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IN THE
COURT OF APPEALS OF INDIANA

JACQUELINE K. POOLE,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 48A02-0612-CV-1165
	)	
FINLEY A. RENNAKER,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable George Pancol, Master Commissioner
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0203-DR-219

November 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jacqueline K. Poole appeals an order modifying child support to include college expenses. Poole asserts no change in circumstances justified modification, the effective date of the modification is erroneous, and the court miscalculated both child support and her arrearage. We affirm in part and reverse in part.

FACTS AND PROCEDURAL HISTORY

During Poole's marriage to Finley A. Rennaker, they had two sons, Z.R. and J.R. Poole and Rennaker divorced in 2000. In July of 2004, by court order, Poole was given physical custody of both sons, and Rennaker was to pay $215.00 per week in child support.

On June 20, 2005, Z.R. began living with Rennaker. On June 28, 2005, Rennaker petitioned to modify custody and support. Two weeks later, Rennaker supplemented his petition to ask the court to consider college expenses because Z.R. would begin college in the fall semester of 2005. Z.R. began commuting to IUPUI from Rennaker's house that fall. A number of hearing dates were continued at Poole's request.

On April 7, 2006, Rennaker asked the court to retain his child support payments, rather than send them to Poole, because Rennaker believed Poole should have been paying support to him since June of 2005. The court granted his motion on April 28, 2006.

On June 28, 2006, the court heard the motions to modify. The court requested findings from the parties. Both sons began attending Ball State University in the fall semester of 2006. The trial court entered its order modifying child support on October 18, 2006. Poole filed a motion to correct error, which was denied.

DISCUSSION AND DECISION

Where, as here, the trial court entered findings and conclusions, we apply a two-tiered standard of review. *Freese v. Burns*, 771 N.E.2d 697, 700 (Ind. Ct. App. 2002), *trans. denied* 792 N.E.2d 36 (Ind. 2003). We first determine whether the evidence supports the findings, then whether the findings support the judgment. *Id.* We may neither reweigh the evidence nor assess the credibility of the witnesses. *Id.* at 700-701. We will reverse findings of fact if they are clearly erroneous, that is, where our "review of the record leaves us firmly convinced a mistake has been made." *Id.* at 701. A judgment is clearly erroneous when unsupported by the findings or when "it relies on an incorrect legal standard." *Id.*

1. Modification of Agreement

On November 3, 2000, during their dissolution proceedings, Poole and Rennaker entered into an agreement regarding "Educational Expenses, Trade School or College Education," which included the following:

> 3.6 The parents agree to fund the costs and expenses for each year of college as follows: the child shall be responsible for a portion defined as any available scholarships or student loans with the remaining portion being divided by the parents in proportion to their then respective income.

(App. at 9.) Rennaker asked the court to modify the existing custody order to provide for Z.R.'s college expenses, and after a hearing, the court did so.

Poole now argues the trial court did not have authority to modify that agreed allocation of college expenses because Rennaker did not demonstrate a substantial change of circumstances making that previous order unreasonable. The Record does not

reflect Poole reminded the court that their 2000 Agreement already resolved this issue.

A party may not sit idly by at trial, not objecting to the procedures used in the trial court, and then, after an unfavorable outcome at trial, complain about those procedures for the first time on appeal. *Elbert v. Elbert*, 579 N.E.2d 102, 107 n.2 (Ind. Ct. App. 1991). By failing to object to the court's allocation of college expenses on the ground the prior order resolved this issue, Poole waived any error. *See id.* Accordingly, we find no error attributable to the court.

2. Z.R.'s First-Year Expenses

Poole argues she should not have to repay Rennaker for any first-year college expenses for Z.R., because the evidence indicated all those costs were covered by student loans.[1] Poole ignores the facts most favorable to the court's decision.

