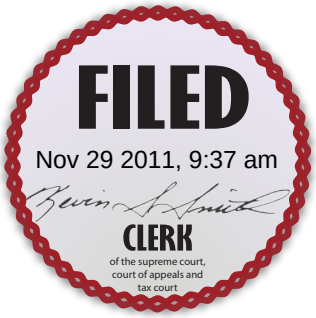

ATTORNEY FOR APPELLANT:

SCOTT J. LENNOX
Reed & Earhart Attorneys at Law, P.C.
Warsaw, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MARRIAGE OF	)	
	)	
STEVE METZGER,	)	
	)	
Appellant-Petitioner,	)	
	)	
and	)	No. 43A03-1101-DR-18
	)	
PEGGY METZGER,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE KOSCIUSKO SUPERIOR COURT
The Honorable A. Christopher Lee, Special Judge
Cause No. 43D01-0506-DR-513

November 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Steve Metzger ("Father") appeals from the trial court's order requiring him to pay child support and a portion of expenses incurred for the post-secondary education of two of his children, N.M. and S.M.

We affirm.

Issues

Father raises several issues for our review, which we restate as:

I. Whether the trial court improperly refused to modify the amount of income it had imputed to Father in the dissolution decree for purposes of determining his obligations to pay child support and educational expenses;

II. Whether the trial court erred when it did not determine that N.M. and S.M. had unilaterally repudiated their relationship with Father; and

III. Whether there was sufficient evidence in the record to support the trial court's determination of the total cost of education for N.M. and S.M.

Facts and Procedural History[1]

Father and Peggy Metzger ("Mother") (collectively, "Parents") were married and had three children, J.M., S.M., and N.M. On June 29, 2005, Father filed his petition for dissolution of the marriage. On October 7, 2006, Parents' marriage was dissolved. At that time, J.M. was emancipated, S.M. remained at home with Mother while she attended college at Ivy Tech State College ("Ivy Tech"), and N.M. was a minor. In 2009, N.M. graduated from high school and began to attend college at Ball State University ("Ball State"). At some

[1] The record and Appellant's Appendix upon appeal does not provide a copy of the original child support order or indeed any record from the original dissolution proceedings except for the CCS. We therefore rely on the trial court's order from which Father now appeals and the associated record for much of the relevant procedural and factual background.

time between the dissolution of Parents' marriage and N.M.'s graduation from high school, S.M. began to attend Indiana University-Purdue University Fort Wayne ("IPFW").

As part of the dissolution proceedings, Father was ordered to pay child support for S.M. and N.M. Father presented evidence regarding his income and assets during the dissolution proceedings, but the dissolution court found this evidence to be without credibility and therefore attributed income to him for purposes of entering a child support order.

On November 6, 2009, Father filed a motion to modify the child support order, along with a motion seeking a change of judge. A special judge was appointed and assumed jurisdiction over the case on December 1, 2009. On April 13, 2010, Mother filed a verified motion for contempt and for an educational support order as to S.M. and N.M.

On December 10, 2010, a hearing was held on Father's and Mother's respective motions. Each party submitted proposed orders, and on December 13, 2010, the trial court entered its findings and conclusions, adopting Mother's proposed order. The trial court found Father's testimony and documentary evidence at the hearing regarding his financial situation to be without credibility; imputed to Father income of $1,249 per week; ordered Father to pay child support in the amount of $197.00 per week; required Father to pay $1,856.00 for S.M.'s education for each of the 2009-2010 and 2010-2011 school years and $8,294.00 for N.M.'s education for each of the 2009-2010 and 2010-2011 school years. The trial court also found Father to be in contempt of court for failure to comply with previous child support orders and therefore ordered Father to pay Mother's attorney fees in the amount

of $1,500.00.

This appeal followed.

Additional facts will be supplied as needed.

Discussion and Decision

Standard of Review

Father appeals from the trial court's order denying his request to modify his support obligations, finding that S.M. and N.M. have not repudiated their relationship with Father, and requiring him to pay a portion of S.M.'s and N.M.'s post-secondary education expenses.

A calculation of child support is presumptively valid, and we review such decisions for clear error. Saalfrank v. Saalfrank, 899 N.E.2d 671, 675 (Ind. Ct. App. 2008). Where post-secondary educational expenses are at issue, we review the decision to order parents to pay such expenses for an abuse of discretion, and the apportionment thereof for clear error. In re Marriage of Blanford, 937 N.E.2d 356, 363 (Ind. Ct. App. 2010).

