

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

John Matthew Ford,
Appellant-Defendant

v.

Britani L. Ford,
Appellee-Plaintiff

March 19, 2024

Court of Appeals Case No.
23A-DR-1903

Appeal from the Boone Superior Court
The Honorable Bradley K. Mohler, Special Judge
Trial Court Cause No.
06D01-1502-DR-58

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

[1] John Matthew Ford (“Father”) appeals a post-dissolution order modifying his child support obligation from \$200.00 weekly to \$1,250.00 weekly for his minor children, who are in the primary custody of Britani Ford (“Mother”). Father, who is self-employed, claims on appeal that the trial court overstated his income when it calculated the new support amount by (1) failing to credit Father for certain business expenses; and (2) including income Father earned from a one-year state government contract. He contends that the resulting support order is clearly erroneous. Concluding that the trial court’s child support order is not clearly erroneous, we affirm.

Issues

[2] Father presents two issues for our review, that is, whether in calculating Father’s income for child support purposes, the trial court clearly erred by:

- I. failing to give Father credit for the necessary business expenses he incurred while conducting his businesses; and
- II. including the income he earned from a one-year government contract.

Facts and Procedural History

- [3] Father and Mother divorced in June 2015. During their marriage, two children were born: B.F., born in November 2009, and A.F., born in February 2011 (hereinafter collectively, “the Children”). Mother was awarded primary physical custody of the Children, Mother and Father (collectively, “Parents”) shared legal custody of the Children, and Father was ordered to pay \$200.00 weekly in child support.
- [4] In July 2018, the trial court approved an agreed order that Parents had submitted. The order provided, among other things, that Father would continue to pay Mother \$200.00 weekly in child support but would also be responsible for one hundred percent of the fees for the Children’s school, school lunches, textbooks, and extracurricular activities. Father’s child support obligation was based on his gross weekly income of \$2,304.00 and Mother’s gross weekly income of \$932.00. Parents also reached an agreement on parenting-time issues and uninsured healthcare expenses, as well as their means of communication regarding legal custody decisions, parenting time, the Children’s extracurricular activities, and child-related expenses.
- [5] Over the next few years, Parents filed numerous post-dissolution pleadings in the trial court, specifically on matters of discovery, the appointment of a guardian ad litem, and Father’s obligation to pay the expenses associated with the Children’s school, extracurricular activities, and healthcare.
- [6] In October 2021, Mother filed a petition to modify parenting time and child support (“Mother’s 2021 Petition to Modify Child Support”), based on alleged

incidents not pertinent to this appeal. Mother asked the trial court (1) to change Father's parenting time with the Children from unsupervised to supervised by an agreed-upon third party and (2) to modify the child support obligation to reflect the requested parenting time change. In January 2022, Mother amended her petition, asking the trial court to order Father to pay her attorney fees associated with the litigation of her petition.

[7] On March 21, 2023, Parents attended mediation and were able to resolve some of their post-dissolution issues. On March 22, Parents filed with the trial court a "Mediated Agreed Modification" (hereinafter, "2023 Mediated Agreement"), which the trial court approved that same day. (Ex. Vol. I, pp. 75-78). Under the agreement, Father agreed to pay Mother \$17,971.70 for past due expenses for the Children's extracurricular activities and uninsured medical costs that were incurred before March 21, 2023. And Father's parenting time was modified. However, the 2023 Mediated Agreement left unresolved "and reserve[d] . . . for [a later] hearing" issues regarding the modification of child support, the "division of the extra-curricular expenses," uninsured healthcare expenses, and attorney fees. (*Id.* at 76).

[8] On May 12, 2023, Father filed his "Petition to Modify Child Support, Payment of Uninsured Medical Expenses, Payment of Extracurricular Activities, Payment of School Fees, Payment of Textbook Fees and School Lunches" (hereinafter, "Father's 2023 Petition to Modify Child Support"). (Appellant's App. Vol. II, p. 55.) In his petition, Father sought clarification from the trial

court regarding the post-dissolution issues that had yet to be resolved and when those matters would be resolved.

