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APPELLANT PRO SE:

**LEE A. McDONALD**  
Crown Point, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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LEE McDONALD,	)	
	)	
Appellant-Respondent	)	
	)	
vs.	)	No. 34A05-0512-CV-725
	)	
GARNETT McDONALD,	)	
	)	
Appellee-Petitioner.	)	

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APPEAL FROM THE HOWARD SUPERIOR COURT  
The Honorable Thomas R. Lett, Special Judge  
Cause No. 34D02-9907-DR-159

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**October 23, 2006**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Lee McDonald (“Husband”) appeals from two Howard Superior Court orders. On appeal, we restate and reorder Husband’s issues as:

- I. Whether the trial court erroneously determined Husband’s child support obligation for S.M. in its January 10, 2005 order;
- II. Whether the trial court erroneously calculated the amount of child support, including educational expenses, that Husband owed for K.M. in its November 10, 2005 order; and,
- III. Whether the trial court erroneously calculated the total amount of child support arrears Husband owes in its November 10, 2005 order.

Concluding that the trial court failed to use both the Child Support Obligation Worksheet and the Post-Secondary Education Worksheet in its calculations, we reverse and remand with instructions.

### **Facts and Procedural History**

Husband and Garnett McDonald (“Wife”) were married on August 7, 1981. They had two children, a son, K.M., and a daughter, S.M., born in 1983 and 1985 respectively. Wife filed a Petition for Legal Separation in July of 1999. The trial court held four “final hearings” on their dissolution of marriage between 2000 and 2001, of which Husband only appeared personally at two. Throughout the proceedings, Husband was represented by four different attorneys and even attempted to represent himself. At the last hearing on July 30, 2001, Husband failed to appear, and his counsel was permitted to withdraw his appearance on Husband’s behalf. At this hearing, Wife testified that their son, K.M., had been accepted to Wabash College. She requested that Husband be responsible for paying a portion of their son’s tuition based upon tuition at a state university and that Husband’s payment be proportionate based upon Husband’s and Wife’s incomes.

The trial court issued its Findings of Fact and Conclusions of Law and its Decree of Dissolution of Marriage on October 18, 2001. Wife was awarded full legal and physical custody of their two children, and Husband was ordered to pay \$214 per week to the clerk of the court for child support. The trial court also ordered Husband to pay 66% of K.M.'s post-secondary educational expenses, which would be determined after the deduction of all grants and scholarships that their son would not have to repay.

Husband filed his first notice of appeal on November 19, 2001, arguing that the trial court had improperly divided the marital estate and had erroneously calculated his child support obligation. Our court issued an opinion on August 13, 2002, affirming the trial court in part, and reversing in part. We found that the trial court had awarded Wife post-secondary educational expenses for their son, but had not reduced Husband's weekly child support obligation of \$214, the amount of support that was determined when both children were living at home. We remanded the case back to the trial court to determine the correct amount of Husband's child support obligation utilizing the Child Support Obligation Worksheet ("CSOW") and the Post-Secondary Education Worksheet ("PSEW"). We also determined sua sponte that Husband's appeal was filed in bad faith to delay the resolution of his child support obligation and ordered the trial court to assess appellate attorney fees against Husband under Indiana Appellate Rule 66(E).

Since our 2002 decision, three separate special judges have presided over this case. Husband's last Motion for Change of Venue was denied in September 2004. Wife has also filed two Affidavits of Citation on June 6, 2003, and again on March 22, 2005, for Husband's failure to pay child support.

On January 10, 2005, the trial court ordered Husband to pay \$228.54 a week in child support for their daughter, S.M. On November 10, 2005, the trial court ordered Husband to pay \$25,325.33 for their son's college expenses and \$10,871.78 in child support arrears for both of their children. Husband now appeals. Additional facts will be provided as necessary.

### **Standard of Review**

Initially, we note that Wife has failed to file an appellee's brief. In such a case, we need not undertake the burden of developing arguments for Wife. Butrum v. Roman, 803 N.E.2d 1139, 1142 (Ind. Ct. App. 2004), trans. denied. Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id. "Prima facie" is defined as "at first sight," "on first appearance," or "on the face of it." Id.

