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

In Re Paternity of: Addison Victoria Jacobs, Brooklyn Kay Jacobs, and Keegan Wayne Jacobs.

Jerry W. Jacobs, Jr.

Appellant-Respondent,

v.

Erica L. Shelley,

Appellee-Petitioner.

October 26, 2022

Court of Appeals Case No. 22A-JP-895

Appeal from the Delaware Circuit Court

The Honorable Kimberly S. Dowling, Judge

Trial Court Cause No.
18C02-1907-JP-113
18C02-1907-JP-114
18C02-1907-JP-115

Robb, Judge.

Case Summary and Issues

[1] Jerry Jacobs ("Father") and Erica Shelley ("Mother") had three children together during their long-term relationship. When the relationship ended, they sought the trial court's intervention in settling issues including, as relevant to this appeal, child support and ownership of items of personal property. While this case was pending, the parties agreed to a provisional child support order. Following a final hearing, the trial court made findings of fact and issued an order setting child support, determining a vehicle titled in Father's name was a gift to Mother, and ordering Father to pay a portion of Mother's attorney fees. Father appeals, raising the following issues for our review: 1) whether the trial court erred in denying Father's motion to modify the provisional child support order and finding him in contempt of the same; 2) whether the trial court erred in determining the parties' incomes for purposes of setting a child support obligation; 3) whether the trial court erred in determining the vehicle was a gift from Father to Mother; 4) whether one of the trial court's findings of fact is unsupported by the evidence; and 5) whether the trial court abused its discretion in awarding attorney fees to Mother.

[2] We conclude the trial court did not err with respect to either the provisional or the permanent child support orders and did not err in finding the vehicle was a gift. We also conclude that although the finding Father challenges is not supported by the evidence, it was not the basis for any conclusion being appealed and is therefore not reversible error. Finally, we conclude the trial court did not abuse its discretion in ordering Father to pay a portion of

Mother's attorney fees. Accordingly, we affirm the trial court's judgment in all respects.

Facts and Procedural History

[3] Father and Mother were long-time friends turned romantic partners who began living together in approximately 2006 and eventually had three children together. Father and Mother were never married, but Father's paternity of the children was established through a paternity affidavit executed at the time each child was born.

[4] In July 2019, the relationship ended when Mother moved out of the family home into a condo purchased by her parents as an investment; Mother's name is also on the deed.[1] Mother lives in the condo rent-free and her parents pay the utilities, insurance, taxes, and homeowner's association ("HOA") fees in the "ballpark figure" of $800.00 per month. Transcript of Evidence, Volume II at 86. Mother works part-time (approximately twenty hours per week) for her uncle's company and does not work full-time because the cost of after-school childcare would exceed her income from the extra hours. Her income is less than the federal full-time minimum wage of $290.00 per week.

[1] The deed is titled in the names of "Anthony S. Hawk, Victoria A. Hawk, Husband and Wife and Erica L. Shelley, Joint Tenants with Full Right of Survivorship." Documentary Exhibit Volume, Volume III at 120.

[5] On July 19, 2019, Mother filed Verified Petitions to Confirm Custody, Establish Child Support and Fix Parenting Time as to each child. Mother had custody of the children pending a hearing on her petitions, and Father had parenting time pursuant to the Indiana Parenting Time Guidelines.

[6] In October, the parties reached, and the trial court approved, the following provisional child support agreement:

> 1. Effective Friday, October 25, 2019 and continuing each Friday thereafter until further order of the court, [Father] shall pay provisional support to [Mother] . . . in the sum of [$200.00] per week.
>
> 2. That the provisional order is wholly without prejudice to the parties' rights to contest or modify the provisional support, including the starting date and amount of support.

Appellant's Appendix, Volume II at 99. At the time of the agreed order, Father thought the next court date would be in a couple of months and he had some money so he "didn't really care" about the $200 support amount. Tr., Vol. II at 202. Father is self-employed in construction and his income varies widely. When "work got tight[,]" and the case was proceeding slowly, he stopped making support payments and has paid no support since August 2020. *Id.* at 201-02. Instead, he introduced evidence of sums he spent on clothing and activities for the children directly. Mother filed a petition for contempt in April 2021 regarding Father's failure to pay child support. In June, Father filed a motion seeking to modify the provisional support order, requesting that the "start date and amount of support be modified based on the facts and

circumstances from and after" the effective date of that order. Appellant's App., Vol. II at 121.

