MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE

COURT OF APPEALS OF INDIANA

Darryl J. Collins,
Appellant-Defendant,

v.

Ann T. Collins,
Appellee-Plaintiff.

December 8, 2022

Court of Appeals Case No. 22A-DC-1319

Appeal from the Monroe Circuit Court

The Honorable Kara E. Krothe, Judge

Trial Court Cause No. 53C08-1704-DC-170

Bailey, Judge.

Case Summary

[1] Darryl Collins ("Father") appeals the trial court's order denying his motion to modify his child support obligation. Father raises one issue for our review, namely, whether the court clearly erred when it denied his motion. We affirm.

Facts and Procedural History

[2] Father and Ann Collins ("Mother") were married, and, on July 13, 2000, Mother gave birth to J.C. ("Child").[1] On April 17, 2017, Mother filed a petition to dissolve the marriage. Also on April 17, the parties entered into an agreement ("the Agreement"). Pursuant to the Agreement, Father agreed to pay "$3,000/month until the time [Child] graduates from college." Appellant's App. Vol. 2 at 30. Father additionally agreed to pay for Child's "college costs." *Id*. On June 26, the court dissolved the marriage. In its dissolution decree, the court granted Mother and Father joint legal custody of Child but ordered that Mother would be the primary physical custodian. The court also ordered Father to pay Mother $750 per week in child support.[2]

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[1] It is unclear from the record when the parties initially married. But they dissolved their marriage in 2005 and remarried in 2006. They also have two other adult children together who are not subject to these proceedings.

[2] In a prior appeal, this Court noted the discrepancy between the agreed-to child support amount of $3,000 per month and the amount of $750 ordered in the dissolution decree. The Court noted that the "discrepancy apparently is the result of the parties' use of a court-approved form for *pro se* litigants that require a weekly child support figure. The parties simply divided the $3,000 monthly figure by four to achieve the $750 weekly amount." *Collins v. Collins*, No. 21A-DC-141, 2021 WL 3027639, at *2 (Ind. Ct. App. July 19, 2021).

[3] On June 26, 2020, Father filed a petition to emancipate Child and to terminate the child support order. In his motion, Father asserted that Child had turned nineteen years old the previous summer, at which point his duty to support Child "ceased[.]" *Id*. at 31. The court held a hearing on Father's motion on August 4. During the hearing, Father testified that he had agreed to pay $3,000 per month until Child graduated from college, which was "intended to be child support," and that Child was currently in college. Ex. at 13. He also acknowledged that he had agreed to pay for Child's "college costs," which was "meant to be something that's separate from that child support[.]" *Id*. Father further testified that he did not know how Mother had arrived at that figure but that it "was the amount she asked for" and that he "just agreed and signed it." *Id*. at 20. Mother then testified that the $3,000 per month was "financial support to keep [Child] in his childhood home through the time he graduated from college" and that the figure represented the "mortgage, taxes, insurance and maintenance" for the home. *Id*. at 32.

[4] Following the hearing, the court determined that the Agreement had not been "effectively incorporated and merged into" the dissolution decree and, thus, that it was not binding on the parties. Appellant's App. Vol. 2 at 33. As a result, the court found that the provision requiring Father to pay $3,000 per month until Child graduated from college was "not binding" on Father and that Child was emancipated as of July 13, 2019. *Id*. But the court found that Father should continue to pay for Child's college expenses. Mother appealed the court's order.

[5] On appeal, this Court held that the Agreement "was designed to enable Mother to maintain the family home for the couple's youngest child until he graduated from college." *Collins v. Collins*, No. 21A-DC-141, 2021 WL 3027639, at *1 (Ind. Ct. App. July 19, 2021). The Court then found that the court had "properly incorporated" the Agreement into the dissolution decree. *Id*. at *2. Accordingly, the Court held that the trial court had committed clear error when it found that the Agreement was not binding on the parties. *Id*. In addition, while the Court declined to express an opinion as to the merits of Father's motion to modify the child support order, it held that the court order mandating that Father pay $3,000 per month may be modified if he "meets the requirements for modification found in" Indiana Code Section 31-16-8-1(b). *Id*. at *3. Accordingly, this Court remanded the cause to the trial court for further proceedings. *Id*. at *3.

