APPELLANT PRO SE:

SEAN GORMAN
Bloomington, Indiana

IN THE
COURT OF APPEALS OF INDIANA

SEAN GORMAN,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 53A05-0611-CV-671
	)	
HOLLY (GORMAN) CEDAR,	)	
	)	
Appellee.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Stephen R. Galvin, Judge
Cause No. 53C06-0310-DR-649

July 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Sean Gorman (Father) appeals the trial court's Order, which modifies its previous Order of child support and establishes a support arrearage.

We affirm.

ISSUES

Father raises three issue on appeal, which we restate as the following two issues:

(1) Whether the trial court abused its discretion by calculating a child support award in deviation of the Indiana Child Support Guidelines; and

(2) Whether the trial court abused its discretion by attributing childcare expenses to Holly Cedar (Mother) while she is a full-time student.

FACTS AND PROCEDURAL HISTORY

Father and Mother were divorced on September 30, 2004. They had three children: N.G., born September 24, 1998, G.G., born February 19, 2000, and B.G., born September 5, 2002. Pursuant to the Decree of Dissolution of Marriage, the parties share joint legal custody, with Mother having primary physical custody. At the time of the dissolution, Father was employed part-time earning $210 per week, while pursuing a law degree as a full-time student. Mother was employed part-time, earning $261 per week. The Child Support Obligation Worksheet included with the Dissolution Decree listed Father's recommended support obligation as zero. However, in accordance with the mediated agreement incorporated by the trial court in its Decree, Father agreed to pay Mother $10 per week to support his three children.

On October 27, 2005, Mother filed her Verified Motion to Modify Custody and Child Support.[1] At the time of filing, Mother was a full-time student, pursuing a Master of Divinity and Pastoral Counseling at Earlham School of Religion in Richmond, Indiana while Father had secured full-time employment at the Indiana Department of Environmental Management, earning approximately $722 per week, before taxes and other withholdings. On July 11, 2006, the trial court conducted a hearing and issued its Order on the same day, concluding that Father's child support obligation should be increased to a weekly amount of $142.40.

On July 19, 2006, Father filed a Motion to Correct Error, alleging that the trial court had imputed an improper base income to Mother in its calculation of the child custody award. On August 3, 2006, Mother filed a request for a new custody modification hearing. Thereafter, on October 30, 2006, the trial court conducted a hearing on Father's Motion to Correct Error and Mother's request to modify custody. In its Order, the trial court declared to take Father's motion under advisement and requested both parties to submit their support arrearage calculation within seven days of the issuance of the Order.

On November 17, 2006, Father filed a Notice of Appeal. Four days later, Mother responded by filing a Motion to Strike the Notice of Appeal, alleging that the trial court's Order, dated October 30, 2006 was not a final judgment. On February 6, 2007, the trial court issued its Order, concluding in pertinent part:

[1] We note that Father's Appendix lacks the chronological case summary for the trial court proceedings, as required by Ind. Appellate Rule 50(A)(a). We will attempt to reconstruct the procedural history of this case from the filings Father did submit.

> 2. [] When the original support order was issued, [Father] was a full-time student. In the child support order calculation attached to the Decree of Dissolution, his income was listed at $210. At the time [Mother] made $11 per hour at PALS. In the same child support calculation, her income was entered as $261. Since the dissolution, [Father] has obtained employment with the Indiana Department of Environmental Management, earning $722 per week. [Mother] is now a full-time student at Earlham College.
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> 3. [Father] asked that [Mother's] income be imputed at $11 per hour. However, in the Decree of Dissolution, the parties expressed their intent that income not be imputed to a parent while the parent was in school. At the time the original Decree of Dissolution was entered, [Father] was in [l]aw [s]chool. Obviously, he has a college degree, and was clearly capable of earning substantially in excess of $210 per week. At that time, he did not take the position that his income should be imputed at an amount greater than $210. [Father's] current insistence on strict adherence to the provisions of the Indiana Child Support Guidelines concerning imputation of income is diametrically opposed to his position on the same issue in the Dispositional Decree.
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> 7. On November 17, 2006, [Father] filed a Notice of Appeal. On November 21, [Mother] filed a Motion to Strike Notice of Appeal, alleging that the [trial] [c]ourt's Order of October 30, 2006 was not a final judgment. However the [c]ourt did not rule on the Motion to Correct Error[] within 30 days, and the Motion is deemed denied.

(Appellant's App. pp 31-32).

Father now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Father contends that the trial court abused its discretion by deviating from the Indiana Child Support Guidelines when imputing Mother's income for purposes of calculating the parties' child support obligation. Additionally, he asserts that as Mother is a full-time student, she cannot claim childcare expenses.