- [9] On June 29, 2023, the trial court held a hearing on Mother’s 2021 Petition to Modify Child Support, Mother’s January 2022 amended petition, and Father’s 2023 Petition to Modify Child Support. At the June 29 hearing, Parents’ respective counsel stipulated that nine petitions were pending for the trial court’s consideration.
- [10] Mother, Father, and Anthony Robbins, Father’s accountant, testified at the hearing regarding Parents’ incomes. Mother testified that she worked as a firefighter paramedic for the Brownsburg Fire Territory and earned approximately \$76,000.00 per year. Father was self-employed and owned three businesses, Matt Ford Trucking, LLC (formed in October 2019) (hereinafter, the “Trucking Business”), Matt Ford Transport, LLC (formed in December 2021) (hereinafter, the “Transport Business”), and a livestock business (collectively, “Father’s Businesses”). Father’s Form 1040 tax returns for years 2019, 2020, and 2021 were admitted into evidence, as were the bank account statements for 2022 for the Trucking and Transport Businesses. When the hearing took place, Father had yet to file his Form 1040 tax return for the year 2022. Father’s 2021 Profit and Loss statement was admitted into evidence by stipulation of the parties.
- [11] At the hearing, Father testified that in 2021, he was awarded a \$600,000.00 contract by the State of Indiana (hereinafter, the “Government Contract”) that

required Father to remove certain hog barns and hog waste along Interstate 65 so that a new interstate ramp could be built. To perform the required work, Father borrowed money and purchased “nine or ten pieces of equipment.” (Tr. Vol. II, p. 75.) The contract ended in 2022.

[12] Robbins—who had been a licensed certified public accountant for thirty-eight years and had prepared Father’s tax returns for years 2019, 2020, and 2021—testified regarding the financial records for Father’s Businesses. Robbins testified that he was aware that Father had purchased equipment to fulfill the Government Contract and that Robbins had accounted for the purchase of the equipment when he prepared Father’s Form 1040 2021 tax return (hereinafter, “2021 Tax Return”). Robbins opined that the purchase of the equipment was necessary to generate the income that Father had earned from the Government Contract. Robbins testified that Father spent \$436,000.00 on the equipment.

[13] On July 18, 2023, the trial court issued its final order (hereinafter, “Final Order”), granting Mother’s 2021 Petition to Modify Child Support and Father’s 2023 Petition to Modify Child Support. The trial court found Father’s weekly gross income to be \$12,920.00, based on Father’s 2021 Tax Return, and the court increased Father’s child support obligation from \$200.00 weekly to \$1,250.00 weekly, retroactive to October 21, 2021, the date that Mother had filed her 2021 Petition to Modify Child Support.

[14] Specifically, the trial court noted in its Final Order:

[Father's adjusted gross income] for 2021 was \$215,624. His gross receipts from [the Trucking Business] were \$1,796,275 and he deducted \$456,248 in depreciation[.] Included in the items depreciated were trucks, trailers, and buildings[.]

[Father] claims that his 2021 income is an anomaly based upon a one-time government contract for \$600,000.

[Father] has not filed his 2022 income tax returns, despite the due date having been April 17, 2023, thus making it difficult to determine whether 2021 was a unique income year.

* * * * *

That the court determines [Father's] income, for child support purposes for 2021, is \$671,872 (\$215,624 + \$456,248) which equates to a weekly income of \$12,920. In arriving at such income, the Court adds back the depreciation for [the Trucking Business].

(Appellant's App. Vol. II, pp. 29-30 (citations omitted).)¹

[15] On July 21, 2023, Mother filed a motion for clarification of issues that she believed the trial court had not addressed. That same day, Father filed his

¹ Additionally, the trial court's Final Order provided: Father's child support payment included his contribution to "all regular child-rearing expenses contemplated by the [Indiana Child Support] Guidelines"; Father's obligation to pay the Children's school fees, lunches, and textbooks was "terminated"; and Father had accumulated a child support arrearage from October 21, 2021 through July 18, 2023, of \$92,000.00 after an adjustment for amounts Father had paid to Mother for the Children's school fees. The Final Order also addressed Parents' obligations regarding the Children's uninsured healthcare costs; directed Parents to share equally the costs of all agreed-upon extra-curricular activities for the Children; and determined that Parents were responsible for their respective attorney fees. (Appellant's App. Vol. II, p. 31.)