Here, the trial court entered special findings and conclusions sua sponte. Our standard of review in such situations is well settled:

> When a trial court enters special findings and conclusions sua sponte, the specific findings and conclusions control only as to the issues they cover, while a general judgment standard applies to any issue upon which the court has not found. Nelson v. Marchand, 691 N.E.2d 1264, 1267 (Ind. Ct. App. 1998). On appeal, we review the trial court's specific findings and conclusions under a two-tiered standard of review. Staresnick v. Staresnick, 830 N.E.2d 127, 131 (Ind. Ct. App. 2005). We first consider whether the evidence supports the findings, and next whether the findings support the judgment. Id. The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. Id. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. Id. We

> neither reweigh the evidence nor assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. Id. We review conclusions of law de novo. Id. However, we may affirm a general judgment on any theory supported by the evidence adduced at trial. Nelson, 691 N.E.2d at 1267.

Tew v. Tew, 924 N.E.2d 1262, 1264-65 (Ind. Ct. App. 2010), trans. denied.

We note that Mother has not submitted an appellee's brief. In such cases, we need not develop arguments for the appellee, but rather review the trial court's order for prima facie error. Painter v. Painter, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). Prima facie error is error "at first sight, on first appearance, or on the face of it." Id. (quoting Hamiter v. Torrence, 717 N.E.2d 1249, 1252 (Ind. Ct. App. 1999)).

Imputed Income

Father contends that the trial court's decision not to modify the income of $1,249 per week it had imputed to him for the purposes of determining child and educational support obligations was an abuse of discretion.

Father moved to modify an existing order setting forth his child support obligations. Indiana Code section 31-16-8-1 permits modification of an existing child support order and sets forth the requirements for such a modification:

> Except as provided in section 2 of this chapter [relating to matters of health insurance coverage], modification may be made only:
>
> (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or
>
> (2) upon a showing that:

> (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
>
> (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.
>
> (c) Modification under this section is subject to IC 31-25-4-17(a)(6).

Ind. Code § 31-16-8-1(b).

A party seeking modification of a child support obligation bears the burden of proving the change of circumstances required by section 31-16-8-1(b)(1). MacLafferty v. MacLafferty, 829 N.E.2d 938, 940 (Ind. 2005). Whether a change of circumstances is "so substantial and continuing as to make the terms" of the existing order "unreasonable" is a mixed question of law and fact. Miller v. Sugden, 849 N.E.2d 758, 760-61 (Ind. Ct. App. 2006), trans. denied.

The trial court made extensive findings regarding Father's financial situation when it refused to decrease Father's income of $1,249 per week—the same amount that had been imputed at the time of the dissolution decree. After reviewing the evidence, the trial court concluded that "there remain significant and troubling issues as to the credibility of Petitioner's testimony with respect to his income" to such an extent that "Petitioner's explanations for unaccounted income … [are] incredulous and unworthy of belief." (App. 10.)

The trial court noted that Father claimed to have an adjusted gross income of less than $4,000 in 2007, 2008, and 2009. Father testified that of his business's net profits of around $8500 as reflected on his tax returns, he spent nearly half of his income on medical insurance

premiums and supported himself through loans from friends totaling at least $50,000. Father testified that he was gradually paying those loans off, though he did not know phone numbers or addresses for these individuals. Father testified that he rented a residence and did not own a home; yet Mother introduced evidence that Father was named in county property records as the owner of a house in Kosciusko County, and Father stated that a friend purchased the house in his name.

Further, Father owned a home renovation business and claimed not to have been involved with any other businesses or to have any other source of income; yet Mother introduced into evidence a partnership tax return for Father from Orthopediatrics, LLC, showing a $15,000 contribution of capital from Father in July 2006 and a distribution of $15,007 in the form of proceeds from sale of the business to Father in 2007. The court also had before it Father's monthly bank statements, which saw total monthly deposits and closing balances in excess of $3,000 during most of 2009, including at least one month with deposits totaling more than $9,000 and several months with closing balances greater than $5,000. In sum, Father acknowledged that his checking account showed deposits for 2009 totaling more than $52,000 and that his 2009 tax return reflected gross income of $57,321 (Petitioner's Ex. 1), but was at a loss to explain the deposits to his account and his ability to sustain himself and pay child support in that year except to claim that he received loans from friends.

Given this evidence and Father's evasiveness in testifying about his income, we cannot conclude that the trial court committed prima facie error when it concluded that this situation—which the trial court observed was essentially unchanged from the circumstances

at the time of its original child support decree—did not constitute a change of circumstances warranting reduction of Father's imputed income and, as a result, his child support obligations.

Repudiation of Relationships with Father

Father argues that the trial court erred when it concluded that S.M. and N.M. had not unilaterally repudiated their relationship with him. Put simply, "repudiation occurs only when the child completely rejects a relationship with the parent in question." Redd v. Redd, 901 N.E.2d 545, 552 (Ind. Ct. App. 2009).

