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IN THE
COURT OF APPEALS OF INDIANA

JONI L. WALTERS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 02A03-0705-CV-206
	)	
MARK K. WALTERS,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE ALLEN CIRCUIT COURT
The Honorable Craig J. Bobay, Judge
Cause No. 02C01-9306-DR-737

November 7, 2007

MEMORANDUM OPINION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Joni L. Walters appeals the trial court's order modifying child support, child custody, and parenting time regarding Joni's children with appellee-respondent Mark K. Walters. In particular, Joni contends that the trial court erred by (1) failing to award Joni parenting time for her sixteen-year-old son, A.W.; (2) finding that Joni was voluntarily underemployed and imputing income to her for the purpose of calculating her child support obligation; (3) refusing to accede to Joni's request that Joseph, the parties' 18-year-old son, be declared emancipated for support purposes; and (4) including orthodontia expenses when calculating the parties' respective responsibilities for uninsured medical and dental expenses. Finding that the trial court erroneously failed to award Joni parenting time with respect to A.W. and finding no other error, we affirm in part, reverse in part, and remand with instructions to enter a parenting time order regarding A.W.

FACTS

Joni and Mark were married on February 21, 1987, and had two children: Joseph, born December 26, 1987, and A.W., born February 5, 1990. On August 23, 1993, the parties were divorced. Pursuant to the dissolution decree, Joni was awarded custody of the two children and Mark was obligated to pay weekly child support of $130. Among other things, the decree also required Joni and Mark to bear equal responsibility for any of the children's uninsured medical and dental expenses.

On March 23, 2001, Joni remarried, and on August 15, 2001, she gave birth to a son with her new husband. Prior to her new son's birth, Joni worked forty hours per week at

$11.50 per hour. Following the birth of her son, Joni did not continue her employment because the infant had severe asthma and required five daily breathing treatments.

On February 22, 2005, Joni filed a petition to modify child support, and on September 18, 2005, Mark filed a petition seeking modification of parenting time. On January 6, 2006, A.W. moved out of Joni's home and began to live with Mark. Subsequently, on September 8, 2006, Joseph moved out of Joni's home and began living in his uncle's garage. Mark filed an amended petition on September 18, 2006, asking for a modification of the parties' respective child support and parenting time obligations given that Joseph was no longer living in Joni's home.

On January 10, 2007, the trial court conducted a hearing on the pending petitions. At the time of the hearing, Joni was working two part-time jobs and earning a gross weekly income of $344.82. Joseph testified that he was taking college classes and working 30 to 35 hours per week, that Mark paid for Joseph's car insurance, and that he continued to live in his uncle's garage, paying monthly rent of $250.

On January 15, 2007, the trial court issued an order in which, among other things, it (1) awarded custody of A.W. to Mark; (2) refused to award parenting time to Joni for A.W. based on an erroneous conclusion that A.W. was eighteen years old; (3) found that Joni was voluntarily underemployed and imputed gross weekly income of $532 to her for the purpose of calculating her child support obligation; (4) refusing to declare Joseph to be emancipated; and (5) including orthodontia expenses in the uninsured medical expenses for which Joni bears a portion of the responsibility. Joni now appeals.

DISCUSSION AND DECISION

I. Parenting Time for A.W.

The trial court refused to award Joni parenting time for A.W. based on an erroneous conclusion that A.W. was over the age of eighteen when, in fact, A.W. was sixteen years old at the time the order was entered. Mark concedes that Joni is entitled to parenting time and agrees that the trial court erred on this basis. We hereby remand, therefore, with instructions to enter a parenting time order regarding A.W.

II. Joni's Child Support Obligation

Joni next argues that the trial court erroneously concluded that she was voluntarily underemployed and imputed income to her for the purpose of calculating her child support obligation. A trial court's calculation of a child support obligation under the child support guidelines is presumptively valid. Kondamuri v. Kondamuri, 852 N.E.2d 939, 949 (Ind. Ct. App. 2006). Thus, we will reverse only if the trial court abused its discretion, which occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or if the court has misinterpreted the law. Id.