### **I. Child Support for S.M.**

Husband contends that the trial court's January 10, 2005 order erroneously determined his child support obligation for their daughter, S.M., as Wife did not file a PSEW accounting for their daughter's educational expenses before the December 2004 hearing. Husband further argues that Wife incorrectly stated on the CSOW regarding their daughter S.M. that her weekly income was \$703. Br. of Appellant at 21. Husband points to three pay stubs for Wife between August 2005 and May 2005 indicating that Wife's weekly income was approximately \$910 as evidence that Wife understated her income. Appellant's App. p. 125.

Initially, we note that Husband has incorrectly determined that his child support obligation for S.M. should be calculated according to the parents' salaries as of 2005. In August 2002, we remanded this proceeding to the trial court to re-calculate Husband's support obligations for both S.M. and K.M., following Wife's motion in 2001 for post-secondary educational expenses. In our opinion, we noted that "[t]he record [was] replete with Husband's continuous attempts to delay" the proceedings. Appellant's App. p. 51. In the three years since we first reviewed this matter, Husband has continued to delay the resolution of his child support obligation. As a result, there has not yet been a final determination of Husband's support obligation from the year 2001, the date when Wife initially petitioned the court for an allocation of educational expenses for their older son, K.M.

Both the child support commentary and the worksheet indicate that the allocation of college support expenses for a child who resides on a college campus necessarily entails a recalculation of the amount of child support due to the custodial parent. Carter v. Dayhuff, 829 N.E.2d 560, 564 (Ind. Ct. App. 2005). Therefore, as we concluded in our August 2002 opinion, Wife's petition to allocate educational expenses for K.M. in 2001 necessarily required the trial court to modify Husband's entire support obligation, including his child support obligation for their daughter, S.M. See Appellant's App. pp. 49-50. A trial court has the discretion to make a child support modification relate back to the date the petition to modify was filed. Haley v. Haley, 771 N.E.2d 743, 752 (Ind. Ct. App. 2002). Consequently, for purposes of determining Husband's child support

obligation for S.M., the relevant point of inquiry regarding the parents' incomes is 2001, not 2005 as Husband argues.

As we are remanding this case to the trial court to re-calculate Husband's entire support obligation, we hope to be helpful by instructing the trial court to determine Husband's support obligation for S.M. in 2001 by utilizing a CSOW. Furthermore, we note that the trial court properly did not require Wife to file a PSEW regarding S.M.'s educational expenses because on remand the trial court was ordered to determine Husband's support obligation as of 2001. S.M. did not begin attending Taylor University until 2005, and therefore, the trial court properly did not include an allocation for her educational expenses in Husband's support obligation.

## **II. College Expenses for Son, K.M.**

Husband next contends that the trial court erred in failing to employ the PSEW in conjunction with the CSOW to determine the amount Husband owed for their son, K.M.'s, college expenses. Specifically, he maintains that the filing of these two worksheets may not be waived by the parties and is mandatory for a proper determination of the correct amount of total child support owed.

In reviewing orders for apportionment of college expenses, we do not weigh the evidence or determine credibility, but consider only evidence and reasonable inferences favorable to the judgment. Warner v. Warner, 725 N.E.2d 975, 978 (Ind. Ct. App. 2000). We will affirm the trial court unless its order is clearly erroneous. Id. The decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances which were before the trial court. Id.

We note initially that the trial court has authority and discretion to award post-secondary educational expenses and to determine the amount of such an award. *Ind. Child Support Guideline 6, commentary.* The court should consider post-secondary education to be a group effort and should weigh the ability of each parent to contribute to payment of the expense as well as the ability of the student to pay some part. *Id.* The trial court must determine what constitutes educational expenses, and the Indiana Child Support Guidelines (“Guidelines”) state that these will generally include tuition, books, lab fees, supplies, student activity fees, and the like. *Id.* Room and board are also included when the student lives away from the custodial parent during the school year. *Id.*

Here, we are compelled to note a fatal deficiency in the trial court’s award of college education expenses for their son, K.M., as the order does not incorporate a PSEW and a CSOW. Instead, the order refers to Petitioner’s Exhibit B, which appears to be a list made by Wife of Husband’s arrears in child support and bears no resemblance to the calculation of college education expenses found in the order. From the record, it seems that Wife never filed a PSEW, that the trial court did not adopt the PSEW filed by Husband, nor did it adopt its own PSEW. Therefore, we are unable to determine whether the trial court’s order is consistent with the Guidelines.

