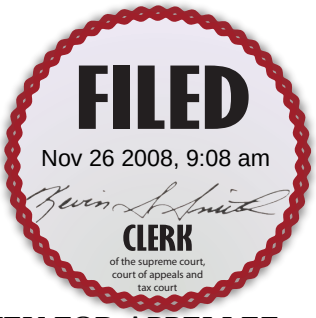

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IN THE COURT OF APPEALS OF INDIANA

IN RE: THE MARRIAGE OF:	)	
	)	
CHRISTINE (TISDALE) BOLICK,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A05-0807-CV-445
	)	
RAYMOND C. TISDALE,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David J. Dreyer, Judge
Cause Nos. 49D10-0110-DR-1644

November 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Christine (Tisdale) Bolick ("Mother") and Raymond Tisdale ("Father") were divorced in 2003. Mother appeals the trial court's resolution of several post-dissolution matters. For our review, Mother raises three issues, which we consolidate as two: 1) whether the trial court properly determined Father's income; and 2) whether the trial court properly gave Father an additional credit for expenses incurred in exercising parenting time. Concluding that the trial court's determination of Father's income was not clearly erroneous and that the trial court did not abuse its discretion in awarding an additional parenting time credit to Father, we affirm.

Facts and Procedural History

When Mother and Father were divorced, Mother was granted custody of the parties' two children. Pursuant to the divorce decree, Mother was required to seek leave of court to live anywhere other than Indianapolis or West Ashley, South Carolina, until the children are emancipated. Following the parties' divorce, Mother and the parties' children moved to South Carolina while Father remained in Indianapolis. Father regularly traveled to South Carolina to exercise parenting time of one week per month with the children using a condominium his family owned in South Carolina. In 2006, Father purchased the condo, and his parents gave him a $330,000.00 gift of equity in the condo at the time of closing. Also in 2006, Mother notified the trial court via letter that she and the children would be moving from West Ashley, South Carolina, to St. George, South Carolina, a move of approximately forty-five miles. After the move, Father was unable to use the condo for parenting time because of the distance from the children's school. They were required to stay in a hotel

during the week instead and used the condo only on weekends. In February 2008, a post-dissolution hearing was held on Mother's December 2006 petition to modify child support and for contempt citation for failure to pay child support; Father's January 2007 motion for contempt and modification of custody; and Mother's January 2008 petition to modify parenting time.[1] The trial court entered findings of fact and an order in which it determined Mother was not in contempt for moving to St. George; Father was not in contempt as he was current on his support; and custody and parenting time would continue as is. As for Mother's petition to modify child support, the trial court found Mother's income was $435.96 per week and Father's income was $1,113.00 per week. The trial court declined to include as part of Father's income the gift of equity from Father's parents. The trial court determined that Father incurs $1,219.00 per month, or $164.00 per week, in additional food and lodging expenses to exercise parenting time because of Mother's move to St. George, and found that Mother should be responsible for ten percent of those expenses. The trial court therefore gave Father an additional parenting time credit of $16.40 against his basic child support obligation of $168.54 (which basic child support obligation already included the parenting time credit determined by the standard formula) to reflect that ten percent contribution from Mother. Mother now appeals.

Discussion and Decision

Mother contends the trial court erred in determining Father's income for purposes of

[1] Copies of the parties' motions were not included in the appendix. Although perhaps not strictly required, see Ind. Appellate Rule 50(A)(2)(f) (stating that the appellant's appendix shall contain "pleadings and other documents . . . that are necessary for resolution of the issues raised on appeal"), the motions would

calculating child support by not including the gift of equity as part of his income and by failing to account for Father's net worth and real estate holdings. Mother also contends that the trial court erred in requiring her to contribute to Father's parenting time expenses.

I. Standard of Review

Child support may be modified in accord with Indiana Code section 31-16-8-1(b), which provides that modification may be made only "upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable" or upon a showing that the child support order differs by more than twenty percent from the child support guideline amount and the order was issued at least twelve months before modification is sought. Child support modification decisions will not be set aside unless they are clearly erroneous. Ind. Trial Rule 52(A); Schacht v. Schacht, 892 N.E.2d 1271, 1274 (Ind. Ct. App. 2008). 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. On appeal, we do not reweigh evidence or judge witness credibility. Carpenter v. Carpenter, 891 N.E.2d 587, 592 (Ind. Ct. App. 2008). When a trial court enters formal findings:

> [we] are not at liberty simply to determine whether the facts and circumstances contained in the record support the judgment. Rather the evidence must support the specific findings made by the court which in turn must support the judgment. . . . [I]f the findings and conclusions entered by the court, even when construed most favorably toward the judgment, are clearly inconsistent with it, the decision must be set aside regardless of whether there was evidence adduced at trial which would have been sufficient to sustain the decision.