Furthermore, the trial court has wide discretion to impute income in child custody matters to ensure that a parent does not evade his or her support obligation. Thompson v. Thompson, 868 N.E.2d 862, 869 (Ind. Ct. App. 2007). A trial court may impute income to a parent when it finds, among other things, that the parent is voluntarily underemployed. Id.

Here, the trial court concluded that Joni is voluntarily underemployed and is capable of earning $532 per week, which is the amount she was earning prior to the birth of her

youngest son. Joni argues that she stopped working during the years of her son's infancy and toddlerhood because of his severe asthma and because he needed four to five breathing treatments a day. Joni testified, however, that her son has never had any severe asthmatic episodes and failed to offer medical testimony establishing the severity of his condition. Tr. p. 31. Additionally, there was evidence in the record establishing that he was an active child who did not need constant attention, did not need the number of breathing treatments claimed by Joni, and that other persons, including Joseph and A.W., were able to and had, in fact, administered the breathing treatments if Joni was unavailable. Id. at 31-34, 66-68. At the time of the hearing, the boy was attending school and the school nurse had been trained to administer any needed treatments. Id. at 36.

The trial court weighed the evidence and considered the credibility of the witnesses, ultimately concluding that Joni was voluntarily underemployed. We cannot and will not second guess that decision. We find, therefore, that the trial court did not abuse its discretion by concluding that Joni was voluntarily underemployed and imputing income to her in an amount representative of her salary before she quit working full time.

III. Emancipation of Joseph

Joni next contends that the trial court erroneously refused to declare Joseph emancipated. What constitutes emancipation is a question of law, but whether there has been an emancipation is a question of fact. Cure v. Cure, 767 N.E.2d 997, 1001 (Ind. Ct. App. 2002). Emancipation of a child cannot be presumed; it must be established by competent evidence. Id. The burden of producing such competent evidence falls on the party asserting

emancipation. Id. Relevant herein is the statutory provision stating that the court shall find the child emancipated and terminate child support if the court finds that the child is not under the care or control of either parent. Ind. Code § 31-16-6-6(b)(3).

Here, there was evidence in the record establishing that although Joseph has a nearly-full-time job and is responsible for his rent payments to his uncle, he is a full-time college student, has received over $1000 in financial assistance from Mark, and does not contribute to his uncle's utility payments. Moreover, Mark pays for Joseph's automobile insurance in the amount of $125 per month. Tr. p. 63-65, 69, 74-75, 78-79. Given this evidence, we find that the trial court did not err by declining to find Joseph emancipated.[1]

IV. Orthodontia Expenses

Finally, Joni argues that the trial court erroneously included orthodontia expenses in the uninsured medical and dental expenses to be shared by Joni and Mark. Joni directs our attention to Glick v. Lawmaster, 648 N.E.2d 370, 373 (Ind. Ct. App. 1995), in which we found that "orthodontia expenses are not medical expenses unless specified as such in a support order." The Glick court explicitly found that "orthodontia expenses are a form of dental expense" that is distinct from medical expenses. Id. at 374. In that case, however, the dissolution decree and support agreement referenced only uninsured medical expenses. Here, on the other hand, the parties agreed to share "uninsured medical or dental expenses . . . ." Appellant's App. p. 30 (emphasis added). Inasmuch as the parties' agreement herein

[1] As an aside, we emphasize that the trial court found that Joseph is partially able to support himself and ordered that he be responsible for half of his support obligation, with Mark and Joni sharing the responsibility for the other half.

provides that they will share responsibility for uninsured dental expenses, we can only conclude that orthodontia expenses are included. Consequently, we find that the trial court did not abuse its discretion by ordering Joni to pay for her portion of the children's uninsured orthodontia expenses.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions to enter a parenting time order regarding A.W.

MAY, J., and CRONE, J., concur.