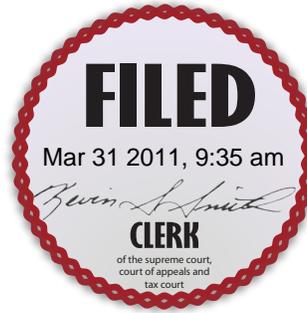


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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D. V., )  
 )  
Appellant, )  
 )  
vs. ) No. 79A04-1007-JP-619  
 )  
B. P., )  
 )  
Appellee. )

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Thomas H. Busch, Special Judge  
Cause No. 79D03-0008-JP-130

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**March 31, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

D.V. (“Father”) appeals the trial court’s modification of his child support obligation to B.J.P. (“Mother”). We affirm in part, reverse in part, and remand.

### **Issues**

Father raises several issues, which we consolidate and restate as whether the trial court properly calculated Father’s child support obligation.

### **Facts**

Mother and Father have one child, B.P., born in September 2000. In December 2000, paternity was established, and the trial court ordered that Mother was to have primary physical custody of B.P., the parties were to have joint legal custody, and Father was to pay child support.

The parties have filed numerous motions before the trial court since December 2000. In August 2009, Mother filed a petition to modify child support. In February 2010, Father filed a petition requesting that he be allowed to claim B.P. as a tax exemption beginning in 2010 and every year thereafter. The trial court held a hearing on March 11, 2010. The trial court later issued a written order denying Father’s petition and granting Mother’s petition. Regarding Father’s petition, the trial court found that it had addressed the tax exemption issue “pursuant to the petitions of the Father filed on March 19, 2008 and April 21, 2009, and the Court’s Order of October 5, 2009.” App. p. 18. The trial court concluded that Father had failed to demonstrate a change of circumstances since its last ruling on the issue. As for Mother’s request for an increase in child support, the trial court ordered:

The Father shall pay support in the amount of \$142.00 per week, beginning with the first payment due as of Friday, August 21, 2009 and ending with the payment due March 5, 2010. Beginning with the payment due March 12, 2010 and each Friday thereafter, owing to the Father's new child, the Father shall pay support in the amount of \$138.00 per week. Based on the increase in support of \$75.00 per week and counting the twenty-seven (27) payments that were due as of the date of the hearing on March 11, 2010, the Father owes the Mother \$2,025.00 in support arrearage.

Id. at 19. The trial court also ordered both parties to carry health insurance on B.P. with Mother's insurance being the primary insurance and Father's insurance being the secondary insurance.

Father filed a motion to correct error, arguing that: (1) the trial court had failed to attach a child support worksheet to its order; (2) a change in circumstances is not necessary to modify tax exemptions; (3) Father's cost to provide health insurance for B.P. was less than Mother's cost; (4) the trial court ignored Mother's rental income in calculating her income; (5) the trial court failed to give Father credit for 107 overnights; and (6) the trial court gave no consideration to Father's travel expenses. On June 4, 2010, the trial court issued a nunc pro tunc order to attach the child support worksheets.

On June 14, 2010, the trial court held a hearing on Father's motion to correct error. After the hearing, the trial court issued an order finding that its nunc pro tunc order was

not in error, but because of the new evidence produced by the Father that the Mother's selected healthcare providers for the minor child are covered by the Father's insurance, and insurance is available to the Father at a lower cost than to the Mother, the Court now issues a Second Corrected Order providing that, beginning July 1, 2010, the Father shall be required to provide health insurance for the minor child, the Mother shall not be required to provide health insurance for

the minor child, and the Father's weekly support shall be \$127.00 per week beginning with the payment due July 2, 2010.

Id. at 27-28. Father now appeals.

### **Analysis**

Father claims that the trial court failed to properly calculate his child support obligation. 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. (citing Ind. Trial Rule 52(A)). 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. When a trial court enters formal findings, we observe the following regimen:

courts reviewing support orders contained in judgments entered under T.R. 52 are not at liberty simply to determine whether the facts and circumstances contained in the record support the judgment. Rather the evidence must support the specific findings made by the court which in turn must support the judgment. . . . [I]f the findings and conclusions entered by the court, even when construed most favorably toward the judgment, are clearly inconsistent with it, the decision must be set aside regardless of whether there was evidence adduced at trial which would have been sufficient to sustain the decision.

Id. Father makes several arguments regarding the trial court's child support calculation.

We will address each separately.

#### ***I. Rental Income***

Father first argues that the trial court erred by failing to include rent collected by Mother as part of her gross income. Father argues "[t]he Trial Court should not consider

[mortgage interest, depreciation and other traveling expenses] since the Mother is acquiring capital assets and tax advantages by deducting the mortgage interest on a home that she owns.” Appellant’s Br. p. 11.

