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APPELLANT PRO-SE:

THOMAS M. SLAATS
Newburgh, Indiana

IN THE
COURT OF APPEALS OF INDIANA

THOMAS M. SLAATS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 87A01-1009-DR-523
	)	
SALLY E. SLAATS,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE WARRICK SUPERIOR COURT
The Honorable Keith A. Meier, Judge
Cause No. 87D01-0602-DR-74

September 26, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-petitioner Thomas M. Slaats appeals the trial court's order regarding the modification of child support and parenting time matters as to his three minor children, J.S., A.S., and E.S. Although Thomas raises multiple allegations of error, we consolidate and restate them as follows: (1) whether the trial court erred in calculating Thomas's income for child support purposes and abused its discretion in failing to consider "alternative circumstances" when figuring gross income; (2) whether the trial court erred in not attributing potential income to Thomas's former wife, appellee-respondent, Sally, because she was "underemployed" in accordance with the Indiana Child Support Guidelines (Guidelines); (3) the trial court failed to apply the modified amount of support to the date that the petition was filed; (4) the credit that Thomas was entitled for health care premiums was improperly calculated; and (5) the trial court failed to properly calculate the number of overnights that the children had with Thomas.

Concluding that the trial court properly calculated Thomas's child support obligation and finding no other error, we affirm.

FACTS

Thomas and Sally were married on July 14, 1997, and all three children were born during the course of the marriage. On May 8, 2006, the marriage was dissolved and the parties participated in mediation and arrived at a settlement agreement. Thomas was to pay $190 per week in child support, which was a deviation from the normal calculation of $217 per week under the Guidelines. That amount was calculated based on the three children who lived at home and 98 non-custodial parent "overnights" per year.

Appellant's App. p. 107. There was also a prescribed deviation for Thomas to cover the first amount of healthcare costs up to $3000 per year that were not covered by insurance. Additional costs over that amount would be split equally.

On October 2, 2009, Thomas petitioned for a modification of child support. At a hearing on April 29, 2010, Thomas testified that he was working as an independent contractor and had separated from his previous employer in June 2009. The trial court evaluated the invoices that were sent from January 1, through April 29, 2010, totaling $14,488, to the Johnson Controls Company, in determining Thomas's actual income. The trial court arrived at Thomas's weekly income amount by dividing the income by the eighteen weeks between January 1 and April 29, 2010. This served as the basis for determining that Thomas's income was $805 per week that was used in the support worksheets.

The evidence also demonstrated that Sally was working full time when they married and during the first several months after the marriage. Thomas testified that the parties verbally agreed that Sally would return to work on a fulltime basis when their youngest child entered first grade. Sally testified at the hearing that she worked at least nineteen hours per week, and that her salary, in 2009, when based on an hourly rate, was $42,000. Sally acknowledged that she worked from nineteen to thirty-four hours per week and that was subject to change after the hearing date. Sally also testified that her income for 2009, as reflected in a W-2 form, was $67,773.93.

At the time of the hearing, the trial court ordered Thomas to provide it with the dates of summer parenting time because those days would affect the support calculation. However, the trial court indicated in an order on July 1, 2010, that it had not received the summer parenting schedule from either party. The trial court had, in fact, given the parties until May 31 to provide the information.

The trial court denied Thomas's request for overnight credit for the hours during the evenings that the children are with him. The trial court also found that both parents appeared to be underemployed, "the father due to the economy and the mother so she can be with the children." Appellant's App. p. 29.

The trial court's order eliminated three weeks of parenting time credit, and determined that Thomas could reduce his child support obligation when the three weeks of summer parenting time were completed. The trial court ordered Thomas to prepare a revised child support worksheet and a proposed amended order, file them with the court, and contemporaneously forward them to Sally's counsel. In response, Thomas filed a document that contained the revised order that included a corrected insurance premium credit and an explanation of how the documents were generated.

In light of the evidence demonstrating that Sally worked from nineteen to thirty-four hours per week, which was subject to change after the hearing date, the trial court figured that she was working twenty-nine hours per week and calculated the amount at $1273.39. Also, contrary to the evidence that was presented regarding Thomas's

payment of the health insurance premiums, the trial court found that Sally paid those premiums at a cost of $144.83 per month.

The trial court further determined that Thomas had ninety-eight overnights per year with the children that would include three weeks during the summer, as long as he designated those weeks by April 1. The trial court concluded that Thomas should not be given credit for the three weeks of parenting time in the summer of 2010 unless he actually exercised those additional overnight periods.