Since 1989, the Guidelines have required, in all cases which the court is requested to order support, that both parents complete and sign, under penalty of perjury, a child support worksheet to be filed with the court verifying the parents’ incomes. *Payton v. Payton*, 847 N.E.2d 251, 253 (Ind. Ct. App. 2006). Furthermore, the Guidelines state that

a PSEW, along with a CSOW “must be filed with the court” in determining a parent’s educational support obligation. Child Supp. G. 6, commentary. Therefore, “the trial court must require the parties to file Post-Secondary Educational Support Worksheets.” Topolski v. Topolski, 742 N.E.2d 991, 998 (Ind. Ct. App. 2001).

Child support and college expenses are often linked, which is why the Guidelines require trial courts to use both a PSEW and a CSOW in determining the parents’ entire support obligations. The trial court’s November 10th order for education expenses determined that Husband’s pro rata share of K.M.’s educational expenses was 66%. After reviewing the record, we believe that the trial court adopted this percentage from its first “Findings of Fact and Conclusions of Law” issued on October 18, 2001. This was error, as the trial court’s Findings of Fact and Conclusions of Law was reversed and remanded by this court on August 13, 2002, with instructions to re-calculate the amount owed pursuant to the Guidelines. A parent’s pro rata share of the educational expenses determined in the PSEW should be determined from Line 2 of the CSOW. See Child.Supp. G. 6, commentary. Thus, it was error for the trial court not to require Wife to file a PSEW and a CSOW before the December 2004 hearing so that it could use these two worksheets together in determining Husband’s entire support obligation for both children.

### **III. Calculation of Husband’s Child Support Arrears**

Lastly, Husband contends that the trial court erroneously calculated his child support arrears, as it again did not use the PSEW and CSOW worksheets. In its November 10, 2005 order, the trial court ordered Husband to pay \$10,871.78 in child



support arrears, an amount that it adopted from Wife's Exhibit B. Wife's Exhibit B states that from October 18, 2001, to January 9, 2005, Husband was required to pay \$214 a week. This court has already concluded in its August 2002 opinion that Husband's support obligation of \$214 was erroneously determined. This figure is the initial child support obligation determined at the September 2, 1999 provisional hearing, which included support for both children living at home. However, in 2001, the parties' son, K.M. began attending Wabash College, at which time he moved away from home to live on campus.

As our August 2002 opinion stated, "Under Indiana Code section 31-16-6-2(b), if the trial court orders the parties to pay support for post-secondary education expenses, 'the court shall reduce other child support for that child that: (1) is duplicated by the educational support order; and (2) would otherwise be paid to the custodial parent.'" Appellant's App. p. 49.

Regarding the calculation of a parent's entire child support obligation when one child remains at home with the custodial parent, the commentary to Guideline 6 states:

When the parties have more than one child, Section Two requires the preparation of a Regular Child Support Obligation Worksheet applicable only to the child(ren) who regularly reside with the custodial parent, and for a determination of that support obligation. The annualized obligation from Line (J) of the Education Worksheet [determining the support obligation for the child who does not regularly reside with the custodial parent] is then inserted on Line 7 of the regular support Worksheet as an addition to the Parent's Child Support Obligation on Line 6.

Child.Supp. G. 6, commentary.

Thus, it was error for the trial court not to use a PSEW in conjunction with a CSOW to determine Husband's support obligation for both K.M. and S.M. On remand,

we instruct the trial court to order both parties to prepare and submit PSEWs and CSOWs for 2001, the date when K.M. began attending Wabash College. Pursuant to Guideline 6, the trial court must determine Husband's support obligation for S.M. by utilizing the CSOW as well as his support obligation for K.M. under the PSEW. Only after the trial court has correctly determined Husband's entire support obligation for both K.M. and S.M. as of 2001 can the trial court determine the amount of arrears Husband owes.

### **Conclusion**

The trial court erred in not requiring both parties to file a PSEW and CSOW and consequently, erred in calculating Husband's total child support obligation for both children.

Reversed and remanded for proceedings consistent with this opinion.

KIRSCH, C.J., and SHARPNACK, J., concur.