Mother has a house in Ohio that she offers for rent, and Father argues that \$11,860.00 in rent collected should have been included in Mother’s gross income. Mother presented evidence that, although she collected \$11,860.00 in rent in 2008, she had expenses for mortgage payments, tax preparation, and mileage, resulting in a net rental income of negative \$647.50 in 2008. She had a net rental income of negative \$1,548.79 in 2009.

The Indiana Child Support Guidelines provide:

Weekly Gross Income from self-employment, operation of a business, rent, and royalties is defined as gross receipts minus ordinary and necessary expenses. In general, these types of income and expenses from self-employment or operation of a business should be carefully reviewed to restrict the deductions to reasonable out-of-pocket expenditures necessary to produce income. These expenditures may include a reasonable yearly deduction for necessary capital expenditures. Weekly Gross Income from self-employment may differ from a determination of business income for tax purposes.

Ind. Child Support Guideline 3(A)(2). Regarding income from rental property, we have held that, “[u]pon proper allocation of interest and principal, a trial court may, in its sound discretion, disallow the deduction of principal payments from gross income for child support purposes” because “[p]ayments of principal may be considered contributions to a parent’s net worth, rather than ‘ordinary and necessary expenses’ contemplated by the child support guidelines.” Zakrowski v. Zakrowski, 594 N.E.2d

821, 824 (Ind. Ct. App. 1992). Mortgage interest payments, on the other hand, may be deducted so long as the financing terms are not excessive. Saalfrank v. Saalfrank, 899 N.E.2d 671 (Ind. Ct. App. 2008).

Father's argument that Mother's mortgage interest should not have been deducted is incorrect. Moreover, there was no evidence before the trial court allocating the mortgage payments between principal and interest. In absence of such evidence and the failure of Father to make an argument regarding the principal, we conclude that Father has failed to demonstrate that the trial court's calculation of Mother's income is clearly erroneous.

## ***II. Subsequent Born Children***

Father argues that the trial court erred in calculating his child support obligation because it failed to give him credit for his subsequent born child in Exhibit C. Within the calculation of child support, subsequent children are addressed by use of a multiplier that reduces the parent's Weekly Gross Income. Child. Supp. G. 3(C)(1) and Comm. 3(C). The multiplier varies by the number of subsequent children, for example, 0.065 for one subsequent child and 0.097 for two subsequent children.

Father already had an additional child born after B.P. and another child was born in February 2010. The trial court prepared three separate child support worksheets. Exhibit A concerned August 21, 2009, when the petition to modify child support was filed, through March 5, 2010. Exhibit A included a "Subsequent Child Multiplier Credit" of 0.065 for Father, which took his first additional child into account. App. p. 32. A separate child support worksheet, Exhibit B, covered March 12, 2010, through July 2,

2010. This separate worksheet was necessary to take Father's newborn child into account. Exhibit B included a "Subsequent Child Multiplier Credit" of 0.097, which took both of Father's subsequent born children into account. *Id.* at 33. The trial court also prepared Exhibit C, which covered the time period after July 2, 2010. This separate worksheet was necessary to take the change in B.P.'s health insurance into account. However, in Exhibit C, the trial court reverted back to a "Subsequent Child Multiplier Credit" of 0.065, when the multiplier should have remained 0.097. *Id.* at 34. Mother concedes that the trial court erred by applying the wrong multiplier in Exhibit C. Consequently, we reverse and remand on this issue for the trial court to recalculate Father's child support in Exhibit C.<sup>1</sup>

### *III. Parenting Time Credit*

Father argues that the trial court erred in calculating his parenting time credit. However, Father has provided no cogent argument explaining why the trial court's order was erroneous, nor has he supported his allegation of error with any citation to legal authority. This does not comply with our rules, which require that contentions in a brief be supported by cogent reasoning and citations to legal authorities. Ind. Appellate Rule 46(A)(8)(a). Thus, this issue is waived. Vandenburgh v. Vandenburgh, 916 N.E.2d 723, 730 (Ind. Ct. App. 2009).

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<sup>1</sup> We acknowledge Mother's argument that Father waived this issue by failing to make a cogent argument. Father's argument on this issue is certainly lacking, and we remind Father that our rules require cogent reasoning and citations to legal authorities. Ind. Appellate Rule 46(A)(8)(a). However, our review of Exhibit C reveals that Father is correct regarding the multiplier, and Mother concedes that Father is correct. Consequently, we have addressed the argument.