[7] While these proceedings were pending, Mother tested positive for methamphetamine twice and Father was convicted of operating a vehicle while intoxicated ("OWI") and placed on house arrest. These were not the parties' first incidents with drugs or alcohol, however: Mother has a history of using opioids in excess of the amount prescribed to her or that were not prescribed to her and Father has two previous OWIs and grew marijuana at a property he owns. Mother's positive drug tests prompted Father to file emergency motions to modify custody of the children. After holding a hearing in May 2021, the trial court declined to modify custody, finding that "while both parties have significant issues related to substance abuse, one does not outweigh the other." *Id.* at 128.

[8] Shortly before a final hearing on all issues began in late 2021, Father filed a petition for the return of personal property; namely, a 2011 Highlander that he purchased in 2012 and titled in his name but that had been in the exclusive possession of Mother.[2] Father fixed up and sold a car that Mother owned prior to purchasing the Highlander. Mother said Father purchased the Highlander for her as a "push prize" when their second child was born, and she had been

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[2] Father also petitioned for the return of an engagement ring he had given Mother; Mother returned that ring at the final hearing. In addition, Mother asked for the return of an armoire and a dresser that were still at Father's home; Father agreed at the hearing that she could get them any time.

using it since 2012, Tr., Vol. II at 227; Father said he had "always referred [to] the Highlander as a family vehicle[,]" *id.* at 215, and never told Mother it was a gift. Father made the majority of the payments on the vehicle and Mother paid for the license plate, the upkeep (i.e. oil changes), and car insurance once she moved out.

[9] The trial court held a final hearing in November 2021 and incorporated the testimony from the May 2021 emergency custody hearing. Evidence was taken regarding, among other things, the parties' incomes, the purchase and use of the Highlander, and attorney fees. With regard to child support, Father suggested that because his income varies from year to year the trial court should determine his gross weekly income by averaging his income from 2015 to 2021[3] and asked that in addition to imputing minimum wage to Mother, an additional $250.00 per week be imputed to Mother "from the in-kind [benefits] from her parents of at least [$1,000.00] with the utilities, free use of the condo, homeowner's association fees, and all of that[.]" *Id.* at 194. Father submitted a proposed child support worksheet incorporating these requests that calculated his weekly support obligation as approximately $36. He also proposed the trial

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[3] Father's Exhibit E shows his income for this period as:

2015	$11,104
2016	$25,857
2017	$27,544
2018	-$46,487
2019	N/A
2020	$78,330
2021	$47,322 (Computed on an annual basis; $27,605 actual through 7/31)

Ex., Vol. III at 134.

court retroactively reduce his child support obligation under the provisional agreed order from $200 to $36 effective as of the date the provisional order was signed. Mother submitted her own proposed child support worksheet calculating Father's weekly gross income based on his 2020 income and requested that Father be ordered to reimburse the fees her parents paid to each of her three attorneys for their work in this case.

[10] On January 24, 2022, the trial court issued an order awarding the parties joint custody with primary physical custody to Mother. In so doing, the trial court considered, among other things, the parties' substance use issues and made the following findings:

> 21. This is not just a comparison of substances. Mother's use of opioids and methamphetamine are definitely problematic. Father's use of alcohol and marijuana are also problematic. . . .
>
> 22. Mother's use spans years. . . .
>
> 23. Father's use of alcohol and marijuana also spans years. . . .

Appealed Order at 2-3. As to the other issues, the trial court found, in pertinent part:

- that no income should be imputed to Mother for in-kind benefits she receives from her parents because there was no reliable evidence of the amount, but set Mother's weekly gross income at $290 (the federal full-time minimum wage level);

- that Father's income "varies significantly from year to year" and the "most appropriate income" to rely on is Father's 2020 and 2021 income, which averages $62,826 per year, or $1,208 per week; therefore, Father's child support obligation beginning January 21, 2022 is $236 per week (Appealed Order at 3-4, ¶¶ 31, 38);
- that the provisional amount of child support should not be modified;
- that given Father's average income, he had the ability to pay child support in 2020 and 2021 and is in contempt for failure to pay per the agreed provisional order, is in arrears in the amount of $14,700 as of the date of the final hearing, and shall pay an additional $14 per week toward that arrearage;
- that the Highlander was a gift to Mother and Father is not entitled to "any sum associated with the vehicle" (*id.* at 5, ¶¶ 47-48);
- that both parties have incurred attorney fees and they should be apportioned according to the parties' percentage of total income; therefore, Father should pay 80% of the parties' total fees.