[6] On remand, the trial court held a second hearing on Father's petition to modify his child support obligation. Father testified that Child was twenty-one years old and in his third year at Purdue University, that Child lives in an apartment off campus, and that he gives Child one thousand dollars per month for "rent, utilities, and food." Tr. at 5. He also testified that Child had lived with him in December 2020 and "all of 2021 when he was not in school." *Id*. at 9. As for the $3,000 monthly payment to Mother, Father testified that it "was the number [Mother] wanted and [he] just agreed to it." *Id*. at 17. And he testified that it was not based on the number of overnight visits but that the number represented the "mortgages [sic] and . . . utilities." *Id*. at 21. Similarly, Mother

testified that the number was "based on keeping the childhood house" for Child. *Id*. at 34. She also testified that, when she and Father agreed to $3,000 per month, overnight visits were not taken into account and that it was "anticipat[ed]" that Child would go to college. *Id*. at 23.

[7] In a post-hearing brief, Father asserted that, at the time of the original child support determination, Child resided with Mother but "now attends college and resides without either parent[.]" Appellant's App. Vol. 2 at 57. And he asserted that Child lives with him, not Mother, when Child is not in school. He maintained that Child "living independently while attending college and residing with [Father] during breaks in the college schedule constitutes a substantial and continuing change in circumstances" that renders the original order unreasonable. *Id*. at 58. He further asserted that, while the child support guidelines are "difficult to apply" because Child lives independently, "by any fair calculation," the guideline calculation would be "over 100% different from the currently [sic] ordered amount." *Id*.

[8] Mother also submitted a post-hearing brief and argued that Father had "not adequately shown that there has been a substantial and continuing change in circumstances" such that the terms of the Agreement are unreasonable. Appellant's App. Vol. 2 at 50. In particular, she argued that Child's change in location did not represent a change in circumstances because the Agreement "anticipated, in fact rested on the assumption, that [Child] would go to college, and therefore that his living conditions and expenses would change from those of the child he was at the time of the parties' divorce." *Id*. at 47. And she

argued that Father had not submitted a child support obligation worksheet and, as a result, he "obviously cannot show that the amount calculated under such a worksheet would deviate from the current weekly amount by 20%." *Id*. at 50.

[9] On March 7, 2022, the court entered its findings of fact and conclusions thereon. The court found that, under the Agreement, "Father agreed to pay Mother $3,000.00 per month until [Child] graduates from college. This agreement was presumably not based on their incomes but a figure upon which they agreed." Appellant's App. Vol. 2 at 12. The court further found that, when the child support was established, Child "was still in high school and it was anticipated that he would attend college. No stipulation was included in the Decree that would have reduced the amount of child support paid if [Child] were to live on campus." *Id*. And the court found that, while Father had submitted a child support obligation worksheet with his post-hearing brief, he "did not admit the worksheet into evidence." *Id*. at 14. The court then concluded that Father "has failed to provide any evidence" to show either that "there has been a substantial and continuing change in circumstances," or that a current calculation would deviate by at least 20%. *Id*. at 15. Accordingly, the court denied Father's petition to modify his support obligation. This appeal ensued.

Discussion and Decision

[10] Father appeals from the trial court's denial of his motion to modify his child support obligation. "Upon review of a modification order, 'only evidence and

reasonable inferences favorable to the judgment are considered.'" *Bogner v. Bogner*, 29 N.E.3d 733, 738 (Ind. 2015) (quoting *Kinsey v. Kinsey*, 640 N.E.2d 42, 44 (Ind. 1994)). The order will only be set aside if clearly erroneous.[3] *Id*. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake was made. *Fowler v. Perry*, 830 N.E.2d 97, 102 (Ind. Ct. App. 2005). Further, where, as here, the trial court *sua sponte* enters specific findings of fact and conclusions, we review its findings and conclusions to determine whether the evidence supports the findings, and whether the findings support the judgment. *Id*.

[11] Indiana Code section 31-16-8-1 governs modification of child support orders and provides in relevant part:

> (a) Provisions of an order with respect to child support . . . may be modified or revoked.
>
> (b) Except as provided in section 2 of this chapter, . . . modification may be made only:
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> > (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or
> >
> > (2) upon a showing that:

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[3] Our Supreme Court clarified that, although it and our Court "have phrased the standard as both abuse of discretion and clear error, . . . clear error should be standard upon review." *Bogner*, 29 N.E.3d 733 at 738 n.2.

> (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
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> (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

[12] On appeal, Father maintains both that he has shown a change in circumstances and that the current order differs by more than 20% from the amount that would be ordered under the child support guidelines.[4] We address each contention in turn.

