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IN THE
COURT OF APPEALS OF INDIANA

M.S.,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 82A05-0905-JV-248
	)	
A.S.G.,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Renee Allen Ferguson, Magistrate
Cause No. 82D01-0405-JP-279

January 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

M.S. ("Mother") appeals the trial court's denial of her motion to correct errors.

We affirm in part and reverse in part.

ISSUES

1. Whether the trial court imputed an erroneous monetary figure for Father's weekly gross income.

2. Whether the trial court's determination of child care expenses is contradicted by the evidence.

3. Whether the trial court erred in failing to make a specific determination regarding payment of health care expenses.

FACTS

In 2004, Mother filed a paternity action in Evansville, wherein it was determined that A.S.G. ("Father") was the biological parent of B.G.S. (born December 27, 2002). On August 24, 2004, the trial court issued an order establishing paternity and other matters as follows: (1) Mother was awarded primary physical custody of B.G.S.; (2) Father was granted visitation pursuant to the Indiana Parenting Time Guidelines; (3) Father was ordered to provide employer-based health insurance for B.G.S.; and (4) the trial court deviated from the Indiana Child Support Guidelines at the time and imposed no formal child support order because "[M]other state[d] she [wa]s employed and c[ould] adequately provide for the child." (Mother's App. 8).

Prior to the paternity action, both parties were residents of Evansville and had entered into an informal child support arrangement, whereby Father agreed to pay to

Mother $227.00 per week -- $127.00 for child support and $100.00 for day care expenses, respectively. On January 10, 2007, Mother filed a notice of her intent to relocate pursuant to Indiana Code section 31-17-2-2, Father did not object. Mother subsequently moved to Indianapolis with B.G.S.

Father adhered to the terms of the parties' informal child support arrangement until August of 2008, when B.G.S. began attending preschool at a daycare facility in Indianapolis. Father then reduced his child support to $90.00 per week. On September 16, 2008, Mother filed a petition to modify the order establishing paternity, wherein she sought a child support order in accordance with Indiana's Child Support Guidelines. On October 7, 2008, Father also filed a petition to modify the order establishing paternity, wherein he sought custody of B.G.S. and requested child support and parenting time determinations accordingly.

The trial court conducted an evidentiary hearing on January 21, 2009. Father reported a weekly gross income of $1,307.69. He also testified that although his 2008 earnings statement reflected bonus and overtime pay, his employer had since suspended such compensation for 2009 due to the economic downturn. Mother testified to reported weekly gross income of $262.00. She also submitted documentation of B.G.S.'s weekly day care expenses, totaling $137.00. No evidence was presented of rebuttable extenuating circumstances, i.e., chronic medical conditions, prior child support orders, etc. by either party. The trial court took the matter under advisement.

On February 23, 2009, the trial court issued its order, which provided as follows:

> 1. That the Mother shall retain primary physical custody of the parties' child. The parents shall have joint legal custody. The Father shall have parenting time in accordance with the Indiana Parenting Time Guidelines as a minimum. Father shall have the first fight [sic] of refusal.
>
> 2. The Father shall pay child support to the Mother in the amount of $144.00 per week, payable through the Vanderburgh County Clerk's Office. The order of support is retroactive to the filing of the Petition to Modify filed on September 16, 2008. The Father is to be given credit for payments made directly to the Mother.

(Order 1).

On March 24, 2009, Mother filed a motion to correct error. On April 7, 2009, Father filed a statement in opposition to Mother's motion. The trial court denied Mother's motion on March 31, 2009. She now appeals.

Additional facts will be presented as necessary.

DECISION

Mother argues that the trial court imputed an erroneous monetary figure for Father's weekly gross income; that the trial court's determination of B.G.S.'s day care expenses was contrary to the evidence presented at the hearing; that the court improperly gave Father a credit for child care expenses which he had not been ordered to pay; and that the trial court failed to order the parties to pay medical expenses in accordance with Indiana's Child Support Guidelines.