In particular, a portion of the trial court's order provided that

> 2. [T]here has been a showing of changed circumstances so substantial and continuing as to make the terms of the prior orders unreasonable and grants the modification. For purposes of the child support calculation, the father's income is $805.00 per week and the mother's is $1,273.00. Pursuant to the . . . Guidelines, at 77 overnights per year, the father's support obligation would be $199.00 per week. Pursuant to the . . . Guidelines, at 98 overnights per year, the father's support obligation would be $157.00 per week. The father shall pay to the clerk of this court, for the mother's use in supporting the children, the sum of $199.00 per week with the first payment thereon to be due and payable on July 9, 2010. If the father has already or does, . . . exercise his 3 weeks of summer parenting time in 2010, then his child support shall be $157.00 per week commencing on the first Friday following the date he completes or completed his third week.

Appellant's App. p. 30. The trial court ruled that commencing July 9, 2010, Sally was to pay the first $1,591.00 per year of all the reasonable and necessary, uninsured health care expenses of the children and all reasonable and necessary, uninsured amounts in excess thereof was to be prorated between the parties with Sally being responsible for paying 61% and Thomas, 39%.

Thomas filed a motion to correct error, and on August 31, 2010, the trial court ordered Thomas to prepare a revised child support worksheet and a proposed amended order. The trial court made it clear that if Thomas exercised his summer parenting time in 2010, the parties should consider agreeing to a revised child support obligation and file an agreed entry.

Finally, the trial court determined in a subsequent order on November 5, 2010, that Thomas's child support would be $122 per week. That amount was based on the findings of income for Thomas and Sally and 77 overnights. The trial court concluded that Thomas should receive credit for $43.00 per week that he reimburses Sally for health insurance premiums for the children. Thomas now appeals.

DISCUSSION AND DECISION

I. Standard of Review—No Appellee's Brief

We initially observe that Sally did not file an appellee's brief in this case. When the appellee fails to submit a brief, we will not undertake the burden of developing arguments for the appellee. Ramsey v. Ramsey, 863 N.E.2d 1232, 1237 (Ind. Ct. App. 2007). In such situations, we apply a less stringent standard of review with respect to showings of reversible error. While we do not undertake to develop the appellee's arguments, we may reverse the trial court's decision if the appellant can establish prima facie error. Id. Prima facie error is defined as "at first sight," "on first appearance," or "on the face of it." Id.

II. Thomas's Claims

A. Thomas's Income

Thomas argues that the trial court erred in calculating the amount of his income for child support purposes. Thomas claims that although the invoiced amount to the Johnson Controls Company established that he earned $805 per week, the documentation that he presented in his motion to correct error established that he made only $328 per week. Thomas also argues that the trial court was biased and asserts that his counsel was unprepared to present various strategies at the hearing about his income that had been discussed.

We initially observe that the overarching policy goal is to protect the best interests of the children in all family court matters. Clark v. Clark, 902 N.E.2d 813, 816 (Ind. 2009). Decisions regarding child support are generally within the sound discretion of the trial court, and we will reverse a modification order only when the decision is clearly against the logic and effect of the facts and circumstances. Payton v. Payton, 847 N.E.2d 251, 253 (Ind. Ct. App. 2006). In so doing, we consider only the evidence and reasonable inferences favorable to the judgment. Id. Where, as here, the trial court did not issue special findings, we will affirm the general judgment if it can be sustained on any legal theory that is supported by the evidence. Borum v. Owens, 852 N.E.2d 966, 969 (Ind. Ct. App. 2006).

The Guidelines require a trial court to determine the proper level of child support by calculating each parent's weekly gross income. Ind. Child Support Guideline 1. Weekly

gross income is the sum of actual income, potential income if a parent is underemployed, and imputed income based on "in kind" benefits. Child Supp. G. 3(A)(1); see also In re the Matter of Paternity of C.L.H., 689 N.E.2d 456, 458 (Ind. Ct. App. 1997). The trial court is guided by the Guidelines and their commentary in determining the amount of each type of income.

Weekly gross income from self-employment or operation of a business is defined as gross receipts minus ordinary and necessary expenses. These types of income and expenses from self-employment or operation of a business should be reviewed to restrict the deductions to reasonable out-of-pocket expenditures necessary to produce income. Child Supp. G. 3(A).

Notwithstanding Thomas's allegation that the trial court failed to calculate the proper amount of his income, the record demonstrates that the document attached to the motion to correct error was merely a printout of an invoice from Johnson Controls that purportedly established the amounts that were paid to Thomas's business from August 2009, through July 2010.

