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IN THE
COURT OF APPEALS OF INDIANA

DANIEL WISE,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 20A03-0911-CV-504
	)	
DINA DETER-WISE,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable David A. Denton, Magistrate
Cause No. 20C01-0107-DR-148

April 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Daniel Wise (Father) appeals the trial court's order directing him to pay 40.6% of his oldest daughter's college expenses pursuant to appellee-petitioner Dina Deter-Wise's (Mother) petition to modify support. Specifically, Father argues that the trial court abused its discretion in ordering him to pay that amount because the evidence established that he could not afford such a payment and he had no "assets that could be used to finance his portion of the college expenses." Appellant's Br. p. 1. Finding no error, we affirm the judgment of the trial court.

FACTS

Mother and Father were divorced on September 7, 2001. In accordance with the dissolution decree, Mother was awarded custody of the parties' two daughters, D.W. and Da.W. Father was ordered to pay support and the issue of college expenses was reserved for future determination by the court at the request of either party.

D.W. graduated from high school in 2009 and began attending Purdue University in August 2009. Prior to the start of the school year, Mother filed a verified motion to modify child support and for college expenses. In response, Father submitted a verified financial budget with the trial court. Father reported that he had a monthly gross income of $3,314.22 and expenses totaling $3,628.67. Thus, Father's budget indicated a monthly "shortfall" of $314.45. Appellant's App. p. 4.

On September 1, 2009, a non-recorded evidentiary hearing was conducted on Mother's motion before the Magistrate. After taking the matter under advisement, the Magistrate entered findings of fact and conclusions of law on September 8, 2009,

ordering Father to pay 40.6% of D.W.'s college expenses. The presiding judge subsequently approved the order and it was determined that

> 2. Purdue University costs $20,138.00 per year for [D.W.] and the child is obligated under the Guidelines to provide . . . 25% of her college costs after grants and scholarships. The child has received $500.00 in scholarships, leaving her share $4,909.50 The parents must share $14,728.50. Based on the incomes of the parents as determined above, the husband is responsible for 40.6% of the expenses, or $5891.52 and the wife responsible for the remainder. The daughter has provided her share through loans and will be employed at the dining hall during school.
>
> 3. The husband submitted a budget to establish that he cannot afford to pay any part of the college expenses for his daughter. He further claimed that he has no equity in his residence. In his disclosure he failed to mention a 2003 Harley Davidson Motorcycle that he purchased after the dissolution and a 1969 Chevrolet Camaro which he has owned for over 30 years, assets which could be used to finance his daughter's education. In addition the husband is apparently supporting his girlfriend who lives with him but is unemployed.

Id. at 14. The trial court also directed the parties to calculate the child support based on the findings of income and the weeks that D.W. will be at home during the school year and the summer months in accordance with the Child Support Guidelines.[1]

Although Father filed a timely notice of appeal, the Magistrate subsequently indicated that the hearing had not been recorded. As a result, on November 30, 2009, Father submitted his statement of the evidence in accordance with Indiana Appellate Rule 31. Father asserted that

[1] Indiana Code section 31-16-6-2(b)(1)(2) provides that if support is ordered for a child's educational expenses at a post-secondary educational institution, the trial court must reduce other child support for that child that is duplicated by the educational support order and would otherwise be paid to the custodial parent.

> 13. Counsel for [Father] argued that [Father] was unable to afford to contribute to the daughter's college but that he could continue paying the current support obligation of $160.00 per week.
>
> 14. Counsel for [Father] argued that [Father] did have some assets but he should not be required to sell assets in order to pay for his daughter's college expense.
>
> . . .
>
> 19. [I]n discussion relative to the [Father's] girlfriend residing with him, there was no evidence, merely argument from counsel for [Mother], that the Husband was supporting his girlfriend. [Father] argued he was not supporting his girlfriend, she was just residing with him and she was paying her own expenses.
>
> 20. That [Father] further argued that he did not go to college and did not feel he should have to sell assets or go into debt to help provide his daughter with a college education based on the fact his income would not support paying $5,891.52 per year for "his share" of the daughter's college expense.

Appellant's App. p. 19-20.

On January 5, 2010, Mother submitted her statement of the evidence and alleged that

> 11. [Father] submitted a Verified Monthly Budget to assert that he is unable to pay any portion of college expenses for . . . [D.W.], although [Father] failed to mention that he purchased a 2003 Harley Davidson motorcycle after the dissolution, plus owns a number of vehicles, including a 1969 . . . Camaro, which [Father] has owned for over 30 years. It was also brought to the attention of the Court that . . . [Father] has a girlfriend residing with him without paying rent, who is unemployed and . . . [Father] was supporting her, although . . . [Father] asserted that she was just living there and paying her own expenses. [Father] further stated that he did not go to college and does not feel he should sell any assets or go into debt to pay for his daughters to go to college.
>
> 12. [Mother] obtained a loan in the approximate sum of $10,319.00, at an interest rate of 7.9%. That from said loan, . . . [Mother] has paid or purchased the following items: tuition, room and board, books and supplies, laptop computer, in the sum of $1,200; Boiler Gold Rush, in the sum of $320.00; orientation, in the sum of $180; housing application, in the

