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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MARRIAGE OF
BELINDA D. PEDERSEN (PFLUEGER)

Appellant-Petitioner,

vs.

ROGER C. PEDERSEN,

Appellee-Respondent.

No. 30A01-0610-CV-429

APPEAL FROM THE HANCOCK CIRCUIT COURT
The Honorable Richard D. Culver, Judge
Cause No. 30C01-9005-DR-359

December 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Belinda (Pedersen) Pflueger ("Mother") appeals an order on a number of petitions she and Roger Pedersen ("Father") brought addressing child support and parenting time. Mother asserts the trial court erroneously modified Father's parenting time and his obligation to pay college expenses, improperly found Father owed no support arrearage, and improperly found Mother in contempt for submitting child support worksheets that were "disingenuous." (App. at 22.) Father asserts on cross-appeal the child support order was erroneous because the evidence did not support the findings regarding Mother's income; the court should not have denied support modification until the oldest child turns 21; the court improperly modified the college expense order; the judgment did not address certain contentions Father raised; and the court should not have found him in contempt for failing to timely pay college expenses.

We affirm in part, reverse in part, and remand.

FACTS AND PROCEDURAL HISTORY

The parties divorced in 1991 and the divorce decree incorporated a settlement agreement providing Mother would have custody of their daughter M.P. and their son R.P. Father was granted parenting time and ordered to pay child support of $1200 per month plus a percentage of his gross income over $60,000 per year. Father would also pay for each child's undergraduate college education, with such expenses limited to the cost an in-state resident would pay at a state-supported university.

In 1997 Mother petitioned to modify the agreement and in 1998 Father cross-petitioned. They entered into a mediation agreement providing the base child support amount would not change but the formula to calculate the additional support obligation

would be modified so the amount would be recalculated when Father earned over $80,000 per year. The agreement was incorporated into an agreed entry, which also provided for satisfaction of a disputed support arrearage and provided all prior orders not expressly modified would remain in effect.

In 2003 the court approved another agreed entry that stipulated Mother could move to Florida with the children and addressed parenting time provisions. That order again provided any orders not expressly modified would remain in effect.

In 2005 Mother petitioned to modify parenting time and a trial was conducted in May of 2006. The court denied Father's petition to modify child support as "premature," (App. at 25), until R.P. turned 21. Then, Father's support would become $197 per week. It denied Mother's petitions for contempt and to determine Father's support arrearage, finding Father was current in his support obligation as of the trial date. It sanctioned both Father and Mother, noting the "parties' unrealistic contentious nature" had resulted in "attorney fees of a heretofore unseen level." (*Id.*) Father was held in contempt for failure to timely pay R.P.'s 2005 college expenses. Mother was held in contempt for failing to comply with discovery requests, interfering with Father's parenting time, and filing a "disingenuous" child support worksheet. (*Id*. at 27.)

DISCUSSION AND DECISION

1. Standard of Review

The trial court entered findings of fact and conclusions of law. When a party requests special findings of fact and conclusions of law pursuant to Ind. Trial Rule 52(A), our standard of review is two-tiered: we determine whether the evidence supports the

trial court's findings and whether the findings support the judgment. *Weiss v. Harper*, 803 N.E.2d 201, 204-05 (Ind. Ct. App. 2003). We will not disturb the findings or judgment unless they are clearly erroneous. *Id*. at 205. Findings of fact are clearly erroneous when the record lacks any reasonable inference from the evidence to support them. *Id*. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id*. We will not reweigh evidence or judge the credibility of witnesses, but consider only the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom. *Id*.

Special findings are those that include all facts necessary for recovery by a party in whose favor conclusions of law are found. *Id*. The findings are adequate if they support a valid legal basis for the trial court's decision. *Id*. The purpose of special findings of fact is to provide reviewing courts with the theory on which the judge decided the case, so they should state the ultimate facts from which the trial court determined the legal rights of the parties. *Id*. On appeal, we construe the findings together liberally in support of the judgment; however, we may not add anything to the special findings of fact by way of presumption, inference, or intendment. *Id*.