[11] Father filed a Motion to Correct Error, which was not ruled upon, and then filed a timely Notice of Appeal on April 21, 2022. On May 3, 2022, Mother filed a petition seeking payment of her to-be-incurred appellate attorney fees based on the trial court's determination in the order being appealed that Father had a significantly higher income than Mother. Over Father's objection and following a hearing, the trial court found Mother's request "to be reasonable" and ordered Father to pay $8,000 to Mother's attorney within thirty days.

Appellant's App., Vol. II at 145.[4] The trial court did allow that "[e]ither party may request the Court [to] consider these fees once the appeal has concluded to determine any further fees to be ordered or re-paid." *Id.* Father also appeals this order.

Discussion and Decision

I. Findings of Fact: Child Support and Personal Property

A. Standard of Review

[12] Pursuant to Indiana Trial Rule 52(A), the reviewing court will "not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." When the trial court issues findings sua sponte, we review those findings by applying a two-tiered standard: whether the evidence supports the findings, and whether the findings support the judgment. *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016). "The trial court's findings or judgment will be set aside only if they are clearly erroneous. A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it." *In re Marriage of Sutton*, 16 N.E.3d 481, 485 (Ind. Ct. App. 2014) (citation omitted). Clear error occurs

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[4] The trial court states in its order that Mother requested "pre-appeal fees" in the amount of $10,000. *Id.* The amount the trial court ordered Father to pay comes from applying the income percentages figured by the trial court in the appealed order – 80% to Father and 20% to Mother – to the total amount requested.

when our review leaves us with the firm conviction that a mistake has been made. *Quinn v. Quinn*, 62 N.E.3d 1212, 1220 (Ind. Ct. App. 2016). "Any issue not covered by the findings is reviewed under the general judgment standard, meaning a reviewing court should affirm based on any legal theory supported by the evidence." *Steele-Giri*, 51 N.E.3d at 123-24.

[13] In addition, there is a well-established preference in Indiana for granting trial courts latitude and deference in family law matters. *Id.* at 124. As an appellate court, we "are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence[.]" *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (citation omitted). To prevail on appeal, it is not enough that the evidence might support some other conclusion; it must positively require that conclusion. *Id*.

B. Child Support

1. Weekly Gross Income

[14] We begin by addressing Father's contention that the trial court's findings regarding his and Mother's weekly gross income were clearly erroneous, as the trial court's findings about the provisional support order in part stem from these findings.

[15] Father first argues the trial court's finding regarding his weekly gross income is clearly erroneous. A trial court's calculation of a child support obligation is

presumptively valid and will be reversed only if it is clearly erroneous or contrary to law. *Trabucco v. Trabucco*, 944 N.E.2d 544, 549 (Ind. Ct. App. 2011), *trans. denied*. A decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances before the trial court. *Id*. Here, the trial court found:

> 31. Father is self-employed. . . . [H]is income varies significantly from year to year.
>
> 32. Father [has] proposed that the Court average his income over a seven (7) year period. . . .
>
> * * *
>
> 36. The Court has reviewed . . . Father's income. The Court elects not to include in an average of income the years 2015-2017 as being too remote. Given that 2018 was an anomaly in that it was the only year that Father incurred a loss, the Court finds that it would not be reliable to include that year in an average of income.
>
> 37. Further, in that Father has not yet filed his 2019 taxes, the Court cannot consider income from that year.
>
> 38. The Court has determined that the most appropriate income to rely upon would be Father's 2020 and 2021 income and the Court has averaged the income from those two years for the calculation of child support. The Court finds this to be a reasonable amount of income for Father.

Appealed Order at 3-4.

[16] We have endorsed the use of income averaging to determine gross weekly income for child support obligors who are self-employed. *See, e.g.*, *In re Paternity of G.R.G.*, 829 N.E.2d 114, 119 (Ind. Ct. App. 2005) (holding trial court's averaging of father's income over three years to calculate his weekly gross income was not error); *see also* Ind. Child Support Guideline 3(B), cmt. 2 (noting that for income verification purposes, one pay stub alone can be misleading, especially for the self-employed, and suggesting "[w]hen in doubt," to review income tax returns for the last two or three years). "[A]ll forms of self-employment create some level of unpredictability in income, and such factual determinations are best left to the trial court." *Trabucco*, 944 N.E.2d at 552.