As the trial court pointed out in its denial of the motion to correct error, Thomas specifically testified at the hearing on April 29, 2010, that his year-to-date income amounted to $14,488. That amount also was consistent with an exhibit from Johnson Controls that Thomas presented at the April 29, 2010, hearing. Because this was the very evidence that Thomas presented at the hearing in an effort to establish the income amount, we reject his contention that the trial court was bound to conclude that the

document he had attached to his motion to correct error was what the trial court should have considered as evidence of his income. See Cochran v. Rodenbarger, 736 N.E.2d 1279, 1283 (Ind. Ct. App. 2000) (holding that evidence must be admitted into evidence in order to be considered).

Also, even though Thomas contends that the trial court should have followed the Guidelines that allow a self-employed person to deduct a portion of the FICA tax that exceeds the tax that would be paid by an employee who earns the same weekly gross income, he did not make any argument in support of this claim at trial. Therefore, the argument is waived. See Carr v. Pearman, 860 N.E.2d 863, 871 n. 3 (Ind. Ct. App. 2007) (observing that an appellant who presents an issue for the first time on appeal waives the issue for purposes of appellate review).

Finally, we note that other than the bald unsupported assertion that his counsel was not adequately prepared for the hearing and that the trial court demonstrated bias against him, Thomas has not supported those claims with anything other than his self-serving statements. In short, Thomas's contentions fail with respect to these issues.

B. Underemployment

Thomas next claims that the trial court erred in concluding that Sally was underemployed because she had to care for the children. Thomas contends that the trial court should have imputed income to Sally because the evidence demonstrated that her decision to work on a part time basis had nothing to do with her care of the children.

The Guidelines provide that if a parent is voluntarily underemployed, child support shall be determined based on potential income. Child Supp. G. 3(A)(3). More particularly, "[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 earning levels in the community." Id. One of the purposes for determining 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. 2(c). Indeed, trial courts have broad discretion when imputing income "to ensure the child support obligor does not evade his or her support obligation." Miller v. Sugden, 849 N.E.2d 758, 761 (Ind. Ct. App. 2006). Also, while legitimate reasons may exist for a parent to leave one position and take a lower paying position other than to avoid child support obligations, such is a matter entrusted to the trial court and will be reversed only for an abuse of discretion. Bojrab v. Bojrab, 810 N.E.2d 1008, 1015 (Ind. 2004).

In this case, Sally testified that she has been able to maintain the "perfect balance in having the full-time job . . . raising [the] children and having a part-time job to balance that." Tr. p. 73-75. Notwithstanding this testimony, Thomas points out that he "asked" the trial court to consider Sally's potential income when modifying child support. Appellant's App. p. 124-26. Although Thomas contends that the trial court should have adopted his proposed amounts of potential income because she was voluntarily underemployed without just cause and the result reached here was not fair

under the circumstances, such was a decision entrusted to the trial court. As noted above, Sally testified that she kept part time employment so she could spend more time with the children and care for them.

In short, Thomas has not established that the trial court's determination that Sally was underemployed because she wanted more time to care for the children and its decision not to calculate potential income to Sally amounted to an abuse of discretion.

C. Application of Modified Support Order

Thomas argues that the trial court failed to apply the terms of the modified support order to the date that the petition was filed. In particular, Thomas claims that because he filed the petition on October 2, 2009, the support modification should be retroactive to that date. Thomas asserts that the trial court "lack[ed] desire to apply the Child Support Rules as they are written and expected to be applied." Appellant's Br. p. 24.

In resolving this issue, we initially observe that the right to support lies exclusively with the child and the custodial parent holds the support in trust for the benefit of the child. In re Hambright, 762 N.E.2d 98, 101 (Ind. 2002). The trial court has the discretionary power to make child support modification relate back to the date of the filing, or any date thereafter. Id. at 641. We will reverse a decision regarding retroactivity only for an abuse of discretion or if the trial court's determination is contrary to law. Id. While modifications normally speak only prospectively, permitting the trial courts the discretion to make the modification effective as of the date the petition is filed

may serve to avoid dilatory tactics. Talarico v. Smithson, 579 N.E.2d 671, 673 (Ind. Ct. App. 1991).

Pursuant to the Guidelines:

> modification of a support obligation may only relate back to the date the petition to modify was filed, and not an earlier date, subject to two exceptions: (1) when the parties have agreed to and carried out an alternative method of payment which substantially complies with the spirit of the decree; or (2) the obligated parent takes the child into the obligated parent's home and assumes custody, provides necessities, and exercises parental control for a period of time that a permanent change of custody is exercised.