I. *Standard of Review*

Our standard of reviewing child support awards is well settled. We begin with the understanding that support calculations are made utilizing the income shares model set forth in the Indiana Child Support Guidelines (the Guidelines). *McGill v. McGill,* 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). The Guidelines apportion the cost of supporting children between the parents according to their means. *See id.* This approach is based on the premise that children should receive the same portion of parental income after a dissolution that they would have received if the family had remained intact. *Id.* A calculation of child support under the Guidelines is presumed to be valid. *Id.* Therefore, we will not reverse a support order unless the determination is clearly against the logic and effect of the facts and circumstances. *Id.* When reviewing a child support order, we do not revisit weight and credibility issues but confine our review to the evidence while reasonable inferences favorable to the judgment are considered. *Id.*

Nevertheless, we note at the outset that Mother did not file an appellee's brief in this case. Where the appellee fails to file a brief on appeal, we may in our discretion reverse the trial court's decision if the appellant makes a *prima facie* showing of reversible error. *Id.* This rule was established for our protection so that we can be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *Id.*

II. *Child Support Order*

First, Father asserts that the trial court improperly deviated from the Guidelines. Specifically, he claims that because Mother is voluntarily unemployed, the trial court

must calculate the child support award based on her potential income. He maintains that as Mother already has a college degree, was a licensed teacher, and earned $11 per hour at her most recent employment, the trial court should have imputed her income at $440 per week, thereby reducing Father's support obligation to $61.09 per week.

It is well established that, even though the calculation of child support by application of the Guidelines yields a figure that becomes a rebuttable presumption, there is room for flexibility. Guidelines are not immutable, black letter law. *See* Child Supp. G. 1, cmt. An indiscriminate and totally inflexible application of the Guidelines can easily lead to harsh and unreasonable results. *See id.* Instead, an infinite number of situations may prompt a trial judge to deviate from the appropriate Guideline amount. *See id.*

Initially, we note Father's argument that the trial court failed to issue findings supporting its deviation from the Guidelines. The Guidelines stipulate that "if 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." Child Supp. G. 3(F)(2). Here, we find that the trial court, in its Order of February 6, 2007, as cited in our fact summary, sufficiently justified its decision to divert from the Guidelines.

Turning to Father's main contention, we recognize that pursuant to the Guidelines, "[i]f a parent is voluntarily employed or underemployed, child support shall be calculated based on a determination of potential income." Child Supp. G. 3(A)(3). One of the purposes for including potential income is to "discourage a parent from taking a lower

paying job to avoid the payment of significant support." Child Supp. G. 3, cmt. 2c. The trial court has discretion to impute potential income to a parent if it is convinced the parent's underemployment "has been contrived for the sole purpose of evading support obligations." *Kondamuri v. Kondamuri*, 852 N.E.2d 939, 950 (Ind. Ct. App. 2006). There are, however, "circumstances in which a parent is unemployed or underemployed for a legitimate purpose other than avoiding child support and, in those circumstances, there are no grounds for imputing income." *Abouhalkah v. Sharps*, 795 N.E.2d 488, 491 (Ind. Ct. App. 2003). This is such a case.

Here, the record is devoid of any evidence that Mother intentionally became unemployed in order to avoid her child support obligation. Rather, the evidence merely indicates that Mother returned to college in pursuit of a Master's degree in hopes of providing a better life for herself and her minor children. Accordingly, unlike Father, we conclude that Mother is unemployed for a legitimate purpose. *See id*. Even though the trial court was not obligated to impute income to her under these circumstances, doing so does not make it error.

II. *Childcare Expenses*

Father argues that the trial court erred in allowing childcare expenses to be attributed to Mother while she is a full-time student. In particular, he claims that the Guidelines mandate that childcare expenses are a proper component of child support only when the parent with primary custody is employed or seeking employment.

Guideline 3(E) specifies:

> [c]hildcare costs incurred due to employment or job search of both parent(s) should be added to the basic obligation . . .. Childcare costs required for active job searches are allowable on the same basis as costs required in connection with employment."

In addition, the commentary notes that "[w]orkrelated childcare expense is an income-producing expense of the parent." Child Supp. G. 3, cmt. 1.

Faced with the identical issue, we stated in *Thomas v. Orlando*, 834 N.E.2d 1055, 1059 (Ind. Ct. App. 2005):

> [W]e believe that it is a parent's responsibility to continually try to better herself and to create more and better opportunities for the child and the family unit. We are hard-pressed to come up with a better example of a way to do just that than by pursuing an education, be it high school, college, or graduate school. A parent who finds within herself the diligence and ambition to obtain a degree will be rewarded not only with better job prospects and increased earning potential, but also with a child who has learned by example that education is valuable and essential.

As a result, we concluded in *Thomas* that "[i]t is apparent to us that becoming a full-time student is inherently a work-related activity in that it is designed to improve employment prospects and increase income potential." *Id*.

We see no reason to deviate from our well-reasoned opinion in *Thomas*. Therefore, we find that Mother's childcare expenses incurred because she is a full-time student is an income-producing expense as contemplated by the Guidelines. Thus, the trial court properly included this expense in its calculation of the parties' child support obligation.

CONCLUSION

Based on the foregoing, we find that the trial court properly calculated the parties' respective child support obligations.

Affirmed.

BARNES, J., and NAJAM, J., concur.