[17] Father claims it was error for the trial court to use only his "best years" in determining his income, Brief of Appellant at 23, but he does not acknowledge that they are also the most recent years. Moreover, he claims the 2020 income figure is "escalated" because some projects he was working on in 2019 were not completed in 2019 and carried over to 2020. Tr., Vol. II at 193. But Father did not provide evidence of his income from 2019 to support this claim or to include in the calculation. And he argues it was error for the trial court to reject the only year he reported a loss (2018) and to disregard his three lowest earning years (2015 through 2017), but he does not acknowledge those were the four oldest years he reported or that his income in 2015 through 2017 was significantly lower than his more recent income figures. He claims the trial court's decision to focus on his more recent income is "arbitrary," but he does

not offer a principled basis for looking back seven years. Br. of Appellant at 22. Father posits the trial court "wanted to establish support at the highest possible figure[,]" *id.* at 23, but it could as easily be said that, in advocating a seven-year average, Father was trying to establish support at the *lowest* possible amount.

[18] The trial court acknowledged that Father's income varies significantly from year to year and explained its rationale for the years it chose to include in an income averaging calculation. In light of Father's self-employment, the trends in his income over the years he reported, and Father's failure to completely document his income prior to the final hearing, coupled with the lack of an argument or support for income averaging over seven years, the trial court's calculation of Father's weekly gross income was not clear error.

[19] Father also argues the trial court's finding that no additional income should be imputed to Mother due to in-kind benefits she receives from her parents is clearly erroneous. The trial court declined to impute income to Mother as a result of her parents providing a home for which she does not pay any rent or a portion of the mortgage, utilities, or HOA fees "as Father was unable to provide to the Court a reliable sum attributable to said rent, utilities, or HOA fees." Appealed Order at 3. Father had proposed that an additional $1,000 per month in income be imputed to Mother for the value of those benefits.

[20] Indiana Child Support Guideline 3(A)(1) sets forth the following definition of weekly gross income:

> For purposes of these Guidelines, "weekly gross income" is defined as actual weekly gross income of the parent if employed to full capacity, potential income if unemployed or underemployed, and the value of in-kind benefits received by the parent.

The commentary to Guideline 3(A) further explains,

> Whether or not the value of in-kind benefits should be included in a parent's weekly gross income is fact-sensitive and requires careful consideration of the evidence in each case. . . . [R]egular and continuing payments made by a family member . . . that reduce the parent's costs for housing, utilities, or groceries, may be included as gross income.

Child Supp. G. 3(A), cmt. 2(d).

[21] There is no dispute that Mother lives in a condo purchased by her parents for which she does not contribute financially or that her parents pay the utilities, taxes, and HOA fees associated with the condo. But Father's sole evidence of the value of those benefits was the testimony of Mother's stepfather, who was equivocal at best in stating the cost of those items each month was $800, and who never put a figure on what a fair rental value for the condo would be. *See* Tr., Vol. II at 85-86 (stepfather testifying he "can't be specific" about how much the bills are, $800 is "a rough guess" and a "ballpark figure" and he had "no idea" how much would be considered a fair rental value). Mother also testified she "would assume" but did not know that the condo could be rented for more than $200 per month. *Id.* at 112. There is little doubt that Mother benefits from

the amounts her parents pay on her behalf, but as the trial court noted, there is no reliable evidence of what those amounts are.

[22] Moreover, in *Thomas v. Orlando*, we affirmed the trial court's refusal to impute income in a rent-free living situation where the mother was a full-time student with no income and therefore her living situation did not free up money for her to support her child. 834 N.E.2d 1055, 1060-61 (Ind. Ct. App. 2005). Here, Mother does have some income, but because the trial court *already* had to impute income to Mother to raise her weekly gross income to the federal full-time minimum wage figure, the support she receives from her parents is "not an extra, padded, amount that add[s] to her already-present ability to support herself and her child[ren]." *Id.* at 1061. Given the circumstances of this case, we conclude the trial court did not clearly err in declining to impute income to Mother for in-kind benefits.

2. Provisional Order

[23] Next Father contends the trial court clearly erred in not modifying the provisional support order (and corresponding arrearage amount). He claims he "only agreed to the provisional amount on the assumption it would only be a short-term obligation" and the trial court "did not provide any sort of calculation to justify $200 per week throughout the provisional period." Br. of Appellant at 24.