"A trial court's calculation of child support is presumptively valid." *Saalfrank v. Saalfrank*, 899 N.E.2d 671, 674 (Ind. Ct. App. 2008) (quoting *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008)). Child support orders must be made in compliance with

the Indiana Child Support Rules and Guidelines. *Clark v. Madden*, 725 N.E.2d 100, 107 (Ind. Ct. App. 2000). In reviewing a determination of whether child support should be modified, we will reverse the decision only for an abuse of discretion. *Cross v. Cross*, 891 N.E.2d 635, 641 (Ind. Ct. App. 2008). We review the evidence most favorable to the judgment without reweighing the evidence or reassessing the credibility of the witnesses. *Id*. An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court, including any reasonable inferences therefrom. *Id*.

Moreover, "[m]odification of child support may be made only if the circumstances changed so substantially that the terms became unreasonable or if child support under the existing order differed by more than twenty percent from a calculation of child support under the new circumstances." *Saalfrank*, 899 N.E.2d at 674-75; Ind. Code § 31-16-8-1(b) and Ind. Child Support Guideline 4. The petitioner bears the burden of establishing that his or her desired modification is warranted. *Cross*, 891 N.E.2d at 641.

1. Father's Weekly Gross Income

It is undisputed that both parties were employed. Mother argues that the trial court imputed an erroneous amount for Father's weekly gross income. Specifically, she argues that the trial court improperly failed to consider overtime and bonus income in its determination. We disagree.

In devising a child support order, the first task of the trial court is to determine the weekly gross income of each parent. *Ratliff v. Ratliff*, 804 N.E.2d 237, 245 (Ind. Ct. App.

2004). "Weekly gross income" is defined broadly in the Indiana Child Support Guidelines 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. 2006). "However, determining income is fact-sensitive when *irregular* income, such as bonuses, overtime, or commissions are involved." *Ratliff*, 804 N.E.2d at 245 (emphasis added). We review the finding of gross income for clear error. *Id.* at 246.

Indiana Child Support Guideline 3 states that bonuses and overtime, *inter alia*, are

> sensitive to downturns in the economy. The fact that overtime, for example, has been consistent for three (3) years does not guarantee that it will continue in a poor economy. * * * Care should be taken to set support based on dependable income, while at the same time providing children with the support to which they are entitled.
>
> When the court determines that it is not appropriate to include irregular income in the determination of the child support obligation, the court should express its reasons. When the court determines that it is appropriate to include irregular income, an equitable method of treating such income may be to require the obligor to pay a fixed percentage of overtime, bonuses, etc., in child support on a periodic but predetermined basis (weekly, bi-weekly, monthly, quarterly) rather than by the process of determining the average of the irregular income by past history and including it in the obligor's gross income calculation.

Ind. Child Support Guideline 3(A)(4)(b).

Here, Mother's child support worksheet stated Father's gross income at $1,547.88 (based upon his 2008 W2 gross earnings of $80,490.00). On the other hand, Father's child support worksheet stated his weekly gross income to be $1,307.69. At the hearing, he testified as follows with regard to the disparity:

> Q: In regards to . . . to Mother's exhibit Number Six, your, uh, [W2] earnings statement?

> Father: Yes.
> Q: Is there anything else that would be helpful to the Court in explaining this? You indicate that your W2s show a federal wage of the Seventy-Five, Forty-One [sic[1]]?
> Father: Yes.
> Q: And that's what you've earned for this year, that being the 2008 year?
> Father: Yes. Um, the only other changes, of course, would be, uh, the economy. The overtime I earned in 2008, um . . .
> Q: Is that gonna be in 2009? Do you have an option to work overtime?
> Father: I have no option in 2009 to work overtime. It has been cut.
> Q: What about your bonuses?
> Father: Also cut.
> Q: So likely . . . no one has a crystal ball . . .
> Father: Sure.
> Q: . . . but likely, from the status of the economy currently, your wages for 2009 will be considerably lower, specifically no overtime and no bonuses?
> Father: Yeah, I am currently, so far in 2009, not earning anything under those categories, just the base salary. And that's what we've been informed will be the, um, status quo from here on.

