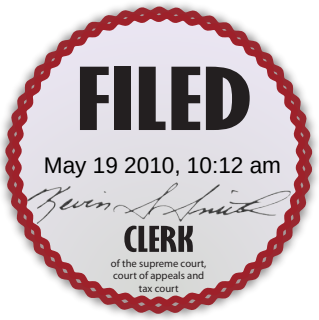

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IN THE
COURT OF APPEALS OF INDIANA

JEFFERY R. GRUBE,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 25A05-0912-CV-721
	)	
HEATHER A. (GRUBE) RYAN,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE FULTON SUPERIOR COURT
The Honorable Douglas B. Morton, Special Judge
Cause No. 25D01-9905-DR-49

May 19, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Jeffrey R. Grube, (Father), appeals the trial court's Order granting Heather A. Ryan's (Mother) petition to modify child support.

We affirm.

ISSUES

Father raises three issues for our review, which we restate as the following single issue: Whether the trial court erred when it modified Father's child support obligation.

FACTS AND PROCEDURAL HISTORY

Father and Mother divorced in 1991. During their marriage, two children were born: B.G., born on January 19, 1991, and A.G., born on September 14, 1995.

In August 2007, the trial court entered a modification of child support, requiring Father to pay $138.36 per week in child support less a $17.95 credit for parenting time for 78 overnights, for a total of $120.00 per week. In its decision, the trial court stated:

> The [c]ourt begins by noting that it is not supposed to base its support order upon the parties' income but instead upon their income potential recognizing that most people work near their potential. [Mother] has never appeared to the [c]ourt to be a person capable of minimum wage but instead shows seriously more income potential than that. Accordingly the [c]ourt has attributed to her some amount of income beyond the minimum.
>
> [Father's] income is harder to identify because of the family arrangement under which he farms. The [c]ourt believes that the income numbers submitted to the Federal Government, while probably accurately reflecting cash flow, are probably not accurate in reflecting what all is attributable to [Father] in income. The [c]ourt has adopted $580 per week income level for [Father] consisting of the following: (a) $290 per week reflected on his income tax return plus additional computations relating to cash flow; this amount for instance accounts for his $10,000 per year salary check from Grube Farms plus additional farm income; (b) $100 for living rent free in a home, [];

> (c) $140 per week for his own real estate; [Father] is the owner of 126 acres which should be producing an income flow to him in the neighborhood of $75 per acre or more per year . . . (d) $50 per week in odd job work . . . .

(Appellant's App. pp. 98-99). On August 5, 2009, Mother filed a petition to modify the court's order, arguing that the amount of child support differs by more than 20% from the amount that would be ordered by applying the Indiana Child Support Guidelines. At the time of the hearing on the petition to modify child support in November 2009, B.G. was a full-time student at Purdue University. A hearing was held on November 25, 2009. On December 2, 2009, the trial court granted Mother's petition and modified Father's child support obligation from $120 a week to $183 a week. In its Order, the trial court stated:

> The [c]ourt now finds that a substantial and continuing change of circumstances now exist rendering the existing support order to be unreasonable. In particular, the [c]ourt believes that [Father's] capitalization of his farming operation is producing for him a greater income and that he no longer is holding overnight visitations as had been credited to him . . . .

(Appellant's App. p. 32).

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

DISCUSSION AND DECISION

I. *Standard of Review*

Father argues that the trial court improperly modified his child support obligation. Specifically, he argues that: (1) the trial court incorrectly determined his gross weekly income by relying entirely upon loan documents and without considering tax returns or other verification of income; (2) the trial court improperly determined that he is no longer entitled

to parenting time credit; and (3) the trial court should have required Mother to provide college expense verification.

"We place a 'strong emphasis on trial court discretion in determining child support obligations' and regularly acknowledge 'the principle that child support modifications will not be set aside unless they are clearly erroneous.'" *Lea v. Lea*, 691 N.E.2d 1214, 1217 (Ind. 1998) (quoting *Stultz v. Stultz*, 659 N.E.2d 125, 128 (Ind. 1995)). "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. *Menard, Inc. v. Dage-MTL Inc.*, 726 N.E.2d 1206, 1210 (Ind. 2000), *reh'g denied*. We give due regard to the trial court's ability to assess the credibility of witnesses. *Id*. While we defer substantially to findings of fact, we do not do so to conclusions of law. *Id*. We do not reweigh the evidence; rather, we consider the evidence more favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Yoon v. Yoon*, 711 N.E.2d 1265, 1268 (Ind. 1999). The petitioner bears the burden of establishing that his or her desired modification is warranted. *Cross v. Cross*, 891 N.E.2d 635, 641 (Ind. Ct. App. 2008).