Child Supp. G. 4(1).

In this case, Thomas points to no evidence suggesting that Sally may have employed dilatory tactics to delay the modification hearing. The absence of such tactics, combined with the determination that child support modifications typically apply prospectively only, lead us to the conclusion that the trial court did not abuse its discretion when deciding not to order the modified child support amount retroactive to the date that the petition was filed.

D. Health Care Premiums

Thomas next claims that the trial court erred in calculating the amount of credit for health care premiums and failed to properly adjust the amount of support after the motion to correct error was filed. The Guidelines provide that a parent generally receives a health insurance credit in an amount equal to the premium cost the parent actually pays

for a child's health insurance. Ind. Child Support Guideline 3(E)(2), (G)(3); Julie C. v. Andrew C., 924 N.E.2d 1249, 1261 (Ind. Ct. App. 2010).

In this case, the trial court provided in its July 1 order that Sally paid the childrens' health insurance premiums at the rate of $145 per month. During the hearing, Thomas stated that he paid the premiums for the health, vision and dental insurance for the three children, as dictated by the original dissolution decree. Sally also testified that Thomas paid the insurance premiums. When the trial court inserted data into the child support worksheet to submit with the July 1 order, it gave Sally credit for paying $145 per week.

Thomas claims that this misinformation severely affected the resulting child support obligation, raising the figure for support above the previous support figure prior to the date that the petition for modification was filed. In the motion to correct error, Thomas asserted that the misinformation about the premium payments was reported on the worksheet. As a result, the trial court directed counsel to submit a revised worksheet and proposed amended order. In its November 5, 2010, order, the trial court noted that Thomas proceeded pro se and filed a document on September 16, 2010, that included an order, worksheets, and a written explanation for the documentation. Thereafter, on September 22, Thomas's counsel submitted an amended proposed order as the trial court had directed.

Thomas responded that his counsel had filed a document that he had not authorized. Thomas's counsel subsequently withdrew from the case at his request. The trial court then concluded that Thomas had attempted to obtain an improper ex parte

order and the document he submitted on September 16, did not comply with the trial court's directive. Therefore, the trial court did not approve or adopt the figures in Thomas's document.

Nonetheless, Thomas acknowledges that the trial court did follow the figures set forth in the worksheet that was attached to the motion to correct error, and did award him the proper credit for paying the health insurance premiums. Therefore, Thomas's argument regarding the health care insurance premiums fails.

E. Overnights—Credits

Thomas argues that the trial court erred in calculating the number of overnights that should have been credited to him in the November 10, 2010, order. Thomas contends that he successfully documented the number of additional overnight visits and that his child support obligation should have been reduced.

Indiana Child Support Guideline 6 provides that "[a] credit should be awarded for the number of overnights each year that the child(ren) spend with the noncustodial parent." The rationale behind the parenting time credit is that overnight visits with the noncustodial parent may alter some of the financial burden of the custodial and noncustodial parents in caring for the children. Vandenburgh v. Vandenburgh, 916 N.E.2d 723, 727 (Ind. Ct. App. 2009). Because it is difficult to calculate the amount of financial burden alleviated by an overnight visit, the guidelines provide a standardized parenting time credit formula. Id.

Credit is not provided for evening visits because watching the children during study hours typically does little to displace the relative parental burdens. Accordingly, the number of visits a noncustodial parent receives parenting time credit for cannot exceed the number of visits in which the children physically stay overnight with the parent. Young v. Young, 891 N.E.2d 1045, 1049 (Ind. 2008).

At the April 29 hearing, Sally acknowledged that there have been "times" when Thomas has the children overnight during the week when she is "out of town for business." Tr. p. 114. Thus, the trial court instructed Thomas at that hearing to provide a schedule of three weeks of additional parenting time that he was claiming in order to maintain the ninety-eight overnights that had been credited in the original decree. Id. at 114-16.

Although Thomas contends that he established the completion of those additional overnights with the children, he argues that the trial court erroneously failed to consider those nights when calculating child support. Nonetheless, as discussed above, the document that Thomas submitted to the trial court on September 16, 2010, in an effort to establish those additional overnights, was not authorized by the trial court and it did not comply with the directive. That said, Thomas has failed to establish that he successfully completed the additional three weeks of parenting time. Therefore, we cannot say that the trial court abused its discretion in not reducing Thomas's child support obligation based on the alleged additional overnights with the children.

The judgment of the trial court is affirmed.

KIRSCH, J., and BROWN, J., concur.