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ATTORNEY FOR APPELLANT:

STEPHEN P. MURPHY, JR.
Murphy & Murphy, LLC
Vincennes, Indiana

ATTORNEY FOR APPELLEE:

BRYAN A. JEWEL
Kirchoff & Jewel
Vincennes, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ROBBIE ROBBINS,)

Appellant,)

vs.)

SUSAN L. ROBBINS,)

Appellee.)

No. 42A01-0608-CV-335

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable Timothy Crowley, Judge
Cause No. 42D01-0008-DR-86

December 8, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Robbie Robbins (“Father”) appeals the trial court’s order modifying child support.

We affirm.

ISSUES

1. Whether the trial court erred in calculating Father’s weekly gross income.
2. Whether the trial court abused its discretion in making the award of the tax exemption to Father contingent on the payment of child support.

FACTS

Two children, B.R. and H.R., were born of the marriage between Father and Susan (Robbins) Ball (“Mother”). The trial court dissolved the marriage of Father and Mother on July 11, 2001.

On March 11, 2005, Mother filed a “Petition for Modification of Support and Health Care Provision Orders.” (App. 7). According to Mother’s petition, the trial court had ordered Father to pay child support in the amount of \$76.00 per week and ordered Mother “to carry and maintain the health and hospitalization insurance on the parties’ two children.” (App. 7). In her petition, Mother asserted that

there now exists a substantial and continuing change in circumstances regarding the support for the maintenance of the parties’ minor children and the health care provision that makes the present support order unreasonable, in that the incomes of the parties have changed and [Father] now has available health insurance through his employer, Toyota.

(App. 7).

On November 28, 2005, Father filed a “Motion for an Order to Appear and Show Cause,” asserting that despite the trial court’s order that Father “shall have the Federal

and State income tax exemptions for” B.H., “commencing with tax year 2003,” Mother had claimed the child on her 2004 taxes. (App. 9).

The trial court held a hearing on the parties’ motions on March 14, 2006, following which the trial court ordered the parties to submit written arguments. During the hearing, Father testified that his weekly gross income from his employment with Toyota was \$800.00. Father further testified that he anticipated his net income from farming for the year 2006 would be approximately \$30,000.00.

During the hearing, Mother introduced Father’s tax returns for 2003 and 2004. According to the tax return for 2003, Father’s total farm income was \$31,955.00.¹ According to the tax return for 2004, Father’s total farm income was \$34,956.00.² Father’s total farm income for both 2003 and 2004 reflected his farm income from the “[s]ales of livestock, produce, grains and other products” raised plus “[a]gricultural program payments” minus farm expenses, including interest payments. (Ex. Vol. 4 and 5).

On March 21, 2006, Father submitted his written argument and Child Support Obligation Worksheet (“CSOW”) to the trial court. According to Father’s submission, the \$30,000.00 from farming did “not include a reduction for FICA tax [o]f 15.30% nor

¹ Father did not work for Toyota in 2003. In 2003, Father’s adjusted gross income was \$29,698.00, which reflected Father’s total farm income (\$31,955.00) minus one-half of his self-employment tax (\$2,257.00).

² In 2004, Father’s total income was reduced by one-half of his self-employment tax in the amount of \$2,470.00.

d[id] it contemplate a reduction for capital expenditures for land payments [Father] has to make to continue the farm income.” (App. 12). Father requested that the trial court

accept his estimated net income figure of \$30,000.00 for farm income and reduce that figure by the appropriate amount of FICA tax of 15.30% or \$4,590.00 or \$88.00 per week as well as a deduction for a reasonable amount of capital expenditures of \$30,958.00 or \$595.00 per week (\$6,010.00 per year in property taxes PLUS \$17,048.00 per year in land payments to bank PLUS \$7,900.00 per year in land payments to [Mother]).

(App. 14-15). Father maintained that “[a]lthough property tax is not a capital expenditure it is an ordinary and necessary expense not included in arriving at the \$30,000.00 figure[.]” (App. 15).

On June 13, 2006, the trial court entered its order and child support guideline calculations along with its CSOW. The trial court made the following findings:

1. That a substantial and continuing change of circumstances has occurred which necessitates a modification of the Respondent/Father’s support obligation.
2. That a substantial and continuing change of circumstances has occurred which necessitates a modification of the insurance/medical provisions of the Court’s prior order.
3. That the Petitioner/Mother is in contempt of Court for willfully and deliberately violating this Court’s Orders concerning the claiming of federal and state income tax exemptions for the children.

(App. 27-27). The trial court’s CSOW credited a weekly gross income of \$1,400.00 to Father. The trial court ordered that Father’s child support be “modified to the sum of \$176.00 per week and that Mother “carry and maintain health and hospitalization insurance on the parties’ two children” (App. 27-28). The trial court further ordered Mother to “allow [Father] to claim both [B.R.] and [H.R.] as exemptions on his federal

and state income tax returns for calendar year 2006. Provided, [Father] must be current in his child support obligations as of December 31, 2006, to claim both children.” (App. 28).