2. Mother's Income

Father asserts the only evidence before the trial court was that Mother's annual income from all sources has averaged about $54,000 per year for the three preceding years. However, the trial court found her income was about $35,000 per year. This, he asserts, violated the child support guidelines. As the record does not support the finding Mother's income was about $35,000 per year, we must remand.

When we review the calculation of a parent's income, we will not reverse the trial court's finding unless it is clearly erroneous. *Eppler v. Eppler*, 837 N.E.2d 167, 173 (Ind. Ct. App. 2005), *trans. denied* 855 N.E.2d 1001 (Ind. 2006). If the trial court's income finding includes the income required by our Child Support Guidelines and is within the scope of the evidence presented at the hearing, its determination is not clearly erroneous. *Id*.

The child support guidelines define "weekly gross income" broadly to include not only income from employment but also potential income and imputed income from in-kind benefits. *Glover v. Torrence*, 723 N.E.2d 924, 936 (Ind. Ct. App. 2000). Weekly gross income of each parent includes income from any source, unless explicitly excluded, and includes income from salaries, wages, commissions, bonuses, overtime, partnership distributions, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, inheritance, prizes, and alimony or maintenance received from other marriages. Ind. Child Support Guideline 3(A).

Father introduced evidence based on Mother's tax returns and discovery responses that her average income for the prior three years was nearly $54,000.[1] The parties direct us to no other evidence in the record regarding Mother's income.[2] We must therefore

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[1] Father asserts, "Not only is there no evidence in the Record contradicting Exhibit E, Mother stated Exhibit E was accurate." (Reply Br. of Appellee/Cross-Appellant, Roger C. Pedersen (hereinafter "Father's Reply Br.") at 6.) It is not apparent Mother's statement could be so interpreted. After Father's attorney summarized the exhibit while cross-examining Mother, she responded only "Okay." (Appellee's App. at 108.) We admonish Father's counsel to refrain from so mischaracterizing Mother's testimony.

[2] Mother asserts, "At trial, [Mother] testified that she receives trust income of approximately $25,000 per

remand so the trial court may re-calculate Mother's income in light of the only evidence before it, or in the alternative explain why certain income contemplated by the Child Support Guidelines was excluded.

3. Support Modification

Father petitioned in April of 2004 to modify the child support and college educational expense orders on the ground there had been "substantial changes of circumstances including, but not limited to, the children's substantial inheritances, Mother's substantial inheritances, and Mother's substantial assets." (App. at 146.) The trial court found in its judgment of June 2006 that "the support guidelines do not suggest that Father's current support is unreasonable," (*id*. at 22), but determined the support obligation would become unreasonable as of December 22, 2006, due to R.P.'s emancipation.[3] It accordingly denied Father's petition as "premature" until that date, when Father's support obligation would be modified to $197.00 per week.

At the same time, the trial court "clarified and limited," (*id*. at 23), Father's obligation to pay for the children's college expenses. Provisions for the payment of college expenses are modifiable, as college expenses are in the nature of child support.

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year and has been receiving $11,000 a year as a gift from her father. (App. 250, Tr. 189.)" (Reply Br. of Appellant/Cross Appellee's Br., Belinda D. Pedersen (Pflueger) (hereinafter "Mother's Reply Br.") at 4.) There is no such testimony on that page of the transcript. We must accordingly accept Father's contention Mother did not provide any evidence of her income at the May 2005 hearing.

[3] On that date R.P. turned twenty-one. The duty to support a child ceases when the child becomes twenty-one years of age unless the child is emancipated before reaching that age. Ind. Code § 31-14-11-18. However, an order for educational needs may continue in effect until further order of the court. *Id*.

Father appears to argue the denial of his petition to modify child support until R.P. reached twenty-one is error because the court did not reveal the basis for its determination in the form of "either specific findings or incorporation of a proper worksheet." (Father's Br. at 25.)

We decline Father's invitation to hold "specific findings" or a "worksheet" are required to explain a child support modification to the extent it is premised on statutory emancipation.