(Tr. 83-84).

In its determination of Father's child support obligation, the trial court's calculation of his gross income reflected his base pay, paid holiday time, and vacation/sick days, but excluded bonuses or overtime pay. We cannot say that such was unreasonable given Father's testimony. Mother's argument that Father was, in fact, going to earn bonus income in 2009 amounts to an invitation that we reweigh the evidence, which we cannot do. *Saalfrank*, 899 N.E.2d at 674. We do not find the trial court's calculation of gross income to be clearly erroneous.[2]

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[1] Father's W2 earnings statement shows a federal wage of $75,481.00.

[2] Indiana Child Support Guideline 3 provides that "[w]hen the court determines that it is not appropriate to include irregular income in the determination of the child support obligation, the court *should* express

2. Child Care and Associated Expenses

Mother argues that the trial court's determination of child care expenses was clearly erroneous and unsupported by the evidence. Specifically, she argues that the trial court's decision to give Father a $100.00 credit for day care expenses, without ordering him to pay the same, was clearly erroneous. We agree.

"To determine whether a child support order complies with the child support guidelines, we must first know the basis for the amount awarded. *Walters v. Walters*, 901 N.E.2d 508, 513 (Ind. Ct. App. 2009) (quoting *Heiligenstein v. Matney*, 691 N.E.2d 1297, 1303 (Ind. Ct. App. 1998)). "Such a revelation could be accomplished either by specific findings or by incorporation [of] a proper worksheet." *Id*. Here, although we have neither specific findings nor a worksheet from the trial court, we note that the trial court appears to have adopted Father's proffered child support worksheet, wherein Father had arrived upon a total "Recommended Support Obligation" in the amount of $144.10. (Father's Ex. C). Here, the trial court imposed a child support obligation of $144.00 per week.

Indiana Child Support Guideline 3(E) provides, in pertinent part,

> Child care costs incurred due to the employment [ ] of both parent(s) should be added to the basic obligation. It includes the separate cost of a

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its reasons." Ind. Child Support Guideline 3 (emphasis added). Here, the trial court's order was silent regarding its apparent exclusion of Father's bonus and overtime income from its determination of his weekly gross income. We encourage trial courts to issue clear and detailed orders for our review. That said, however, under the instant facts, we find no clear error. The evidence most favorable to the judgment established that Father's bonus and overtime income was particularly irregular and undependable given the economic downturn and his employer's decision to suspend bonuses and overtime compensation for 2009.

> sitter, day care, or like care of a child or children while the parent works or actively seeks employment. Such child care costs must be reasonable and should not exceed the level required to provide quality care for the children. Continuity of child care should be considered.

Ind. Child Support Guideline 3. "Work-related child care expense is an income-producing expense of the parent." *Id*.

Mother presented specific evidence of her child care expenses for B.G.S. At the evidentiary hearing, she testified that she resides in Indianapolis, where she works the dayshift at a restaurant from on or about 10:00 a.m. to 4:30 p.m. or 5:30 p.m. on Monday through Friday. She testified further that she generally works twenty-five to thirty hours each week, earning a gross weekly wage of approximately $262.00 per week. Mother also testified that she had two available options regarding child care of B.G.S. during her work day: (1) enrolling B.G.S. in kindergarten at a local public school from 8:00 a.m. until 2:00 p.m., after which B.G.S. would have to go to another daycare facility from 2:00 p.m. until Mother's work shift ended; or (2) enrolling B.G.S. in his current daycare preschool, where Mother drops him off at 7:45 a.m., and he remains in the facility until Mother's work shift ends between 4:30 and 5:30 p.m. Mother testified that the total cost associated with the local public school option is $140.00 per week; and the cost of B.G.S.'s current day care preschool is $137.00 per week. Father presented no evidence to rebut Mother's proffered daycare expenses.

