (5) days prior to school beginning.
>
> 3. [Mother] shall have all of Christmas break with the exception that Christmas day, Christmas eve and the day after Christmas (taken as a three (3) day period) shall alternate between the parties.

Id. at 11. The trial court also ordered Father to file a proposed child support worksheet.

On June 4, 2009, Father submitted a child support worksheet and filed a motion to reconsider the trial court's order "with respect to the Summer and Christmas vacation

Order." Id. at 35. On June 8, 2009, the trial court entered an Order Modifying Child Support, which stated:

> The Court, on the issue of support finds:
>
> 1. That the visitation granted to the non-custodial parent is in the best interest of the children as it allows the children to be around the natural mother even though the children now reside two and one-half hours from their mother.
>
> 2. That there is a great disparity between the income of the father and that of the mother.
>
> 3. That the income difference and the visitation of the children with the non-custodial parents [sic] produces a support payment that would be from custodial to non-custodial parent.
>
> 4. That the support figure is based upon the needs of the children.
>
> 5. That all other parts of the Order are reasonable and in the best interests of the children.
>
> It is Ordered that the Motion to Reconsider is denied and Ordered that child support shall be paid by the father to the mother in the sum of $85.62 per week commencing June 5, 2009.

Id. at 12. On July 1, 2009, Father filed a motion to correct error, which the trial court denied.

Before addressing Father's arguments, we note that Mother did not file an appellee's brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments, and we apply a less stringent standard of review, that is, we may reverse if the appellant establishes prima facie error. Zoller v. Zoller, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). This rule was established so that we might be

relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. Wright v. Wright, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002).

I.

The first issue is whether the trial court abused its discretion by increasing Mother's parenting time. In all parenting time controversies, courts are required to give foremost consideration to the best interests of the child. In re Paternity of G.R.G., 829 N.E.2d 114, 122 (Ind. Ct. App. 2005). When reviewing the trial court's resolution of a parenting time issue, we reverse only when the trial court abused its discretion. Id. If the record reveals a rational basis for the trial court's determination, there is no abuse of discretion. Id. We will not reweigh evidence or reassess the credibility of witnesses. Id.

The Ind. Parenting Time Guidelines provide that "[t]here is a presumption that the Indiana Parenting Time Guidelines are applicable in all cases covered by these guidelines." Ind. Parenting Time Guidelines, Scope of Application, § 2. "Any deviation from these Guidelines by either the parties or the court must be accompanied by a written explanation indicating why the deviation is necessary or appropriate in the case." Id. The requirement for a written explanation rests upon the concept of appellate review. By requiring the trial court to proffer an explanation for its departure from the Guidelines, we not only force the trial court to reflect upon the possible consequences of its change from normal parenting time, we also enable the appellate court to thoroughly and appropriately review the trial court's deviation and the reasons behind it.

Father argues that the trial court abused its discretion "in granting [Mother] significantly more parenting time after the move than she was exercising before [Father]'s move 2-1/2 hours away." Appellant's Brief at 8. Father also argues that "the trial court violated the Parenting Time Guidelines by essentially granting [Mother] the parenting time afforded a parent living in the same community as the children PLUS the parenting time afforded a parenting [sic] living a long distance from the children." Id. at 10.

Generally, Ind. Parenting Time Guideline Section II.B. provides that the noncustodial parent receives parenting time on alternating weekends from Friday at 6:00 P.M. until Sunday at 6:00 P.M.; one evening per week for up to four hours; and on scheduled holidays. Ind. Parenting Time Guideline Section II.B. also provides for extended parenting time consisting of one-half of the summer vacation and provides that "[d]uring any extended summer period of more than two (2) consecutive weeks with the non-custodial parent, the custodial parent shall have the benefit of the regular parenting time schedule set forth above, unless impracticable because of distance created by out of town vacations."

Ind. Child Parenting Time Guideline Section III addresses parenting time when distance is a major factor and provides that "[w]here there is a significant geographical distance between the parents, scheduling parenting time is fact sensitive and requires consideration of many factors which include: employment schedules, the costs and time

of travel, the financial situation of each parent, the frequency of the parenting time and others." The Commentary provides:

> When distance is a major factor, the following parenting time schedule may be helpful:
>
> * * * * *
>
> (C) Child 5 Years of Age and Older. For a child 5 years of age and older, seven (7) weeks of the school summer vacation period and seven (7) days of the school winter vacation plus the entire spring break, including both weekends if applicable. Such parenting time, however, shall be arranged so that the custodial parent shall have religious holidays, if celebrated, in alternate years.

Ind. Parenting Time Guideline § III, Commentary.

Here, the trial court's order stated:

> The court orders visits as per the Indiana Parenting Time Guidelines (including at a minimum, every other weekend) with the following modifications:
>
> 1. [Mother] shall have all of Spring break.
>
> 2. [Mother] shall have summer visits to begin the weekend after school ends to five (5) days prior to school beginning.
>
> 3. [Mother] shall have all of Christmas break with the exception that Christmas day, Christmas eve and the day after Christmas (taken as a three (3) day period) shall alternate between the parties.