Hay v. Hay, 730 N.E.2d 787, 791-92 (Ind. Ct. App. 2000). In their 1991 dissolution settlement, Mother and Father agreed Father would "pay for all expenses of the children reasonably attributable to a four-year undergraduate college education," (App. at 177), which obligation would include tuition, room and board, books, and fees, but would not exceed the cost for a state resident at a state-supported university. In the order before us on appeal, the court limited Father's college expense obligation to eight semesters per child, and it placed a "cap," (*id*. at 24), on the amount he was obliged to pay for each child each semester.

We will reverse a decision regarding modification of child support only where it is clearly against the logic and effect of the facts and circumstances that were before the trial court. *Hay*, 730 N.E.2d at 792. On appeal, we do not weigh the evidence or judge the credibility of the witnesses, but consider only the evidence most favorable to the judgment, together with the reasonable inferences that can be drawn therefrom. *Id*. at 792-93.

> Child support awards may be modified 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.

Ind. Code § 31-16-8-1. The petitioner, here Father, bears the burden of proving a substantial change in circumstances justifying modification. *Hay*, 730 N.E.2d at 793.

Mother and Father entered into a child support agreement as part of the marriage dissolution in 1991 and that agreement, with some modification, was reaffirmed by agreements in 1998 and 2003. Child support obligations are modifiable whether they are court-ordered or the result of the parties' agreements. *Id.* at 791.

Mother argues the college expense modification was wrong because there was no substantial change in circumstances that rendered the original agreement unreasonable. The trial court found changed circumstances in that Mother's net worth had increased since the dissolution, the children now had assets in the form of trust accounts, Mother was unemployed at the time of dissolution and at the time of the modification but had been employed in the interim, and Mother has income from interest, dividends, and distributions averaging $673 per week.[4]

Changes in the relative financial resources of both parents may be sufficient to modify a child support order. *Harris v. Harris*, 800 N.E.2d 930, 938 (Ind. Ct. App. 2003), *trans. denied* 812 N.E.2d 798 (Ind. 2004). There, the Husband was terminated by his original employer and accepted a position as the president of a startup company. He was required to invest $250,000.00 of his own money in that company. His new compensation package included a base salary, a car allowance, and a discretionary bonus based on the performance of the venture. Husband sued his previous employer for wrongful termination and settled for $800,000.00, which the trial court determined was

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[4] Father asserts the court modified his obligation by a method not provided in the child support guidelines and did not provide findings to justify doing so.

We need not address Father's argument because a child support order may be modified by satisfying either subsection of Ind. Code § 31-16-8-1. It is not necessary to satisfy both subsections. *Burke v. Burke*, 809 N.E.2d 896, 898 (Ind. Ct. App. 2004). Accordingly, we review only whether there are changed circumstances so substantial and continuing as to make the terms of the order unreasonable.

not income for child support purposes. Wife obtained regular employment, earning $90,000.00 per year with a monthly car allowance of $500.00. We found the change in employment and financial situation of both parties was "a substantial and continuous change" sufficient to justify a modification of Husband's child support obligation. *Id*. at 938. We accordingly concluded the trial court's decision was not clearly against the logic and effect of the facts and circumstances before the court. *Id*. at 939.

Similarly, in the case before us the trial court was presented with sufficient evidence of changed circumstances to permit its clarification and limitation of Father's college expense obligation.

Father argues the trial court erred in concluding "the support guidelines do not suggest that Father's current support is unreasonable," (App. at 22), because beginning in June 2004, R.P. was attending college away from Mother's residence and was living at Mother's residence only during the summer.

Ind. Code § 31-16-6-2 provides if a court orders support for a child's educational expenses it must reduce other child support for that child that is duplicated by the educational support order and that would otherwise be paid to the custodial parent. The commentary to Child Supp. G. 6 provides:

> Section Two [of the Post-Secondary Education Worksheet] determines the amount of each parent's weekly support obligation for the student who does not live at home year round. . . . It further addresses the provisions of IC 31-16-6-2(b) which require a reduction in the child support obligation when the court orders the payment of educational expenses which are duplicated or would otherwise be paid to the custodial parent.
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> * * * *

> Section Two applies when . . . the parties have more than one child and one resides away from home while attending school and the other child(ren) remain at home.