Mother's current daycare arrangement for B.G.S. is "reasonable and does not exceed the level required to provide quality care for" him. Ind. Child Support Guideline

3(E). It was reasonable for Mother to select the daycare option that allows B.G.S. to remain in a single facility until the close of her work shift, as opposed to selecting the public school alternate option which would require her to leave her job when its kindergarten school day concludes at 2:00 p.m.; transport B.G.S. to another daycare facility; return to work; and later pick B.G.S. up between 4:30 p.m. and 5:30 p.m. when her shift ended. Accordingly, the trial court's apparent decision to give Father a $100.00 credit for B.G.S.'s child care expense "leaves us firmly convinced that a mistake has been made." *See Dedek*, 851 N.E.2d at 1050. We conclude that the trial court's finding that the child care expense for B.G.S. is $100.00 per week is clearly erroneous.

Having discovered an error in the trial court's calculations, rather than remand to the trial court, we proceed to correct the errors herein for reasons of judicial economy. *See* attached child support obligation and parenting time credit worksheets. At the hearing, evidence was presented that Father and Mother's weekly gross incomes were $1307.69 and $262.00, respectively. Their combined weekly adjusted income is $1569.69. Therefore, pursuant to Indiana Child Support Guideline support schedules, the appropriate basic child support obligation for B.G.S.'s care is $218.00 per week. After adding the $137.00 weekly work-related child care expense and a $5.00 weekly health insurance premium, the worksheet indicates a child support obligation of $360.00 per week. Applying the respective percentage shares of their total weekly adjusted incomes, Father and Mother's child support obligations are: $299.91 per week (83.3088% of $360.00) and $60.09 per week (16.6912% of $360.00), respectively. Next, under the

Child Support Guidelines, we must apply the following applicable adjustments: from Father's child support obligation, we must subtract $5.00 for B.G.S.'s weekly health insurance premium and $19.99[3] for duplicated parenting time expenses. Therefore, Father's recommended child support obligation should be $274.92. (See attached Child Support Obligation and Parenting Time Credit worksheets).

As a result, we find that the trial court's order requiring Father to pay $144.00 per week in child support is clearly erroneous. We reverse and instruct the trial court to enter Father's child support order in the amount of $274.92 per week, consistent with our opinion.

3. Uninsured Medical Expenses

Lastly, Mother argues that the trial court failed to include a provision in its order requiring the parties to pay medical expenses in accordance with the Indiana Child Support Guidelines. Father counters that such "is implicit through the [trial] court's February 23, 2009 Order and the unmodified provisions of the July 14, 2004 Order Establishing Paternity." Father's Br. at 15. He also asserts that he has never failed to provide health insurance for B.G.S.

Indiana Child Support Guideline 3(H) provides, in pertinent part, that

> The data on which the Guideline schedules are based include a component for ordinary health care expenses. Specifically, six percent (6%) of the support amount is for health care. The non-custodial parent is, in effect, prepaying health care expenses every time a support payment is made. Consequently the Guidelines require that the custodial parent bear the cost

[3] See attached Parenting Time Credit Worksheet.

> of uninsured health care expenses up to six percent (6%) of the basic child support obligation.

Ind. Child Support Guideline 3(H).

Pursuant to the Guidelines, each time Father makes a child support payment, six percent of his child support payment, or $857.75/year [(.06 x $274.92) x 52 weeks] is prepaid toward B.G.S.'s health care expenses. Likewise, Mother bears responsibility for the cost of B.G.S.'s uninsured health care expenses up to six percent of the basic child support obligation [$680.16/year = (.06 x 218) x 52 weeks]. We hereby order the parties to comply with the aforementioned "six percent rule" of the Indiana Child Support Guidelines regarding the payment of B.G.S.'s uninsured health care expenses.

Affirmed in part, reversed in part and remanded with instructions.

KIRSCH, J., and MAY, J., concur.

Worksheet – Child Support Obligation

Each party shall complete that portion of the worksheet that applies to him or her, sign the form and file it with the court. This worksheet is required in all proceedings establishing or modifying child support.

