



Joseph N. Meade (“Joseph”), the custodial parent, appeals the trial court’s order granting Kathleen F. Meade’s (“Kathleen”) petition for modification of her child support obligation. Joseph presents two issues for our review, which we consolidate and restate as: whether the trial court erred by granting Kathleen’s petition for modification of her child support obligation.

We reverse and remand.

### **FACTS AND PROCEDURAL HISTORY**

Joseph and Kathleen’s marriage was dissolved on September 10, 2009, and Joseph was awarded primary physical custody of their three minor children. Kathleen, who had worked for British Petroleum for approximately twenty-seven years, and who earned approximately \$72,000.00 per year at the time of the dissolution, was ordered to pay child support to Joseph in the amount of \$324.08 per week. During the course of the dissolution proceedings, Kathleen learned that her position as shareholder services manager with British Petroleum was being relocated from Indiana to Texas, and was offered the opportunity to relocate in order to retain her position. Ultimately, Kathleen lost her employment with British Petroleum in August 2010, after the oil spill in the Gulf of Mexico, and began receiving \$356.00 per week in unemployment compensation through the Texas Workforce Commission. Kathleen also received a severance package of \$96,000.00 from British Petroleum, which she accepted.

Kathleen relocated to Indiana in February 2011 and petitioned the trial court for a modification of her child support obligation. At the time of the hearing on her petition,

Kathleen remained unemployed and considered returning to college in an effort to improve her future employment opportunities. Kathleen requested that the trial court modify her child support based upon her unemployment income. She also requested that the trial court make the modification retroactive to the date she filed her petition, June 2010, and exclude from her income the severance pay she received.

After the hearing during which Kathleen's petition was considered, the trial court issued an order in which it found that her severance pay was income in 2010 and, as such, did not reflect a substantial change in circumstances for purposes of modification of child support for that year. However, the trial court found that, beginning January 1, 2011, there was a substantial change in Kathleen's income, as she was receiving \$356.00 per week in unemployment compensation. The trial court modified Kathleen's obligation to \$100.00 per week, with the support order subject to review upon Kathleen's successful employment. Joseph now appeals.

### **DISCUSSION AND DECISION**

Modification of a child support order requires a showing of "changed circumstances so substantial and continuing as to make the terms unreasonable." Ind. Code § 31-16-8-1(b)(1). Modification of a child support order "involves a factual determination that substantial and continuing, changed circumstances render existing terms unreasonable." *Glass v. Oeder*, 716 N.E.2d 413, 416 (Ind. 1999) (quoting *Giselbach v. Giselbach*, 481 N.E.2d 131, 133 (Ind. Ct. App. 1985)). Our standard of review when asked to determine whether a trial court has abused its discretion in modifying a support order is well settled.

We do not reweigh the evidence or reassess the credibility of witnesses, but rather consider only the evidence most favorable to the judgment, together with the reasonable inferences that can be drawn therefrom. *Sims v. Sims*, 770 N.E.2d 860, 863 (Ind. Ct. App. 2002).

Kathleen’s petition was based upon changed circumstances. Joseph challenges the trial court’s income calculation and argues that the trial court’s treatment of Kathleen’s severance package was an abuse of discretion. We agree.

“For purposes of determining the parents’ income in the child support calculation, the definition of ‘weekly gross income’ is broadly defined to include not only actual income from employment, but also potential income and imputed income from ‘in-kind’ benefits.” *Id.* at 865 (quoting *Glover v. Torrence*, 723 N.E.2d 924, 936 (Ind. Ct. App. 2000)). “A trial court is vested with broad discretion in imputing income to a child support obligor in order to ensure that the obligor does not evade the obligation.” *Id.* (quoting *Lloyd v. Lloyd*, 755 N.E.2d 1165, 1169 (Ind. Ct. App. 2001)).

Indiana Child Support Guideline 3(A)(1) provides that severance pay is included as weekly gross income for purposes of the calculation of child support. Here, the trial court treated the severance pay as income for the year in which it was received by Kathleen, 2010, and found that there was no substantial change in her income that year. The trial court considered only the unemployment payments received by Kathleen in 2011 in its income calculation for determining whether to modify her child support obligation.

In 18 Indiana Practice Series on Business Organizations § 25.13, Paul J. Galanti states the following in regard to executive compensation:

Executive compensation agreements often contain severance pay provisions providing “salary continuation” for a period of time following the termination of an executive’s employment.

Severance pay is defined in Black’s Law Dictionary as “[p]ayment by an employer to employee beyond his wages on termination of his employment. Generally, it is paid when the termination is not due to employee’s fault. . . .” Black’s Law Dictionary 715 (abridged 5th ed. 1983). Where, as here, severance pay is paid in a lump sum to compensate for an extended period of time, trial courts should pro rate the lump sum payment over the period of time for which it replaces the parent’s lost income. The child support obligation should then be calculated accordingly. Therefore, we find that the trial court abused its discretion by failing to pro rate Kathleen’s lump-sum payment of severance pay. As a consequence, the trial court also abused its discretion by modifying Kathleen’s child support obligation by reducing it to \$100.00 per week. We reverse and remand this matter to the trial court for further proceedings consistent with this opinion.

Reversed and remanded.

BAKER, J., and BROWN, J., concur.