DECISION

1. Child Support

Father asserts that the trial court erred in calculating his weekly gross income. Specifically, Father argues the trial court failed to reduce Father’s “weekly farm income of \$577.00 by the total of the ordinary and necessary expenses and capital expenditures of \$683.00” Father’s Br. 7.

“When determining child support, a trial court is vested with discretion in considering what business deductions may be deducted from gross income.” *Thompson v. Thompson*, 811 N.E.2d 888, 924 (Ind. Ct. App. 2004), *trans. denied*. “[W]ith regard to business deductions, the calculation of a parent’s income for support purposes is more inclusive than it is for income tax purposes.” *Id.*

The child support guidelines, in addressing how to calculate weekly gross income from self-employment, provide:

Weekly Gross Income from self-employment, operation of a business, rent, and royalties is defined as gross receipts minus ordinary and necessary expenses. In general, these types of income and expenses from self-employment or operation of a business should be carefully reviewed to restrict the deductions to reasonable out-of-pocket expenditures necessary to produce income. These expenditures may include a reasonable yearly deduction for necessary capital expenditures. Weekly gross income from self-employment may differ from a determination of business income for tax purposes.

* * *

The self-employed shall be permitted to deduct that portion of their F.I.C.A. tax payment that exceeds the F.I.C.A. tax that would be paid by an employee earning the same Weekly Gross Income.

Ind. Child Support Guideline 3(A)(2). Regarding calculating income for the self-employed, the commentary to the guidelines provides:

The principle involved is that actual expenses are deducted, and benefits that reduce living expenses . . . should be included in whole or in part. It is intended that actual out-of-pocket expenditures for the self-employed, to the extent that they are reasonable and necessary for the production of income, be deducted. Reasonable deductions for capital expenditures may be included.

Commentary to Child Supp. G. 3(A)(2).

Here, the trial court determined Father's weekly gross income to be \$1,400.00.

According to Father, the trial court failed to take into account his ordinary and necessary farm expenses, namely:

1. FICA tax of 7.65% of \$30,000.00 per year or \$44.00 per week;³
2. Property taxes of \$6,010.00 per year or \$116.00 per week;
3. Farm land payments to bank of \$17,048.00 per year or \$327.00 per week; and
4. Farm land payments to [Mother] of \$7,900.00 per year or \$152.00 per week.

Father's Br. 6.

Regarding mortgage payments,

[u]pon proper allocation of interest and principal, a trial court may, in its sound discretion, disallow the deduction of principal payments from gross income for child support purposes. Payments of principal may be

³ Father concedes that the trial court gave him credit for the F.I.C.A. tax.

considered contributions to a parent’s net worth, rather than “ordinary and necessary expenses” contemplated by the child support guidelines.

Zakrowski v. Zakrowski, 594 N.E.2d 821, 824 (Ind. Ct. App. 1992).

Thus, the trial court properly disallowed the deduction of Father’s land payments from his gross income.⁴ The trial court also properly disallowed the deduction of property taxes as we cannot say that property taxes are ordinary and reasonable expenses.⁵ Accordingly, we find no error in the trial court’s calculation of Father’s weekly gross income.

2. Exemption

Father asserts the trial court abused its discretion when it required him “to be current in his child support payments as of December 31, 2006 before he could claim the exemption he was entitled to on December 31, 2004.” Father’s Br. 7-8. We disagree.

In this case, the trial court ordered Mother to release the exemption for 2006 to Father. The trial court, however, made the release contingent on Father keeping his child support payments for 2006 current.

Regarding tax exemptions, the commentary to Child Support Guideline 6 provides that in ordering a parent to release an exemption to the other parent, “[j]udges may wish to consider ordering the release to be executed on an annual basis, contingent upon

⁴ Reasonable or necessary interest payments may be deducted from gross income. *See id.* In this case, however, Father testified that he anticipated earning a net income of \$30,000.00 from farming. As net income, this figure reflects deductions for ordinary and necessary expenses—including interest payments—already taken, as supported by the income tax returns entered into evidence. Furthermore, even if the tax returns introduced into evidence did not include deductions for interest payments, we still would find no error with the trial court’s calculations since Father failed to present any evidence of his current interest payments.

⁵ We note that Father failed to submit evidence of his current property tax payments.

support being current at the end of the calendar year for which the exemption is ordered as an additional incentive to keep support payments current.” *See Ritchey v. Ritchey*, 556 N.E.2d 1376, 1379 (Ind. Ct. App. 1990) (“A trial court may make the custodial parent’s duty to execute a yearly waiver contingent upon the noncustodial parent’s support payments being current.”). Thus, we find the trial court did not abuse its discretion in making the tax exemption contingent on current child support payments.

Affirmed.

BAKER, J., and ROBB, J., concur.