> Repudiation of a parent is a complete refusal to participate in a relationship with his or her parent. Redd v. Redd, 901 N.E.2d 545, 550 (Ind. Ct. App. 2009) (quotations omitted). Under certain circumstances, repudiation will obviate a parent's obligation to pay certain expenses for a child, including college expenses. Id. at 550–51. "'[W]here a child, as an adult over eighteen years of age, repudiates a parent, that parent must be allowed to dictate what effect this will have on his or her contribution to college expenses for that child.'" Id. at 551(quoting McKay v. McKay, 644 N.E.2d 164, 166 (Ind. Ct. App. 1994)).

Tew, 924 N.E.2d at 1269.

> Just as divorcing parents run the risk of alienating their children, adult children who willfully abandon a parent must be deemed to have run the risk that such a parent may not be willing to underwrite their educational pursuits. Such children, when faced with the answer 'no' to their requests, may decide to seek the funds elsewhere; some may decide that the time is ripe for reconciliation. They will not, in any event, be allowed to enlist the aid of the court in compelling that parent to support their educational efforts unless and until they demonstrate a minimum amount of respect and consideration for that parent.

McKay, 644 N.E.2d at 167 (quoting Milne v. Milne, 556 A.2d 854, 865 (Pa. Super. 1989)).

Here, the trial court made the following finding regarding the question of repudiation:

> THE COURT FURTHER FINDS that although the testimony has established that there is a strained relationship between the Petitioner and his minor children, that Petitioner has played a major role in the breakdown of the parent-child relationship and that said breakdown is not at the sole and unilateral wish of the minor children, and accordingly the Court find [sic] that the children have not unilaterally repudiated their relationship with the Petitioner and therefore both parents are obligated to contribute to there [sic] children's educational pursuits.

(App. 11.)

Our review of the evidence reveals that Father sent several recent items of correspondence to S.M. and N.M. Father introduced into evidence short notes to each child dated August 19, 2009; one longer undated note to each child; and one birthday card to each child. Each of these bears Father's phone number. (Petitioner Exs. 2 & 3.) Father also testified that the only contact he had with either child after the entry of the decree of dissolution was a single occasion where S.M. asked him to co-sign a loan for a car for her. Father further testified that he had not been informed of or invited to N.M.'s high school graduation, that he had attempted to contact both of his children by visiting their home and through Facebook, and that he was unapprised of where his children attended college or of their academic performance.

Mother testified that the children had cars and could visit Father if they so desired, but that they had no contact with Father because he was "mean" to them (Tr. 58), and that "they'd rather not have anything to do with him. He's violent." (Tr. 59.) Mother further testified that Father had made only a few efforts to get in touch with the children after the entry of the dissolution decree. When asked about the timing of the correspondence from Father to the children, Mother indicated that the August 19, 2009, notes were the first such

attempts on Father's part to reach out to his children, and were sent only a few months prior to Father's petition to modify his child support obligations.

In sum, while Father testified that he had little contact with his children, Mother indicated that this was a result of his conduct toward the children, which included meanness and violence. While the evidence presented to the dissolution court is not without ambiguity, we cannot conclude that it was prima facie error for the trial court to conclude that N.M. and S.M. had not completely unilaterally rejected a relationship with Father.

Evidence of Post-Secondary Education Costs

We now turn to Father's contention that the trial court lacked sufficient evidence when it determined the total post-secondary education costs for N.M. and S.M.

A trial court may order a non-custodial parent to contribute to the expenses for a child's post-secondary education, taking into account the child's aptitude and ability, the ability of the child to contribute to those expenses, and the ability of each parent to meet those expenses. I.C. § 31-16-6-2(a)(1). Post-secondary education expenses, which "generally include tuition, books, lab fees, supplies, student activity fees, and the like" as well as "[r]oom and board … when the student resides on campus or otherwise is not with the custodial parent." Ind. Child Support Guideline 8(b). To the extent that the court orders support for expenses related to post-secondary education, other support that is duplicated by the educational support order or that would otherwise be paid to the custodial parent must be reduced. I.C. § 31-16-6-2(b). We review a trial court's order requiring a non-custodial parent to contribute to extraordinary expenses, including post-secondary educational

expenses, for an abuse of discretion. Blanford, 937 N.E.2d at 363.

Here, Father challenges the sufficiency of the evidence upon which the trial court rested its decision to award educational expenses. Specifically, Father contends that the trial court did not have sufficient evidence of the children's aptitude for post-secondary education, the costs of post-secondary education for each child, or Father's ability to pay for the children's post-secondary education.