[24] First, as Father acknowledges, he agreed to the provisional child support amount in October 2019. When the proceedings took longer than he

anticipated, however, he did not immediately move to modify the agreement; rather, he simply stopped paying support in August 2020 and did not file a motion for modification until June 2021. We acknowledge the agreement provided that it was "without prejudice to the parties' rights to contest or modify the provisional support, including the starting date and amount of support." Appellant's App., Vol. II at 99. But it also stated it applied "until further order of the court." *Id.* Father had an ongoing obligation to support his children and the terms of the agreement did not give him the right to unilaterally change the terms or stop paying of his own accord.

[25] Second, to the extent Father argues there are no findings supporting the trial court's denial of his motion for modification, we disagree. Although not specifically directed to the provisional order, the trial court's findings regarding his income and corresponding future child support obligation of $236 – greater than the $200 amount of the provisional order – support the trial court's refusal to retroactively modify the obligation. As we have already determined the trial court's child support calculation was not clearly erroneous, we must also conclude neither was the trial court's denial of Father's petition to modify.

[26] Finally, Father argues the trial court clearly erred in finding him in contempt of the provisional support order because it was subject to retroactive modification and was not, therefore, a "clear and certain" order. Br. of Appellant at 21.

[27] A person is guilty of indirect contempt when he or she knows about a lawfully entered court order and willfully disobeys the order. *Matter of Paternity of T.M.-*

B., 131 N.E.3d 614, 621 (Ind. Ct. App. 2019), *trans. denied*. "However, the court's order must be clear and certain such that there is no question regarding what a person may or may not do and no question regarding when the order is being violated." *Mitchell v. Mitchell*, 785 N.E.2d 1194, 1198 (Ind. Ct. App. 2003). A party may not be held in contempt for failing to comply with an ambiguous or indefinite order. *Id*.

[28] The fact that the provisional support order was subject to retroactive modification does not make it ambiguous or indefinite. The order was clear and certain that Father was to pay $200 per week in child support until and unless the order was modified. *If* the order was retroactively modified, Father's total obligation for the provisional period would have been adjusted at that time. Father was aware of the order, as he agreed to it, and he willfully stopped paying child support altogether despite the order not being modified by agreement or by the court. The trial court did not clearly err in finding Father in contempt for failing to comply with the order.

C. Personal Property

[29] Father also argues the trial court's finding that the Highlander was a gift to Mother is clearly erroneous. Noting the vehicle is titled in his name alone, Father had requested that either the vehicle be returned to him or its value be paid to him.

[30] A valid inter vivos gift occurs when the donor intends to make a gift; the gift is completed with nothing left undone; the property is delivered by the donor and

accepted by the donee; and the gift is immediate and absolute. *Heaphy v. Ogle*, 896 N.E.2d 551, 557 (Ind. Ct. App. 2008). Father claims that because he never transferred title to Mother, the gift was not completed. However, *Brackin v. Brackin*, 894 N.E.2d 206, 212 (Ind. Ct. App. 2008), held that a person can make a valid inter vivos gift of a vehicle even where his or her name remains on the certificate of title if the evidence clearly and convincingly demonstrates the vehicle was delivered with donative intent. Although failure to convey the title to a donee may cast doubt on the donor's intent, the trial court must consider the totality of the circumstances surrounding the alleged gift. *Id.*

[31] Here, Father sold Mother's car and put the proceeds toward purchasing the Highlander. Father has made most of the payments, but Mother has had possession of the Highlander and used it daily since Father bought it in 2012. Mother testified the first she knew of the Highlander was when Father picked her up from the hospital in it after the birth of their second child and that it was a "push prize[.]" Tr., Vol. II at 227. Mother considered it a gift, "especially since he got rid of my already paid off vehicle." *Id.* Although Father denied he ever told Mother the vehicle was a gift and that he always referred to it as a "family vehicle[,]" *id.* at 215, this is essentially a credibility call, one we leave to the trial court. *See Kirk*, 770 N.E.2d at 307. The evidence supports the trial court's conclusion that the Highlander was a gift to Mother.

D. Finding Regarding Marijuana

[32] Finally, Father argues the trial court's findings referencing his use of marijuana are clearly erroneous and those findings should be vacated. The evidence before the court was that for a period of time during their relationship, Father and Mother had a marijuana growing business at their residence. Father denied ever using marijuana and Mother testified that Father grew marijuana and "has tried it before but . . . he did not smoke it." Tr., Vol. II at 117. Although an inference could be made that Father has used marijuana, however briefly, to the extent the trial court's findings imply Father *regularly* used marijuana, we would agree that is not supported by the evidence.