response to Mother’s motion. On July 26, the trial court issued an order providing, in relevant part:

1. That many of the parties’ pending issues were resolved by the [2023 Mediated Agreement] . . . which resolved all issues except . . . child support and those issues related to child support and attorney fees.
2. That the Court’s [Final] Order . . . resolved the issues of child support, child support arrearage[,] and attorney fees and provided guidance for the parties to resolve issues that may arise due to payments and the retroactive increase in child support and the resulting arrearage.
3. That with such guidance, the parties should be able to make the necessary adjustments for payment of expenses incurred after the child support modification became effective. If not, the Court reserves the issue for further hearing, if needed.
4. That in all other aspects, the Motion for Clarification is DENIED.

(*Id.* at 79-80 (citations omitted).) Father now appeals.

Discussion and Decision

Modification of Child Support

[16] Father argues that the trial court erred when it calculated his weekly gross income for purposes of determining his child support obligation. As this Court has stated:

Child support calculations are made utilizing the income shares model set forth in the Indiana Child Support Guidelines. The Guidelines apportion the cost of supporting children between the parents according to their means, on the premise that children should receive the same portion of parental income after a dissolution that they would have received if the family had remained intact. The trial court is vested with broad discretion in making child support determinations. A calculation of child support under the Guidelines is presumed to be valid.

We will reverse a trial court's grant or denial of a request for modification of child support only where the court has abused its discretion. An abuse of discretion occurs when the trial court misinterprets the law or the decision is clearly against the logic and effect of the facts and circumstances before the court. We do not reweigh the evidence or judge the credibility of the witnesses upon review; rather, we consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom.

Sandlin v. Sandlin, 972 N.E.2d 371, 374-75 (Ind. Ct. App. 2012) (citations omitted).

[17] On appeal, Father contends that the trial court erred in calculating his weekly gross income for child support purposes because it: (1) failed to give Father credit for the necessary business expenses he incurred while conducting his businesses; and (2) included in Father's income the \$600,000.00 he earned under the one-year Government Contract. We address each argument in turn.

I. Credit For Necessary Business Expenses

- [18] First, Father argues that the trial court overstated his weekly gross income by failing to credit him for the necessary business expenses he incurred when he purchased equipment to fulfill the Government Contract. At the child support hearing, Father and Robbins testified that Father had spent \$436,000.00 to purchase “nine or ten pieces of equipment” to fulfill the contract. (Tr. Vol. II, p. 75.)
- [19] For child support purposes, the calculation of a parent’s income is more inclusive than the calculation for income tax purposes. *Clark v. Madden*, 725 N.E.2d 100, 107 (Ind. Ct. App. 2000). Regarding income generated from the operation of a business, Indiana Child Support Guideline 3(A)(2) defines such weekly gross income “as gross receipts minus ordinary and necessary expenses.” These expenditures may include a reasonable yearly deduction for necessary capital expenditures. (Child Supp. G. 3(A)(2).) However, the trial court is to carefully review income and expenses from the operation of a business and restrict deductions to reasonable out-of-pocket expenditures necessary to produce income. *Id.* The trial court is vested with discretion in this regard, and its calculation of child support is presumed valid. *Thompson v. Thompson*, 811 N.E.2d 888, 923 (Ind. Ct. App. 2004), *trans. denied*.
- [20] At the hearing in the case before us, the trial court questioned Father regarding the purchase of the equipment for the Government Contract and the value of the equipment. Father testified that the “tanker trucks” he had purchased were valued at “ten thousand apiece or something like that maybe[.]” (Tr. Vol. II, p.

83.) Father also testified that he had purchased “two more trucks” to fulfill the contract, and when asked by the court if he could “use [the trucks] for other types of hauling[,]” Father told the court, “Yeah.” (*Id.*)

[21] It was within the trial court’s discretion to determine if Father should be credited for expenses that he claimed to be necessary business expenses. *See Thompson*, 811 N.E.2d at 923. And based on Father’s testimony, it is reasonable to assume that the inference the trial court drew was that Father’s actual necessary business expenses were far lower than the \$436,000.00 amount Father had claimed and that Father was not entitled to a credit for the expenses for purposes of calculating his weekly gross income. Thus, the trial court did not clearly err by not crediting Father for the necessary business expenses Father incurred when he purchased equipment to fulfill the Government Contract.