IN RE:

CASE NO:
FATHER: A.S.G.
MOTHER: M.S.

CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)

Children	DOB	Children	DOB

	FATHER 1307.69	MOTHER 262.00	
1. **WEEKLY GROSS INCOME** Subsequent Children Multipliers (Circle .935 .903 .878 .863 .854)			1569.69
A. Child Support (Court Order for Prior Born Child(ren)	0.00	0.00	
B. Child Support (Legal Duty for Prior Born Child(ren)	0.00	0.00	
C. Maintenance Paid	0.00	0.00	
D. WEEKLY ADJUSTED INCOME (WAI) Line 1 minus 1A, 1B, and 1C	1307.69	262.00	
2. **PERCENTAGE SHARE OF TOTAL WAI**	83.3088 %	16.6912 %	100 %
3. **COMBINED WEEKLY ADJUSTED INCOME** (Line 1D)			1569.69
4. **BASIC CHILD SUPPORT OBLIGATION** Apply CWAI to Guideline Schedules			218.00
A. Weekly Work-Related Child Care Expense of each parent	0.00	137.00	137.00
B. Weekly Premium – Children's Portion of Health Insurance Only			5.00
5. **TOTAL CHILD SUPPORT OBLIGATION** (Line 4 plus 4A and 4B)			360.00
6. **PARENT'S CHILD SUPPORT OBLIGATION** (Line 2 times Line 5)	299.91	60.09	
7. **ADJUSTMENTS**			
( ) Obligation from Post-Secondary Education Worksheet Line J.	+ 0.00	+ 0.00	
( ) Payment of work-related child care by each parent. (Same amount as Line 4A)	- 0.00	- 137.00	
( ) Child(ren)'s Portion of Weekly Health Insurance Premium $ _____. (This will be a credit to the payor)	- 5.00	- 0.00	
( ) Parenting Time Credit $ _____.	- 19.99	- 0.00	
8. **RECOMMENDED CHILD SUPPORT OBLIGATION**	$274.92	- $76.91	

EXPLAIN ANY DEVIATION FROM GUIDELINE SCHEDULES IN ORDER/DECREE.

I affirm under penalties for perjury that the foregoing representations are true.

Father: _____

Dated: _____ Mother: _____

UNINSURED HEALTH CARE EXPENSE CALCULATION

A. Custodial Parent Annual Obligation: (CSOW Line 4) $_____ + (PSEW § Two, Line I) $_____ = $_____ x 52 weeks x .06 = $ _____.

B. Balance of Annual Expenses to be Paid: (Line 2) _____ % by Father; _____ % by Mother.

Worksheet – Child Support Obligation

IN RE:	**CASE NO:** FATHER: A.S.G. MOTHER: M.S.

PARENTING TIME CREDIT WORKSHEET

Children	**DOB**	**Children**	**DOB**

Line:		
1PT	Enter Annual Number of Overnights	83
2PT	Enter Weekly Basic Child Support Obligation – BCSO (Enter Line 4 from Child Support Worksheet)	$218.00
3PT	Enter Total Parenting Time Expenses as a Percentage of the BCSO (Enter Appropriate TOTAL Entry from Table PT)	.15
4PT	Enter Duplicated Expenses as a Percentage of the BCSO (Enter Appropriate DUPLICATED Entry from Table PT)	.07
5PT	Parent's Share of Combined Weekly Income (Enter Line 2 from Child Support Worksheet)	83.3088
6PT	Average Weekly Total Expenses during Parenting Time (Multiply Line 2PT times Line 3PT)	$32.7
7PT	Average Weekly Duplicated Expenses (Multiply Line 2PT times Line 4PT)	$15.26
8PT	Parent's Share of Duplicated Expenses (Multiply Line 5PT times Line 7PT)	$12.71
9PT	Allowable Expenses during Parenting Time (Line 6PT – Line 8PT)	$19.99

Enter Line 9PT on Line 7 of the Child Support Worksheet as the Parenting Time Credit