With respect to the children's aptitude for post-secondary education, Father argues that the trial court's decision is characterized by a "total lack of evidence." (Appellant's Br. 9.) A trial court may order a non-custodial parent to pay for post-secondary educational expenses conditioned upon aptitude and continued success in such endeavors. However, we have held that evidence demonstrating application to, acceptance by, and enrollment in a post-secondary educational institution was sufficient to establish aptitude for such education. Neudecker v. Neudecker, 566 N.E.2d 557, 560 (Ind. Ct. App. 1991), aff'd, 577 N.E.2d 960 (Ind. 1991). Further, while a trial court may require continued demonstration of adequate academic performance, it need not do so where there is evidence that continued success is not likely to be a problem. Blanford, 937 N.E.2d at 365 (citing Deckard v. Deckard, 841 N.E.2d 194, 203 n.6 (Ind. Ct. App. 2006) (encouraging trial courts to set minimum levels of academic performance when appropriate on a case-by-case basis)).

Here, Father's own testimony establishes that at the time of the dissolution, S.M. was enrolled at Ivy Tech State College, and Mother testified during the modification hearing that S.M. was by that time a senior at Indiana University-Purdue University Fort Wayne

("IPFW"), and would graduate with a degree in Communications. Mother further testified that N.M. had enrolled at and completed a year of study at Ball State and had obtained two scholarships to help subsidize his studies. Mother also entered into evidence N.M.'s transcript from Ball State as of March 2010, which showed successful completion of fifteen credit hours, including an "A" grade in one course, and continued enrollment for an additional fifteen credit hours. (Respondent's Ex. G.) The trial court had sufficient evidence of the children's aptitude for post-secondary education.

Turning now to the evidence of the children's post-secondary educational expenses, Father was ordered to pay $8,249.00 for tuition and room and board for N.M. and $1,856.00 for tuition for S.M. These figures derive from school-provided documents listing the tuition rate at IPFW, where one semester's full-time tuition for fifteen credit hours for the 2010-2011 school year was $3,636.00; and tuition and room and board at Ball State, where one year's full-time tuition was $7,508 and a double room with eighteen dining-hall meals each week was $8,376, yielding a total cost of attendance for one year of full-time enrollment of $15,884.00 for the 2010-2011 school year.[2] Further, Mother entered into evidence an annual statement for student loan indebtedness incurred for S.M.'s education in 2009, which reflected S.M.'s borrowing of $3,500, only slightly less than the tuition figure the trial court entered into the Post-Secondary Education Worksheet for S.M.

These documents were introduced into evidence during Mother's testimony, and

[2] The trial court entered into N.M.'s Post-Secondary Education Worksheet the single figure of $15,884.00 as N.M.'s tuition. (App. 16.) Mother's testimony established the specific amounts for N.M.'s tuition and room and board.

Father does not contest the propriety of the trial court's admission of each into evidence. The trial court in turn entered each of these totals directly into the Post-Secondary Education Worksheets for each child. Based upon this evidence, we cannot agree with Father that the trial court lacked evidence upon which to base its assessment of the children's cost of education.

Finally, with respect to Father's ability to pay, the trial court imputed income to Father of $1,249.00 per week because it found that the evidence he provided with regard to his income and assets lacked credibility. The trial court ordered Father to pay $197.00 per week in regular child support, which accounts for the costs to support N.M. and S.M. when they reside at home with Mother.[3] After requiring S.M. and N.M. to provide approximately one-third of the cost of attendance for their respective educational costs, the trial court ordered Father to pay $1,856.35 for S.M.'s tuition at IPFW and $8,294.15 for N.M.'s tuition and room and board at Ball State. These each reflect 76.205% of the total parental obligation for each child's education, and that percentage is itself a reflection of Father's proportion of the total parental income. (App. 12-16.)

Given Father's caginess with the trial court and the trial court's imputed income, we cannot conclude that the trial court failed to properly assess Father's ability to pay before ordering him to contribute to his children's post-secondary educational expenses. Nor can we conclude that the trial court engaged in any other form of prima facie error when it ordered him to pay for his children's college educations.

[3] S.M. commutes to IPFW and lives with Mother the entire year; N.M. resides at home when school is not in session at Ball State.

Conclusion

We find no error in the trial court's decision to continue to impute income to Father in the absence of reliable documentation of his income and financial situation. We similarly find no error in the trial court's determination that the children had not repudiated Father. Finally, we find no error in the trial court's decision to require Father to contribute to post-secondary educational expenses for his children.

Affirmed.

MATHIAS, J., and CRONE, J., concur.