This section, Father asserts, "prohibits the windfall to Mother and the hardship to Father of paying a child support order which [sic] duplicates living expenses contained in his college expense payments[.]" (Father's Br. at 23.)

Mother does not address this argument in her brief or respond to it in her reply brief. Accordingly, we review Father's claims as to this issue for *prima facie* error. *See Simon Property Group, L.P. v. Brandt Constr., Inc.*, 830 N.E.2d 981, 995 (Ind. Ct. App. 2005) ("[S]ince Brandt presented no arguments in its brief against these assignments of error, we will review this issue for prima facie error."), *reh'g denied*, *trans. denied* 855 N.E.2d 997 (Ind. 2006).

Father has demonstrated *prima facie* error. The trial court did not prepare a Child Support Obligation Worksheet (CSOW) for the period after R.P. started college, or a Post-Secondary Education Worksheet (PSEW) for any period of time. Nor did it adopt those Father offered or otherwise explain its conclusion Father's current support obligation was "not unreasonable." We must therefore remand for additional findings.

4. Father's Support Arrearage

The trial court denied Mother's petition to determine Father's child support arrearage, finding Father was current in his child support obligation as of the date of the hearing. Father does not address this finding on appeal. Accordingly, we review Mother's claim for *prima facie* error.

In 1998 the parties agreed Father would continue to pay a base amount of $1200 per month as child support, but if Father's income was over $80,000 "the amount of child support he should have paid shall be recalculated and he shall pay Mother the difference between the amount he paid and the difference he should have paid for the previous year." (App. at 160.) The trial court found Father's income exceeded $80,000, but concluded Father was current in his child support obligations.

When properly requested, a trial court is required to make complete special findings sufficient to disclose a valid basis under the issues for the legal result reached in the judgment. *Justus v. Justus*, 581 N.E.2d 1265, 1269 (Ind. Ct. App. 1991), *reh'g denied*, *trans. denied*. The purpose of findings of fact and conclusions of law is to provide the parties and reviewing courts with the theory on which the case was decided. *F.E.H., Jr. v. State*, 715 N.E.2d 1272, 1275 (Ind. Ct. App. 1999). The findings regarding Father's income do not support the conclusion there was no arrearage. We must accordingly remand to the trial court for reconsideration of this issue and, if appropriate after such reconsideration, entry of findings that support its conclusion regarding an arrearage.[5]

5. Parenting Time

In June of 2006 the trial court established Father's parenting time with their

[5] Father argues the court improperly failed to make findings addressing his contention he had overpaid support and educational expenses since filing his petition, and that Mother owes him reimbursement for transportation expenses caused by her non-compliance with parenting time orders. For the reasons explained above, we agree and remand for more complete findings on these matters.

daughter, which schedule Mother concedes "substantially mirrored," (Br. of Appellant, Belinda D. Pedersen (Pflueger) (hereinafter "Mother's Br.") at 25), their 2003 agreed order. The 2003 order, in turn, "restated," (App. at 150), the Parents' 1998 agreed entry. Mother asserts the

> extensive transportation schedule, that may once have been in the best interest of a 15 year old junior high school student, is not in the best interest of a 17 year old high school girl making every effort to do her very best in high school, while at the same time maximizing her high school experiences as it pertains to her social life.