Changed Circumstances

[13] Father first contends that the court abused its discretion when it denied his motion to modify his child support obligation because there was a significant and ongoing change in circumstances. In particular, Father asserts that Child "now attends college and resides without either parent in an apartment" and that he gives Child $1,000 for month, which covers Child's rent, utilities, and food. Appellant's Br. at 14. Father further contends that, while the $3,000 per month he pays to Mother is meant to maintain Child's childhood home, Child "spent maybe two nights there in the entire year prior to" the second hearing

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[4] There is no dispute that more than twelve months elapsed between the date the court issued the child support order and the date Father filed his motion to modify.

such that Child no longer receives the benefit of the payments he makes to Mother. *Id*. And Father maintains that it was "unanticipated" that Child would live with Father when not at school." *Id*. at 16.

[14] However, we agree with the trial court that Father has not met his burden to demonstrate a change in circumstance so substantial and continuing as to make the terms of the Agreement unreasonable. Prior to the dissolution of his marriage to Mother, Father agreed to pay Mother "$3,000/month *until the time [Child] graduates from college*." Appellant's App. Vol. 2 at 30 (emphasis added). That "agreement was designed to enable Mother to maintain the family home for the couple's youngest child under he graduated from college." *Collins*, 2021 WL 3027693, at *1. In other words, Father simply agreed to pay Mother a set amount until Child finished college. There is nothing in the Agreement that limits Father's obligation or conditions it on the number or frequency of Child's visits with Mother. On the contrary, the evidence demonstrates that the $3,000 per month "wasn't based on . . . overnights or anything like that." Tr. at 23.

[15] Father agreed, without any caveats or exceptions, to pay $3,000 per month until Child graduated from college so that Mother could maintain Child's childhood home. And, at the time Father entered into the Agreement, he "anticipated" that Child would go to college. Tr. at 18. In other words, Father could reasonably foresee that Child would leave Mother's home. And there is no evidence in the record to show that Father only agreed to make that payment on the assumption that Child would return to Mother's home anytime he was not at school.

[16] We acknowledge that this Court has previously held that the child support guidelines "expressly state that a parent's basic child support obligation will be reduced if or when the child is living away from home." *Lechien v. Wren*, 950 N.E.2d 838, 846 (Ind. Ct. App. 2011). However, the support order in *Lechien* was entered pursuant to a child support obligation worksheet and the guidelines. *See id*. But, here, the parties did not consider their respective incomes, the number of overnight visits, or any other factor considered by the guidelines, and they did not submit a child support obligation worksheet to the trial court at the time of the original child support order. Rather, Father expressly agreed to pay $3,000 per month until Child graduates from college based only on the fact that that was the amount it costs Mother to maintain the home. Father has not demonstrated that the court clearly erred when it determined there are no changed circumstances so substantial and continuing as to render the child support order unreasonable.

Deviation from Guidelines

[17] Father next contends that the court erred when it denied his motion to modify the child support order because he "has been ordered to pay an amount that differs by more than twenty percent from the amount that would currently be ordered" under the guidelines. Appellant's Br. at 16-17. However, Father agreed to pay $3,000 per month without taking the guidelines into consideration and despite the fact that the guidelines might have required a different amount.

[18] This Court has previously addressed a similar issue. In *Reinhart v. Reinhart*, the parties entered into a settlement agreement under which the father agreed to pay the mortgage, taxes, and insurance on the house as an element of child support even though it was in excess of what would be required under the guidelines. 938 N.E.2d 788, 790 (Ind. Ct. App. 2010). Thereafter, the father petitioned to modify the child support based in part on the fact that the obligation differed by more than twenty percent from the amount set by the guidelines. The court denied the father's motion.

[19] On appeal, this Court held that the father "may not take advantage of his own error, if any, in agreeing to a support amount greater than that provided by the Guidelines." *Id*. at 791. This Court further stated:

> Father does not contend that he was unaware that the support amount he agreed to pay exceeded the guideline amount. Thus, he cannot now be heard to complain that support should be modified because the amount he agreed to pay differs by more than twenty percent from the guideline amount.

Id. Likewise, here, because Father agreed to pay Mother $3,000 per month—a number which was not based on the guidelines—Father cannot now complain that his child support obligation differs by more than twenty percent from the guideline amount.

Conclusion

[20] In sum, Father agreed to pay $3,000 per month to Mother without conditioning that payment on Child staying at the house when not at school and, as such, Father has not demonstrated that Child's residence outside of Mother's home constitutes a changed circumstance so substantial and continuing as to make the terms of the Agreement unreasonable. And because Father agreed to pay that amount, he cannot now complaint that it differs by more than twenty percent from what would be ordered under the guidelines. Father has not demonstrated that the trial court clearly erred when it denied his motion to modify the child support order. We affirm the trial court.

[21] Affirmed.

Riley, J., and Vaidik, J., concur.