Waiver notwithstanding, the Child Support Guidelines provide that “[a] credit should be awarded for the number of overnights each year that the child(ren) spend with the noncustodial parent.” Child Supp. G. 6. Father argues that the trial court incorrectly calculated his overnights with B.P.

Mother presented evidence that in 2009, Father exercised 106 overnights with B.P. However, the parenting time schedule changed during 2009. If Father had exercised parenting time based on the current schedule during all of 2009, he would have exercised 101 overnights. Based on the current parenting time schedule, Father was scheduled to exercise 96 overnights with B.P. during 2010. Mother averaged the 101 overnights and 96 overnights to obtain 99 overnights. In calculating Father’s child support, the trial court used a parenting time credit for “96-100 overnights.” App. p. 32-34.

Father argues that he exercised 107 overnights in 2009 and that the trial court should have used 107 overnights to calculate his current child support. However, under the current parenting time schedule, Father was only scheduled to have 96 overnights. Given the current parenting time schedule, we cannot say that the trial court’s use of “96-100 overnights” to calculate Father’s parenting time credit is clearly erroneous.

#### ***IV. Health Insurance***

Father argues that the trial court erred by including Mother’s cost of health insurance for B.P. in the child support calculations for August 21, 2009, through March 5, 2010, in Exhibit A, and March 12, 2010, through July 2, 2010, in Exhibit B. According to Father, he was providing health insurance to B.P. at no cost during this

time, and the cost of Mother's health insurance should not have been included in any of the child support worksheets.

The Indiana Child Support Guidelines provide: "The court shall order one or both parents to provide private health care insurance when accessible to the child at a reasonable cost." Child Supp. G. 7. "Private health insurance coverage should normally be provided by the parent who can obtain the most comprehensive coverage at the least cost." Child Supp. G. 7, Commentary.

Mother presented evidence that she had been providing health insurance to B.P. since May 2004 at a cost of \$31.55 per week. At the March 2010 hearing, Father argued that he could provide insurance for B.P. through his employer at no cost. Mother questioned whether B.P.'s health care providers would accept Father's insurance, which had apparently been a problem in the past. During the motion to correct error hearing, Father argued that all of B.P.'s health care providers were, in fact, included in his insurance's network. As a result, the trial court ordered on June 22, 2010, that Father provide health insurance for B.P. effective July 1, 2010.

Father's argument seems to be that Mother's insurance costs should be removed from the child support calculations retroactive to August 21, 2009. However, Mother was providing health insurance for B.P. during that time and was incurring costs for the insurance. Given that Mother was, in fact, providing the health insurance until July 2010, we cannot say that the trial court's inclusion of Mother's health insurance costs in the child support calculations in Exhibit A and Exhibit B is clearly erroneous.

#### ***V. Tax Exemption***

Father argues that the trial court erred by denying his request to grant him a tax exemption for B.P. The Indiana Child Support Guidelines do “not take into consideration the awarding of the income tax exemption. Instead, it is recommended that each case be reviewed on an individual basis and that a decision be made in the context of each case.” Child Supp. G. 9. “The noncustodial parent must demonstrate the tax consequences to each parent as a result of releasing the exemption and how the release would benefit the child(ren).” Id. In determining when to order a release of exemptions, it is recommended that at minimum the following factors be considered:

- (1) the value of the exemption at the marginal tax rate of each parent;
- (2) the income of each parent;
- (3) the age of the child(ren) and how long the exemption will be available;
- (4) the percentage of the cost of supporting the child(ren) borne by each parent;
- (5) the financial aid benefit for post-secondary education for the child(ren); and
- (6) the financial burden assumed by each parent under the property settlement in the case.

Id.

Father makes no argument regarding any of the factors. In fact, Father’s sole argument is that the trial court should be “guided primarily by the goal of making the maximum amount of child support available to the child.” Appellant’s Br. p. 14-15. Father has failed to demonstrate the tax consequences to each parent of transferring the

exemption and how such a transfer would benefit B.P. Father has failed to demonstrate that the trial court's denial of his petition is clearly erroneous.

### **Conclusion**

The trial court's denial of Father's petition regarding use of a tax exemption for B.P. is not clearly erroneous. The trial court's calculation of child support owed by Father is not clearly erroneous regarding Mother's rental income, Father's parenting time credit, or Mother's health insurance costs. However, the trial court used an incorrect subsequent child multiplier in Exhibit C when calculating Father's child support obligation beginning July 2, 2001. Consequently, we affirm in part, reverse in part, and remand for a recalculation of Exhibit C with the correct subsequent child multiplier.

Affirmed in part, reversed in part, and remanded.

BAKER, J., and VAIDIK, J., concur.