The modification of a child support order is governed by Indiana Code section 31-16-8-1, which provides in relevant part:

> Except as provided in section 2 of this chapter, modifications may be made 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.

The Indiana Child Support Guidelines aid in the determination of the amount of child support that should be awarded and provide a measure for calculating each parent's share of the child support. *In re Paternity of G.R.G.*, 829 N.E.2d 114, 118 (Ind. Ct. App. 2005). "There is a rebuttable presumption that the amount of the award which would result from the application of the Indiana Child Support Guidelines is the correct amount of child support to be awarded." *Id.*

A. *Weekly Gross Income*

In fashioning a child support order, the trial court's first task is to determine the weekly gross income of each parent. *Id*. When determining the weekly gross income of a parent who is self-employed, Ind. Child Support Guideline 3(A)(2) provides:

> Weekly Gross Income from self-employment, operation of a business, rent and royalties is defined as gross receipts minus ordinary and necessary expenses. In general, these types of income and expenses from self-employment or operation of a business should be carefully reviewed in order that the deductions be restricted to reasonable out-of-pocket expenditures necessary for the production of income. These expenditures may include a reasonable yearly deduction for necessary capital expenditures. Weekly gross income from

> self-employment may differ from a determination of business income for tax purposes.[1]

"Weekly gross income" is broadly defined in the Indiana Child Support Guidelines to include "not only actual 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). Indiana Child Support Guideline 3(A)(1) provides, in pertinent part:

> Weekly gross income of each parent includes income from any source, ... and includes, but is not limited to, income from salaries, wages, commissions, bonuses, overtime, partnership distributions, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workmen's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and alimony or maintenance received from other marriages.

The Guidelines provide for a child support worksheet to be completed and filed with the trial court, signed by the parties and supported by documentation. Child Supp. G. 3(B). If the parties cannot agree on the weekly gross income figures to be included on the worksheet, then each party may submit its own worksheet and documentation, from which the trial court can determine the parties' respective weekly gross incomes and compute the appropriate child support amount. Child Supp. G. 3(B), cmt. 1. Each party bears the burden

[1] The commentary to Ind. Child Support Guideline 3(A)(2)(a) further provides:

> In calculating weekly gross income, it is helpful to begin with total income from all sources. This figure may not be the same as gross income for tax purposes. . . . Calculating weekly gross income for the self-employed or for those who receive rent and royalty presents unique problems and calls for careful review of expenses. The principle involved is that actual expenses are deducted and benefits that reduce living expenses (company cars, free lodging, reimbursed meals, etc.) should be included in whole or in part. It is intended that actual out-of-pocket expenditures for the self-employed, to the extent that they are reasonable and necessary for the production of income may be deducted. Reasonable deductions for capital expenditures may be included. While income tax returns may be helpful in arriving at weekly gross income for a self-employed person, the deductions allowed by the Guidelines may differ significantly from those allowed for tax purposes.

of justifying the incomes used in his or her own worksheet. *Hamiter v. Torrence*, 717 N.E.2d 1249, 1252 (Ind. Ct. App. 1999).

During the November 25, 2009 hearing, Mother offered into evidence loan documents demonstrating how much Father pays yearly on each of his three loans.[2] As far as his income is concerned, Father testified that his income does not exceeded $30,000 dollars; however, he later testified that he owns 246 acres of farmland and receives $150 an acre. Thus, he at least earns $36,900 a year. He also owns a ¼ portion of real estate that has been deeded to him that was inherited from his grandmother. Moreover, Father testified that he spent $9,000 to fix the roof on his house. Based on that information, Mother estimated and attributed a yearly income of $50,000 to Father in her child support worksheet.