[33] We may reverse a trial court's judgment only if its findings constitute prejudicial error. *In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008), *trans. denied*. A finding of fact is not prejudicial to a party unless it directly supports a conclusion. *Id.* In *B.J.*, the trial court made a finding that the mother in a termination case admitted testing positive for cocaine during her treatment. However, that finding was erroneous because it was based on evidence stricken from the record. Nonetheless, we did not reverse or remand on the basis of this erroneous finding because it did not constitute the sole support for any conclusion of law necessary to sustain the judgment. *Id*.

[34] Here, the trial court's findings about Father's *use* of marijuana are not supported by the evidence. But they factor only into the trial court's conclusions regarding custody, an issue which Father does not appeal. Because the findings do not

serve as a basis for a part of the judgment on appeal, they do not constitute prejudicial error requiring reversal.

II. Attorney Fees

A. Standard of Review

[35] Indiana Code section 31-14-18-2(a) permits a trial court to award attorney fees in paternity actions. In making such an award, the trial court should consider the parties' resources, their economic conditions, their respective earning abilities, and other factors that bear on the reasonableness of the award, including any misconduct by one party that causes the other party to directly incur additional fees. *In re Paternity of M.R.A.*, 41 N.E.3d 287, 296 (Ind. Ct. App. 2015). An award of attorney fees is proper when one party is in a superior position to pay fees over the other party. *In re Paternity of S.A.M.*, 85 N.E.3d 879, 890 (Ind. Ct. App. 2017).

[36] We review a trial court's decision to award or deny attorney fees for an abuse of discretion. *M.R.A.*, 41 N.E.3d at 296. "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law." *G.G.B.W. v. S.W.*, 80 N.E.3d 264, 272 (Ind. Ct. App. 2017), *trans. denied*.

[37] At Mother's request, the trial court ordered Father to pay part of her attorney fees, both trial and appellate. In support of this order, the trial court made the following finding:

> Both of the parties have incurred attorney fees and Mother has requested that Father pay her attorney fees. Mother has incurred a total of $14,595 in attorney fees and Father has incurred a total of $10,148 in attorney fees. The Court finds that using the percentage of income method of allocation fees would be reasonable. Using the percentage of incomes from the child support worksheet, the Court finds that Father should pay 81% of the total fees. The total fees are $24,743 and Father should therefore pay $20,042. Father should pay his attorney the sum of $10,148 and should pay to Mother the sun of $9894 toward her attorney fees.

Appealed Order at 5.

[38] Father first contends the attorney fee award was an abuse of discretion because it is based on what he characterizes as the trial court's erroneous findings regarding the parties' gross incomes, a contention we have already considered and rejected. *See supra* § I.B.1. The trial court's findings regarding the parties' respective economic circumstances support the trial court's decision that Father is in a superior position to pay attorney fees.

[39] As for the award of attorney fees in general, Father posits that the "bulk of attorney fees were incurred due to [Mother] getting caught for methamphetamine use on more than one occasion [and h]er drug use led to two emergency petitions for custody modification." Br. of Appellant at 24-25. Mother counters that Father "ignores his misconduct which caused [Mother] to incur additional fees[,]" namely his refusal or inability to timely provide his income information which led to the filing of motions to compel and a continuance of the final hearing. Appellee's Brief at 25. Based on our review of

the record, both parties engaged in activities that contributed to the length and complexity of the proceedings and the corresponding amount of attorney fees – Mother's drug use and refusal to comply with trial court orders that would have illuminated that use and Father's failure to pay child support and to provide income verification.

[40] The trial court has broad discretion in awarding attorney fees. *Barton v. Barton*, 47 N.E.3d 368, 377 (Ind. Ct. App. 2015), *trans. denied*. Considering the record as a whole and deferring to the trial court in this family law case, *see Kirk*, 770 N.E.2d at 307, we cannot say the trial court's decision to order Father to pay a portion of Mother's attorney fees is clearly against the logic and effect of the circumstances before the court. Therefore, the trial court did not abuse its discretion.

Conclusion

[41] For the foregoing reasons, the trial court's judgment does not leave us with the firm conviction a mistake has been made. Therefore, we affirm.

[42] Affirmed.

Mathias, J., and Foley, J., concur.