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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE PATERNITY OF K.D.S., S.E.Q., and I.A.J.S. by next friend, JOSEFINA B. QUINTANILLA,	)	
Appellant-Petitioner,	)	
vs.	)	No. 43A04-0605-JV-239
RONDELL N. SHORT,	)	
Appellee-Respondent.	)	

APPEAL FROM THE KOSCIUSKO SUPERIOR COURT
The Honorable Duane G. Huffer, Judge
Cause No. 43D01-0308-JP-216

December 27, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Josefina B. Quintanilla ("Mother") appeals from the trial court's order that Rondell N. Short ("Father") pay no child support on the basis of Father's imprisonment. Mother raises one issue for our review, namely, whether the trial court erred in not imputing any income to Father during his incarceration.

We reverse and remand with instructions.

FACTS AND PROCEDURAL HISTORY

After Mother filed a petition to establish paternity, the trial court found that Father was the biological father of Mother's three children. Due to his incarceration, Father did not appear at the subsequent hearing to determine support, and Mother testified that she lacked knowledge of Father's wages. However, Mother did testify that she knew Father to be employed. The trial court subsequently entered a child support obligation against Father for $0.00. That order stated:

> (A) The Court has considered the (1) The [sic] financial resources of the custodial parent. (2) The standard of living the child[1] would have enjoyed had the parents been married and remained married to each other. (3) The physical and mental condition of the child. (4) The child's education needs. (5) The financial resources and needs of the noncustodial parent.
>
> (B) The Court finds that [Father] is incarcerated, and has been incarcerated since prior to the onset of this action, with an expected release date of November 6, 2008[,] and further that [Father] is believed to have additional pending charges that may lengthen the period of incarceration.
>
> (C) The Court finds that [Father] has no financial resources to use to care for the minor child of this action.

[1] It is not clear either in the order or the brief why the trial court referred to the recipient children in the singular.

> (D) The Court finds that, were the parties to be married and remain married, the standard of living of the child would not include any income from [Father] during his period of incarceration.

Appellant's App. at 4. This appeal ensued.

DISCUSSION AND DECISION

We initially note that Father did not timely file an appellee's brief. Accordingly, we do not undertake the burden of developing arguments for the appellee, as that duty remains with him. Railing v. Hawkins, 746 N.E.2d 980, 982 (Ind. Ct. App. 2001). Normally when the appellee does not file a brief, we apply a less stringent standard of review and may reverse the trial court when 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. (quoting Johnson County Rural Elec. Membership Corp. v. Burnell, 484 N.E.2d 989, 991 (Ind. Ct. App. 1985)).

A trial court has wide discretion with regard to imputing income to ensure the child support obligor does not evade his or her support obligation. Miller v. Sugden, 849 N.E.2d 758, 761 (Ind. Ct. App. 2006), trans. denied. However, we have held that "[w]hen a parent becomes voluntarily unemployed or underemployed, the trial court must calculate support based upon a determination of potential income." Meredith v. Meredith, 854 N.E.2d 942, 947 (Ind. Ct. App. 2006) (citing Ind. Child Support Guideline 3(A)(3)) (emphasis added).

In Lambert v. Lambert, 839 N.E.2d 708 (Ind. Ct. App. 2005), trans. granted, the trial court set an incarcerated father's child support payments at $277.00 per week. In affirming, we stated:

> We are guided, as in all child custody, support, and visitation matters, by the best interests of the child. See Naggatz v. Beckwith, 809 N.E.2d 899, 902 (Ind. Ct. App. 2004), trans. denied. When a parent has voluntarily taken a reduction in income for a legitimate purpose, such as being closer to his or her children or caring for his or her aging and ill parents, we are weighing one positive public policy—adequate support for children—against another positive public policy—quality of life for all family members. When a parent has no such legitimate reason for the reduction in income, we are weighing the positive public policy of support for children against the negative public policy of "rewarding" bad behavior. We find no reason to treat an incarcerated parent any differently than a non-custodial parent who has a higher income imputed because of a voluntary decision causing an unnecessary decline in income. Not only is incarceration a foreseeable result of voluntary criminal conduct, but conviction of a crime necessarily imputes some fault to the perpetrator, fault for which he should not be rewarded with a lower child support obligation than he would have otherwise.

Id. at 714 (emphasis added). Our Supreme Court granted transfer in Lambert, vacating our opinion. Hence, without relying on Lambert, we hold here that, provided there is a record to support the imputation of income, there is no reason to treat an incarcerated parent any differently than a noncustodial parent who has a higher income imputed because of a voluntary decision causing an unnecessary decline in income. Although any decision of our Supreme Court in Lambert may ultimately be dispositive of this case, reaffirming our holdings in opinions pending before our Supreme Court, while not a favored practice, is not new. See, e.g., Schmidt v. State, 816 N.E.2d 925, 932 (Ind. Ct. App. 2004), trans. denied.

Here, Mother contends that the trial court erred in not imputing income to Father in calculating his child support obligation. Although the record contains no evidence of Father's wage-earning opportunities before his incarceration, Mother testified that he was employed. Accordingly, his current lack of employment seems to be a direct result of his

voluntary decision to engage in criminal activity. As such, the trial court was required to calculate support based on a determination of Father's potential income. See Meredith, 854 N.E.2d at 947.

Thus, we must reverse and remand the trial court's order. On remand, we caution that "child support orders cannot be used to force parents to work to their full economic potential or make their career decisions based strictly upon the size of potential paychecks." Id. Instead, we instruct that the trial court to consider the evidence, if any, of "'the obligor's work history, occupational qualifications, prevailing job opportunities, and earning levels in the community' before determining whether income should be imputed." Hyde v. Hyde, 751 N.E.2d 761, 767 (Ind. Ct. App. 2001) (quoting Child.Supp. G. 3(A)(3)). After considering those factors, the trial court should determine an appropriate amount of income to impute to Father during his incarceration.

Reversed and remanded with instructions.

FRIEDLANDER, J., and DARDEN, J., concur.