> sum of $100.00; admission application fee, in the sum of $100.00; and a loft, in the sum of $95.00. . . .
>
> 13. That the Magistrate took the arguments and evidence under advisement, and made his ruling on September 8, 2009, ordering [Father] to pay $5,891.52, as his cost for college expenses for [D.W.] for the 2009/2010 academic year at Purdue, based on [Father's] income of $764.62, the [Mother's] income of $1,115.00, less $17.00 per week insurance and [D.W.'s] portion of college expenses, less a $500.00 scholarship. The Magistrate noted that [Father] has purchased a 2003 Harley Davidson motorcycle after the dissolution and has a 1969 Chevrolet Camaro, which [Father] has owned for over 30 years, and that said assets could be used to finance [D.W.'s] education.

Id. at 22-24. This appeal ensues.

DISCUSSION AND DECISION

We review the trial court's order directing Father to pay 40.6% of D.W.'s college expenses under the "clearly erroneous" standard. Gilbert v. Gilbert, 777 N.E.2d 785, 790 (Ind. Ct. App. 2002). We will affirm unless the decision is clearly against the logic and effect of the facts and circumstances that were before it. Id. A judgment is otherwise clearly erroneous when a review of the record reveals that a mistake by the trial court has in fact been made. Mounts v. Evansville Redevelopment Comm'n, 831 N.E.2d 784, 789 (Ind. Ct. App. 2005).

Pursuant to Indiana Code section 31-16-6-2:

> Sec. 2. (a) The child support order or an educational support order may also include, where appropriate:
>
> > (1) amounts for the child's education in elementary and secondary schools and at postsecondary educational institutions, taking into account:
> >
> > > (A) the child's aptitude and ability;

> (B) the child's reasonable ability to contribute to educational expenses through:
>
> (i) work;
> (ii) obtaining loans; and
> (iii) obtaining other sources of financial aid reasonably available to the child and each parent; and
>
> (C) the ability of each parent to meet these expenses. . . .

Additionally, our Child Support Guidelines (Guidelines) provide that

> If the Court determines that an award of post-secondary educational expense is appropriate, it should apportion the expenses between the parents and the child, taking into consideration the incomes and overall financial conditions of the parents and the child, education gifts, education trust funds, and any other education savings program. The court should also take into consideration scholarships, grants, student loans, summer and school year employment and other cost-reducing programs available to the student. These latter sources of assistance should be credited to the child's share of the educational expense unless the court determines that it should credit a portion of any scholarships, grants and loans to either or both parents' share(s) of the educational expense.

Ind. Child Support Guideline 8(b).

Although Father maintains that the trial court erred because it failed to assign particular values to the assets that Mother claimed were available to pay for D.W.'s college expenses and it had failed to require the parties to apply for and obtain all available financial assistance, there is no indication in the parties' statement of evidence that Father objected to those issues at the evidentiary hearing. Thus, those issues are waived. See Reed v. Dillon, 566 N.E.2d 585, 588-89 (Ind. Ct. App. 1991) (holding that a party who fails to make a timely objection waives the right on appeal to assert that the admission of evidence was erroneous).

Waiver notwithstanding, we note that given today's economic climate, it is quite often the case that the cost of a college education exceeds a family's ability to pay. Here, the trial court considered the post-secondary expenses to be a "group effort," calculated the parents' income, considered the scholarship that D.W. received, and determined the percentage that each should pay toward the annual cost of a Purdue education. Id. at 14. The trial court also found that Father's budget did not disclose certain assets that could be used to pay for D.W.'s education. Id. Although Father did not deny owning the assets, he argued at the evidentiary hearing that he should not have to sell them to finance D.W.'s schooling. Id. at 19-20. As a result, the trial court found, based upon the income figures that Father submitted, that his share of post-secondary expenses was 40.6%. Id.

Moreover, the factors referred to in the Guidelines set forth above are addressed in the post-secondary education expense worksheet that the parties were ordered to tender. Contrary to Father's contention that the trial court erred in not requiring the parents to file a worksheet, the order nonetheless directed the parties to submit the same to the trial court along with the income withholding order. Id. at 15. And Mother filed both the child support obligation worksheet and post-secondary education worksheet on December 28, 2009, which Father signed on December 22, 2009. Appellee's Addendum to Brief, p. 2.

In sum, we conclude that the trial court carefully considered and weighed the evidence that was presented at the hearing and properly applied the Guidelines in these circumstances. Thus, we find that the trial court's order directing Father to pay 40.6% of D.W.'s college expenses was not clearly erroneous.

The judgment of the trial court is affirmed.

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