Appellant's Appendix at 11. Thus, the trial court awarded Mother the standard parenting time, including every other weekend, as well as time in excess of the time suggested in the Commentary to Section III. However, the trial court did not provide a written explanation indicating why it awarded Mother "visits as per the Indiana Parenting Time

Guidelines (including at a minimum, every other weekend)" in addition to parenting time in excess of the time suggested in the Commentary to Section III, which addresses situations when distance is a major factor.[1] Id. Thus, we remand to the trial court to either enter an order pursuant to the Parenting Time Guidelines or enter an order which provides an explanation for the deviation. See Haley v. Haley, 771 N.E.2d 743, 752 (Ind. Ct. App. 2002) (remanding a cause where the trial court provided no explanation for its deviation from the Guidelines).

II.

The next issue is whether the trial court erred by ordering the Mother to pay child support to Father, the custodial parent. A trial court's calculation of child support is presumptively valid. Young v. Young, 891 N.E.2d 1045, 1047 (Ind. 2008). We will reverse a trial court's decision in child support matters only if it is clearly erroneous or contrary to law. Id. A decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances that were before the trial court. 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).

[1] We acknowledge that, after Father filed a motion to reconsider, the trial court issued an Order Modifying Child Support which stated in part that "the visitation granted to the non-custodial parent is in the best interest of the children as it allows the children to be around the natural mother even though the children now reside two and one-half hours from their mother." Appellant's Appendix at 12. Nevertheless, we find that explanation insufficient to justify a deviation from the Parenting Time Guidelines.

Generally, 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 argues that the trial court erred by ordering him as the custodial parent to pay Mother, the noncustodial parent, $85.62 in weekly child support. Father points to the child support worksheet which reveals a figure of "-$85.62" for Mother. Appellant's Appendix at 13. Father argues that "[i]nstead of simply ordering that [Mother] not pay any support, the trial court ordered [Father] to pay as child support the negative figure of $85.62 listed under [Mother]'s column on the child support worksheet." Appellant's Brief at 19. Father also argues that "the trial court here appeared to find that the Child Support Guidelines required such payment." Id.

We find Grant v. Hager, 868 N.E.2d 801 (Ind. 2007), instructive. In Grant, the trial court recognized that the mother was the primary custodial parent but concluded that the Child Support Guidelines produced a "negative credit" and required modification of the support order. 868 N.E.2d at 802. Accordingly, the trial court entered a judgment modifying child support and ordered the mother, the custodial parent, to pay child support to the father, the noncustodial parent, in the amount of $92 per week. Id.

On appeal, the mother essentially contended that the Child Support Guidelines could not result in a custodial parent paying support to the noncustodial parent. Id. at 802-803. This court concluded that the Child Support Guidelines did not permit the application of the Parenting Time Credit in a manner that requires a custodial parent to pay child support to a noncustodial parent. Id. at 803 (citing Grant v. Hager, 853 N.E.2d 167, 174 (Ind. Ct. App. 2006), trans. granted). The Indiana Supreme Court agreed with this interpretation of the Guidelines. Id. The Court stated: "Although we agree with the Court of Appeals that the Guidelines do not authorize 'the payment of child support from a custodial to a noncustodial parent,' that does not automatically render the trial court's resolution of this matter invalid." Id. (quoting Grant, 853 N.E.2d at 174).

The Court observed that Ind. Child Support Rule 2 provides that "[i]n any proceeding for the award of child support, there shall be a rebuttable presumption that the amount of the award which would result from the application of the Indiana Child Support Guidelines is the correct amount of child support to be awarded." Id. The Court also observed that Ind. Child Support Rule 3 provides that "[i]f the court concludes from

the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a written finding articulating the factual circumstances supporting that conclusion." Id. The Court concluded that "[g]iven this deviation authority, a court could order a custodial parent to pay child support to a non-custodial parent based on their respective incomes and parenting time arrangements if the court had concluded that it would be unjust not to do so and the court had made the written finding mandated by Child. Supp. R. 3." Id. at 804.

Father argues that "[a]side from citing the disparity of the parties' incomes and summarily finding that the child support award was in the best interests of the children, the trial court made no findings as to why [Mother], as the non-custodial parent, should receive support greatly exceeding the amount authorized by the Guidelines for custodial parents." Appellant's Brief at 24.

On June 8, 2009, the trial court entered the Order Modifying Child Support, previously cited herein. As previously mentioned, Mother did not file an appellee's brief, and we will not develop arguments on her behalf. With this in mind, we conclude that the trial court's explanation is insufficient to justify a deviation from the Child Support Guidelines. We also observe that the fact that we are remanding the trial court's determination of parenting time may affect the outcome regarding child support. We therefore reverse the trial court's order regarding child support and remand to the trial court to either enter an order pursuant to the Child Support Guidelines or enter an order which provides an explanation for the deviation. See Haley, 771 N.E.2d at 752

(remanding a cause where the trial court provided no explanation for its deviation from the Guidelines).

For the foregoing reasons, we reverse the trial court's award of parenting time to Mother and the trial court's order modifying child support and remand with instructions.

Reversed and remanded.

MATHIAS, J., and BARNES, J., concur.