In the trial court's child support worksheet, it attributed $820 as Father's weekly gross income, or $42,640 yearly. This increase was a $240 increase from the 2007 Order. Given the information presented at the hearing by both parties and the facts in the record, the evidence was sufficient to support the trial court's imputation of Father's income and, thus, was not clearly erroneous. *See Macher v. Macher*, 746 N.E.2d 120, 127 (Ind. Ct. App. 2001) (holding that the trial court's imputation of income to the self-employed father was not clearly erroneous).

[2] Annually, Husband pays the following for three loans: $25, 296.21; $11,393.32; and $378.81. (Appellant's App. pg. 90-92).

B. *Parenting Credit*

Father next argues that the trial court improperly determined that he is no longer entitled to parenting time credit. Indiana Child Support Guideline 6 states 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.*

In its 2007 Order, the trial court determined that based on 78 overnight visits, Father was entitled to deduct $17.95 from his weekly child support obligation. In its 2009 Order, the trial court determined that Father "no longer is holding overnight visitations as had been credited to him[,]" and discontinued the credit. (Appellant's App. p. 32).

First, Father argues that because B.G. is now in college, it is difficult for him to have overnights with B.G. and, as a result, challenges the trial court's determination that he is no longer entitled to parenting time credit. At the time of the hearing in 2009, B.G. was 18 years old and presumably a freshman in college. However, Mother testified that Father had not exercised visitation with either of the children since August 11, 2008, or a year before B.G. entered his first year of college. Father clearly admitted that he does not spend time with his children, and instead, is asking the court to award him credit for attempting to see them:

> [MOTHER'S ATTORNEY]: So you're asking to have some parenting time credit, not because you have been seeing the children but because you've tried to?
>
> [FATHER]: Yes.

(Transcript p. 33). Father cannot get parenting time credit for making efforts to see his children; the children must spend overnights with him. *See* Child Supp. G. 6.

Additionally, even when B.G. returns home from college for vacations, the record demonstrates that he does not stay with Father:

> [MOTHER'S ATTORNEY]: Ok, and then to the extent that he comes home, such as Thanksgiving and Christmas, you'd like to see him then?
>
> [FATHER]: Yes.
>
> [MOTHER'S ATTORNEY]: How does that work out? Do you, in fact, get to see him pursuant to the [c]ourt's last parenting time Order?
>
> [FATHER]: Ah…it doesn't work out that well at all.

(Transcript p. 32). Furthermore, to the extent that Father argues that Mother interferes with his parenting time, he is asking us to reweigh the evidence, which we will not do. *Yoon*, 711 N.E.2d at 1268. Thus, the trial court did not clearly err by determining that he is no longer entitled to overnight visits.

C. *College Expenses*

Finally, Father argues that the trial court abused its discretion by modifying child support because Mother failed to provide any evidence of B.G.'s college expenses, and, thus, the trial court should have either denied her request for modification or required her to provide more information.

It must be noted that in her petition, Mother did not request a modification of child support based on B.G.'s college expenses. Instead, she requested a modification "due to a change in circumstances, including the needs of said child(ren) and the *increased cost of living*, the sum of $120.000 is no longer a reasonable order of support." (Appellant's App. p. 30) (emphasis added).

With respect to B.G.'s college expense, in its 2009 Order, the trial court stated:

> 1.. . . The [c]ourt additionally observes that [B.G.] has commenced college, although neither party has requested the [c]ourt to take into account in making its support calculations.
>
> * * *
>
> 3. The [c]ourt observes that this is a valid computation of support but that, with [B.G.'s] attending Purdue, the [c]ourt would hear a modification request if the expense information for [B.G.] were available. This existing computation presumes that [B.G.] attends Purdue, that [Mother] (or her family) is his primary support there and pays a significant portion of his expenses, that when [B.G.] is on college breaks he resides with her a majority of the time, and that [Husband] (or his family) is not significantly contributing to his college expense. If any of these are in error, then a corrective order should be sought.

(Appellant's App. pp. 32-33). We find that the trial court did not make a determination or order directing either party to pay B.G.'s college expenses. Mother's request for modification was not based on college expenses; thus, she was not required to provide

documentation of expenses. As a result, the trial court properly granted Mother's petition for child support modification.

CONCLUSION

Based on the foregoing, we conclude the trial court did not commit error by modifying Father's child support obligation.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.