Young v. Young, 891 N.E.2d 1045, 1047 (Ind. 2008) (quoting McGinley-Ellis v. Ellis, 638 N.E.2d 1249, 1252 (Ind. 1994)).

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have been helpful to this court in resolving this appeal.

II. Father's Income

When fashioning a child support order, the first task of the trial court is to determine the weekly gross income of each parent. Ratliff v. Ratliff, 804 N.E.2d 237, 245 (Ind. Ct. App. 2004). The Indiana Child Support Guidelines define "weekly gross income" broadly to include not only income from employment but also potential income and imputed income from in-kind benefits. Ind. Child Support Guideline 3(A). Weekly gross income of each parent includes income from any source, unless explicitly excluded, and includes "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, inheritance, prizes, and alimony or maintenance received from other marriages." Id.

If the trial court's income finding includes the income required by the Child Support Guidelines and is within the scope of the evidence presented at the hearing, its determination is not clearly erroneous. Eppler v. Eppler, 837 N.E.2d 167, 173 (Ind. Ct. App. 2005), trans. denied.

A. Exclusion of Gift of Equity

The trial court found that the $330,000.00 gift of equity from Father's parents "should not be included in Father's income because it was not paid in cash, it was a one-time payment, it was paid two years ago, and there is no reason to believe he currently receives income anywhere close to that amount." Appendix to [Appellant's] Brief at 21. Mother contends the trial court's finding was erroneous.

As noted above, gifts are includable in the determination of weekly gross income. See Child Supp. G. 3(A)(1). However, determining income is fact-sensitive when irregular income, such as bonuses, overtime, or commissions are involved. Ratliff, 804 N.E.2d at 245. The comments to Child Support Guideline 3(A) acknowledge that "[j]udges and practitioners should be innovative in finding ways to include income that would have benefited the family had it remained intact, but be receptive to deviations where reasons justify them." Comment 2(b).

The parties have not cited, nor has our own research disclosed, any Indiana case dealing with the precise kind of irregular income we are presented with in this case. We look, then, to cases dealing with similar kinds of income. In Gardner v. Yrttima, 743 N.E.2d 353 (Ind. Ct. App. 2001), we held that the trial court did not abuse its discretion in not including the value of an inheritance in the recipient's weekly gross income when considering a petition to modify. "[T]he nature of an inheritance suggests that it may be the type of income that justifies . . . a deviation. It is not periodic, regular, or dependable. It may not be in the nature of cash or readily convertible to cash." Id. at 358 (footnote omitted). We stated several general conclusions regarding the effect of an inheritance on child support: 1) for purposes of modification, an inheritance may constitute a substantial and continuing change in circumstances; 2) the principal amount of the inheritance should be considered by the trial court in determining the recipient's weekly gross income; 3) the trial court may exclude the inheritance from its determination of weekly gross income where sound reasons exist; 4) the effect of the inheritance on the financial circumstances and net worth of the recipient may be considered in determining whether the trial court should deviate from the

Guidelines; 5) any interest, dividends, or other return on the investment of the inheritance is income; and 6) if the inheritance is placed in non-income producing assets, the trial court may consider the inheritance in determining whether income should be imputed to the recipient. Id. at 359.

In Harris v. Harris, 800 N.E.2d 930, 940 (Ind. Ct. App. 2003), trans. denied, we held that the trial court did not abuse its discretion by including the net amount of a settlement award in calculating child support, noting that although it was a one-time payment of money having but a single impact on the father's financial circumstances, it constituted irregular income which the trial court, in its discretion, could consider. See also Knisely v. Forte, 875 N.E.2d 335, 340 (Ind. Ct. App. 2007) (holding that the trial court did not abuse its discretion in considering father's disability settlement agreement with his employer when calculating his child support obligation).

Like the income in Gardner, Harris, and Knisely, the gift of equity to Father in this case was an irregular and non-guaranteed form of income. Unlike the income in those cases, however, it was not in the form of a cash payment. In receiving the gift of equity in the South Carolina condo, Father also incurred debt in financing the remainder of the purchase price.[2] Even without being included in Father's weekly gross income, the gift inured to the benefit of the children by helping Father provide an actual home for exercising parenting time. Given the discretion of the trial court in determining weekly gross income for calculating child support, and given the circumstances of the irregular income in this case, the trial court's finding that the gift of equity should not be included in Father's weekly gross

income is not clearly erroneous.