(Mother's Br. at 26.)[6]

Where there is a significant geographical distance between the parents, scheduling parenting time is fact-sensitive and requires consideration of factors including employment schedules, the costs and time of travel, the financial situation of each parent, the frequency of the parenting time and others. Ind. Parenting Time Guideline III. In reviewing a determination of visitation rights, we will reverse only for manifest abuse of the trial court's discretion. *K. B. v. S. B.*, 415 N.E.2d 749, 755 (Ind. Ct. App. 1981). Such abuse of discretion will not be found unless the trial court's decision is clearly against the logic and effect of the facts and circumstances before it, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* On appeal we determine whether the record discloses evidence or reasonable inferences to be drawn therefrom that serve as a rational basis to support the trial court's finding. *Id.* We will not reweigh the evidence or judge the credibility of the witnesses. *Id.*

The trial court heard conflicting testimony from Mother, Father, and their daughter

[6] Mother and the daughter live in Florida, and Father lives in Michigan.

regarding new social or academic hardships the visitation schedule might or might not be causing the daughter. It apparently chose to credit the testimony that the existing agreement did not cause hardship to such an extent the agreement was no longer in the daughter's best interests. We decline Mother's invitation to reweigh that evidence, and cannot find an abuse of discretion in the trial court's parenting time order.

6. Contempt Findings

Whether a person is in contempt is a matter left to the trial court's discretion. *Harlan Bakeries, Inc. v. Muncy*, 835 N.E.2d 1018, 1040 (Ind. Ct. App. 2005). We will reverse a finding of contempt only where an abuse of discretion has been shown; such occurs only when a trial court's decision is against the logic and effect of the facts and circumstances before it. *Id*.

Mother's Contempt

The trial court found Mother in contempt for filing "such a disingenuous child support worksheet that it borders upon perjury."[7] (App. at 27.) The worksheets the court was apparently referring to were for the years 1999 through 2004. They all include an affirmation "under the penalties for perjury the foregoing representations are true," (*id*. at 111, 113, 115, 117, 119), but they are not signed, nor do they explicitly state who submitted the worksheets. They indicate, however, they were prepared by Mother's trial counsel. They all state Mother had no income.

In her argument Mother addresses her income, or lack thereof, prior to the divorce

[7] It also found Mother in contempt for failing to comply with discovery requests and for interfering with Father's parenting time. She does not challenge those contempt findings on appeal.

and before 1998, but does not explain the significance of that information to the worksheets that were the subject of the contempt citation. Her argument on this issue offers no legal authority and states, in its entirety:[8]

> Direct contempt involves actions occurring near the Court that interferes [sic] with the business of the Court and of which the Judge has personal knowledge. [Mother] contends the submission of child support worksheets that have some relationship to the facts and asserts [sic] or advocates [sic] an arguable position at trial does not, and cannot, rise to the level of direct contempt.

(Mother's Br. at 31-32.)

A party waives an issue where she fails to develop a cogent argument or provide adequate citation to authority and portions of the record. *Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005), *trans. denied* 855 N.E.2d 994 (Ind. 2006); *see also* Ind. Appellate Rule 46(A)(8) (requiring contentions in an appellant's brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal). Mother has waived this allegation of error by failing to provide cogent argument or citation to authority.

Father's Contempt

For the same reason, we are unable to review the finding Father was in contempt for failing to pay the older child's 2005 college expenses. Father asserts, without citation to authority, there are four "factual elements necessary" to prove failure to comply with a court order when able to do so. He then asserts there was no evidence to satisfy any of

[8] Mother submitted a reply brief but it addressed only Father's contempt.

the elements.[9] We are unable to address that allegation of error, as it is unsupported by citation to legal authority. *See* App. R. 46(A)(8).

CONCLUSION

We affirm the trial court's finding Mother and Father were in contempt, its parenting time order, and its clarification and limitation of Father's college expense obligation. We must remand for additional fact finding regarding Mother's income, Father's arrearage, and Father's child support obligation to the extent it might duplicate their son's living expenses that are also included in Father's college expense obligation.

Affirmed in part, reversed in part, and remanded.

CRONE, J., and DARDEN, J., concur.

[9] Mother asserts "[Father] conceded in his exhibits at trail [sic] that he purposefully withheld child support to offset what 'he believed' he had overpaid [Mother]." (Mother's Reply Br. at 13.) The exhibit to which Mother directs us does not support that characterization, and we admonish Mother's counsel to refrain from so misrepresenting the record. Mother goes on to assert, without citation to the record, that Father "withheld this money at the instruction and advice of his attorney and without Court approval . . . ." (*Id.*)