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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MARRIAGE OF)
)
ERICK GEORGE BLACK,)
)
Appellant-Petitioner,)
)
vs.)
)
MARCY ANN BLACK,)
)
Appellee-Respondent.)

No. 37A04-0909-CV-552

APPEAL FROM THE JASPER CIRCUIT COURT
The Honorable Michael Anthony Shurn, Special Judge
Cause No. 37C01-0307-DR-184

May 26, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Erick Black (“Father”) appeals the Jasper Circuit Court’s order reducing Father’s child support obligation, but refusing to modify the tax exemptions for the dependent children. Father argues that he should owe no child support because he is the custodial parent, and that he should receive the tax exemptions for both children.

We reverse and remand for proceedings consistent with this opinion.

Facts and Procedural History

Father’s and Marcy Black’s (“Mother”) marriage was dissolved in 2003. The parties have two minor children. Father filed a petition to modify child support and custody in 2006, and the parties eventually entered into court-ordered mediation on those issues. On January 13, 2007, the trial court approved the mediation agreement, which provided in pertinent part that: 1) the parties “shall continue to maintain joint legal custody of” their children, 2) Father shall pay \$158.39 per week in child support, and 3) Father may claim minor child, A.J.B., as a dependent for tax purposes, and Mother may claim minor child, H.R.B, as a dependent for tax purposes.

On March 4, 2009, Father filed a petition to modify child support and tax exemptions because his income had decreased, Mother’s income had increased, Father’s child care expenses had increased, and Father had increased overnights with the children. A hearing was held on Father’s petition on April 27, 2009. On June 8, 2009, the trial court issued an order reducing Father’s child support obligation to \$129.95 per week. The court also determined that “there should be no modification of tax exemptions as agreed to by the parties.” Appellant’s App. p. 11. Father subsequently filed a motion to

correct error, which was denied. Father now appeals. Additional facts will be provided as necessary.

Standard of Review

Initially, we observe that Mother failed to file an appellee's brief. We will not undertake the burden of developing arguments for the appellee. Painter v. Painter, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id.

Next, we observe that a trial court's calculation of child support is presumptively valid. Young v. Young, 891 N.E.2d 1045, 1047 (Ind. 2008). We will reverse a trial court's decision in child support matters only if it is clearly erroneous or contrary to law. Id. A decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances that were before the trial court. Id. As the moving party, Father had the burden of establishing grounds for modifying his child support obligation. Scoleri v. Scoleri, 766 N.E.2d 1211, 1215 (Ind. Ct. App. 2002).

Discussion & Decision

The modification of child support orders is governed by statute, specifically Indiana Code section 31-16-8-1. See Clark v. Clark, 902 N.E.2d 813, 815 (Ind. 2009). Section 31-16-8-1 provides that "[p]rovisions of an order with respect to child support . . . may be modified or revoked." Except as provided in another statute, which is not applicable here, modification 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.

I.C. § 31-16-8-1.

Father argues that he is entitled to further modification of his child support obligation because he has demonstrated “changed circumstances so substantial and continuing” as to make the terms of the prior child support order unreasonable. The trial court did modify Father’s child support obligation by reducing his weekly child support obligation from \$158.39 to \$129.95. Therefore, the trial court must have necessarily concluded that Father had established “changed circumstances so substantial and continuing” as to make the terms prior child support order unreasonable.

Father also argues the trial court’s decision to order him to pay child support to the non-custodial parent is contrary to law. The parties’ 2007 mediation agreement states that the parties “shall continue to maintain joint legal custody” of their children, but does not specifically state which parent has physical custody of the children. Appellant’s App. p. 187. The children attend school in the school system where Father’s residence is located, and Father presented evidence that he exercises 208 overnights per year with the children. Mother did not dispute that Father has the children approximately 60 percent of

the overnights annually. See Tr. p. 41; Respondent's Ex. A (noting that Mother had 149 overnights in 2008).

Yet, in calculating the parties' respective child support obligations, the trial court inexplicably gave a parenting time credit to Father instead of Mother. As Father notes in his brief, had the trial court properly calculated the parties' child support obligation by giving a parenting time credit to Mother, the calculation would have resulted in a negative support obligation for Mother. Consequently, the trial court deviated from the Child Support Guidelines when it ordered Father to pay \$129.95 per week to Mother.

In Grant v. Hager, 868 N.E.2d 801 (Ind. 2007), our supreme court held that a trial court has two options when a parenting time credit results in a negative support obligation for the non-custodial parent. First, the court could order neither parent to pay support because "there is a rebuttable presumption that neither party owes the other support." Id. at 803. Second, if the trial court enters the required findings under Child Support Rule 3 to demonstrate "it would be unjust not to do so," the court "could order a custodial parent to pay child support to a non-custodial parent." Id. at 804. Child Support Rule 3 provides: "If the court concludes from the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a written finding articulating the factual circumstances supporting that conclusion."

Here, the trial court ordered Father, the custodial parent, to pay child support to Mother without explaining its reasons for deviating from the Child Support Guidelines when it calculated the parties' child support obligations. We therefore reverse and

remand this case to the trial court to enter a child support order pursuant to the Child Support Guidelines, or to enter an order which provides an explanation for deviating from the Guidelines. See Grant, 868 N.E.2d at 804.

On remand, the trial court should also consider whether to award the tax exemptions for both children to Father. “Generally, the custodial parent automatically receives the dependent tax exemptions for the minor children[.]” Eppler v. Eppler, 837 N.E.2d 167, 178 (Ind. Ct. App. 2005), trans. denied. However, the trial court may order Father to sign over the exemption for one or both children, and in making that decision, the “trial court’s equitable discretion should be guided primarily by the goal of making the maximum amount of child support available for the child.” Eppler, 837 N.E.2d at 179 (quoting Sims v. Sims, 770 N.E.2d 860, 867 (Ind. Ct. App. 2002)). The court should consider the following factors in determining whether to order a release of exemptions:

- (1) the value of the exemption at the marginal tax rate of each parent;
- (2) the income of each parent;
- (3) the age of the child(ren) and how long the exemption will be available;
- (4) the percentage of the cost of supporting the child(ren) borne by each parent;
- (5) the financial aid benefit for post-secondary education for the child(ren);
- and
- (6) the financial burden assumed by each parent under the property settlement in the case.

Ind. Child Supp. G. 9 (2010).

Reversed and remanded for proceedings consistent with this opinion.

BARNES, J., and BRADFORD, J., concur.