B. Father's Net Worth

Mother also contends that the trial court's determination that Father's weekly gross income from "Lindsey Services, his rental properties, and the rent he receives from his father and brother, is $1113.00 per week," app. at 22, fails to account for his net worth and his real estate holdings. Specifically, Mother argues that the mortgage payments Father makes on his real estate holdings are "far in excess" of his income as determined by the trial court. Brief of Appellant at 9. Mother also argues that the credit card statements and loan applications provided by Father do not support his contention that he is living on cash obtained from credit card advances, refinancing real estate, and loans from his father.

In addition to the testimony of Mother and Father, the trial court heard testimony at the post-dissolution hearing from Father's loan processor and accountants for both Mother and Father. Mother's accountant testified that based upon his review of Father's financial documents, "there has got to be somewhere around $90,000 of cash flow just to fund what is going on in the tax return, regardless of other living expenses." Tr. at 47. Mother's accountant concluded that Father's weekly gross income was $5,181 and $9,423 for the years ending December 31, 2005 and 2006, respectively. Petitioner's Exhibit 1. Father's loan processor testified that the income stated on Father's loan applications was never verified and she and Father both testified that Father basically stated the income he would need to qualify for a given loan regardless of whether it bore any relation to his actual income. The income figures on the loan applications therefore varied widely. Father's accountant testified that

[2] The record suggests that Father financed approximately $770,000.00 to purchase the condo. See

"[o]ver the last few years, [Father] has operated at a cash deficit. The deficit has been funded by increasing loan balances on rental properties, . . . [s]elling investment securities, . . . [t]aking advances on charge cards and line of credit accounts, and obtaining loans from his father for the money." Tr. at 90.

In calculating Father's weekly gross income, the trial court specifically declined to rely on the loan applications which admittedly contained false information. The trial court acknowledged Father's "irregular and minimal cash flow," his credit card debt, and his debt to his father. The trial court recognized the fact-sensitive nature of Father's irregular income in determining a weekly gross income figure within the scope of the evidence. The trial court's determination is therefore not clearly erroneous.

III. Mother's Contribution to Parenting Time Expenses

Indiana Child Support Guideline 3(G)(4) provides that the trial court "may grant the noncustodial parent a credit toward his or her weekly child support obligation based upon the calculation from a Parenting Time Credit Worksheet." The trial court prepared a Parenting Time Credit Worksheet which showed allowed expenses during parenting time of $49.90. The trial court gave Father a parenting time credit of $49.90 on the child support worksheet, and then gave Father an additional parenting time credit of $16.40, representing ten percent of the additional weekly expenses Father incurs to exercise parenting time following Mother's move with the children to St. George. Mother contends the trial court erred in allowing this additional credit and essentially ordering her to contribute to Father's parenting time expenses.

Transcript at 53.

"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." Young, 891 N.E.2d at 1048. 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. However, if after calculating the noncustodial parent's child support obligation the trial court concludes that in a particular case, application of the guideline amount would be unreasonable, unjust, or inappropriate, the trial court may deviate from that amount by entering a written finding stating the factual circumstances supporting the deviation. Ind. Child Support Rule 3; Young, 891 N.E.2d at 1048.

Because of Mother's move to St. George, Father is unable to exercise parenting time during the school week at his condo and instead must stay with the children at a hotel nearer their home. This results in Father bearing a disproportionate amount of the "transferred expenses" associated with shared parenting time. See Commentary to Child Supp. G. 6 (stating that transferred expenses are incurred "only when the child(ren) reside with a parent and these expenses are 'transferred' with the child(ren) as they move from one parent's residence to the other. Examples of this type of expense are food and the major portion of spending for transportation."). In this case, shelter costs – normally a "duplicated expense" because they are fixed as a result of maintaining two households – are also a transferred expense because Father must incur hotel costs in addition to the costs of maintaining his condominium. The trial court found that "[h]ad Mother not moved, Father would not incur these expenses," app. at 23, and in awarding an additional credit, determined that the

parenting time credit calculated by the standard formula was insufficient to account for Father's parenting time costs. This finding supports the trial court's deviation from the guidelines by awarding Father a minimal additional parenting time credit.

Conclusion

The trial court's determination of Father's weekly gross income for purposes of calculating child support is not clearly erroneous, and the trial court did not err in awarding an additional parenting time credit to Father. The judgment of the trial court is therefore affirmed.

Affirmed.

NAJAM, J., and MAY, J., concur.