II. Income From The One-Year Government Contract

[22] Next, Father argues that in calculating his weekly gross income, the trial court improperly considered the \$600,000.00 that Father earned from the one-year Government Contract. According to Father, the income should not have been included in the calculation because the contract had ended by the time the child support hearing occurred.

[23] Many forms of income are irregular or nonguaranteed, which causes difficulty in accurately determining the gross income of a party. (Child Supp. G. 3 (Commentary 2.b).) Irregular and nonguaranteed income is includable in the

total income approach taken by the Guidelines, but such income is also “very fact sensitive.” *Id.* Indeed, the Indiana Child Support Guidelines caution that care should be taken to set support based on dependable income, while at the same time providing children with the support to which they are entitled. *Id.* Judges 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 articulate reasons justify them. *Id.*

[24] In the case before us, the trial court, in determining Father’s gross weekly income, considered the \$600,000.00 he had earned from the Government Contract. Regarding that income, the trial court noted in its Final Order that Father had claimed that the income was “an anomaly[.]” (Appellant’s App. Vol. II, p. 29.) However, the court further noted that “it [was] difficult to determine whether 2021 was a unique income year” for Father because Father had yet to file his 2022 Form 1040 income tax return “despite the due date having been April 17, 2023[.]” (*Id.*)

[25] The trial court then used the adjusted gross income (hereinafter, “AGI”) that Father listed on his 2021 Tax Return, \$215,624.00, and added to that amount the \$456,248.00 in equipment and building depreciation that Father had deducted from his gross income, for a total income of \$671,872.00. The court noted in a footnote that it “chose not to add back [to Father’s AGI] \$19,479 in depreciation”—to “provide some relief” to Father. (*Id.* at 30.) In another footnote, the court explained that Father’s child support obligation as “determined by the Child Support Worksheet [wa]s \$1,293.00.” (*Id.* at 31.)

However, the court “determine[d] it [wa]s appropriate to grant [Father] a slight deviation/relief from the Guideline amount” “[d]ue to the significant increases [in Father’s child support obligation] and considering all other factors in the case[.]” (*Id.*) Thus, the trial court set Father’s weekly child support obligation at \$1,250.00.

[26] Father could have provided the trial court with his tax return for 2022 in support of his argument that the income from the Government Contract was irregular income that would not be earned in subsequent years. However, when the hearing was held in June 2023, Father had yet to prepare that return. Instead, Father provided the 2022 bank account statements for the Trucking and Transport Businesses, along with photocopies of deposit slips and the checks he wrote on the accounts. Mother provided, among other documentation, an analysis of Father’s bank statements—purporting to show that Father’s income in 2022 was equivalent to his 2021 income. And for purposes of calculating Father’s child support obligation, Mother asked the trial court to use Father’s AGI from his 2021 Tax Return, “add in the depreciation[,] and calculate his income to be roughly [\$632,000.00].” (Tr. Vol. II, p. 43.) Ultimately, the trial court determined that Father’s income should be calculated in the manner that Mother had requested.

[27] Given the evidence presented by the Parents at the hearing and the facts in the record, we cannot say that the trial court clearly erred by including in its calculation of Father’s income the \$600,000.00 Father earned from the Government Contract. In sum, we conclude that the trial court did not err in

calculating Father's income for child support purposes at \$671,872.00 and his weekly gross income at \$12,920.00.

Conclusion

[28] Based on the foregoing, we conclude that the trial court's order modifying Father's child support obligation is not clearly erroneous, as the trial court did not overstate Father's income when it calculated his child support obligation. Specifically, we find that the trial court did not err (1) by not crediting Father for his claimed necessary business expenses, and (2) by including income Father earned from the one-year Government Contract. Accordingly, the judgment of the trial court is affirmed.

[29] Affirmed.

Crone, J., and Pyle, J., concur.

ATTORNEY FOR APPELLANT

Denise F. Hayden
Lacy Law Office, LLC
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

William O. Harrington
Harrington Law, P.C.
Danville, Indiana