Rennaker testified the loans Z.R. received did not cover the out-of-pocket expenses Rennaker had paid on behalf of Z.R. Rennaker's Exhibit B indicated the out-of-pocket expenses for the fall of 2005 were $3,844 and for spring of 2006 were $3,646. The court found the parents' portion of those amounts was $6,710, which was within the range of the evidence presented. From that, the court assigned $2,415 to Poole, which reflects her proportion of their combined income. As the trial court is assigned the obligation of assessing the credibility of the witnesses and weighing the evidence, *see*

[1] Poole complains because Z.R. cashed in a $3,000 education trust to purchase a truck from Rennaker and to pay for car insurance, so he could commute to college from Rennaker's home. Items such as transportation and car insurance may be considered as costs of education. *See Snow v. Rincker*, 823 N.E.2d 1234, 1238 (Ind. Ct. App. 2005), *trans. denied* 831 N.E.2d 749 (Ind. 2005). Accordingly, we cannot find the trial court abused its discretion in rejecting Poole's arguments that expenditure was improper and her proportion of Z.R.'s first-year expenses should be reduced thereby.

Freese, 771 N.E.2d at 700-01, we find no error.

3. Date of Modification

Next, Poole argues the court erred by making the child support modification retroactive to a date before a petition to modify was filed. The court modified support "beginning June 20, 2005." (App. at 62.) However, Rennaker's petition to modify support was "filed June 28, 2005." (*Id*. at 17.) A petition to modify may relate back to the date the petition is filed or any date thereafter, but not to a date before the petition was filed. *Carter v. Dayhuff*, 829 N.E.2d 560, 567 (Ind. Ct. App. 2005); s*ee also* Ind. Code § 31-16-16-6.[2] Accordingly, the trial court erred when it selected a modification date prior to the filing date of Rennaker's petition.

4. Calculation of Support

Poole first argues the support order is erroneous because it orders "joint physical and legal custody" of both children, (Appellant's App. at 64), but calculates support with worksheets that give Poole custody of J.R. and Rennaker custody of Z.R. A trial court may apply the "split custody" formula provided in the Commentary to Child Support Guideline 6 to calculate support in a joint physical custody situation. *Freese*, 771 N.E.2d at 702; *see also Sanjari v. Sanjari*, 755 N.E.2d 1186 (Ind. Ct. App. 2001) (applying split

[2] Ind. Code § 31-16-16-6(b) provides:

> A court with jurisdiction over a support order may modify an obligor's duty to pay a support payment that becomes due:
> (1) after notice of the petition to modify the support order has been given either directly or through the appropriate agent to:
> (A) the obligee; or
> (B) if the obligee is the petitioner, the obligor; and
> (2) before a final order concerning the petition for modification is entered.

custody formula to joint custody).

Nevertheless, the court's worksheets provided Rennaker a parenting time credit in calculating support for J.R., but did not provide Poole a parenting time credit in calculating support for Z.R. If the parties have "joint physical custody" then accurate calculation would require a parenting time credit for neither parent or both parents. Accordingly, the court erred when it provided a parenting time credit to Rennaker only.[3]

Poole also notes the court did not modify support for the time when both sons would be attending Ball State University. However, neither party filed worksheets providing the court with support calculations appropriate for that time, and neither party testified regarding how many days or weeks they expected the sons to be at home after moving to Muncie. Accordingly, we find no error attributable to the court.

Next, Poole claims the court's worksheets are erroneous because they credit Rennaker for paying health insurance, but do not credit her for paying dental and vision insurance. The court's worksheets match those Rennaker filed. Poole notes she "did not credit either parent with a health care credit [on the worksheets] due to the fact that after computing the amount [Rennaker] pays for health insurance and the amount [Poole] pays for dental and vision insurance, the amounts were a wash." (Appellant's Br. at 16.)

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[3] We note the court had to deal with discrepancies in testimony regarding nearly every fact put into evidence. It is apparent the court was attempting to fashion an order that would be consistent with the evidence and would accommodate the parties' requests. Poole testified her husband is a Navy veteran and she believed Z.R. and J.R. might be eligible for benefits for college through her husband's disability program. Rennaker testified Poole had told him she needed joint legal and physical custody of the boys for that financial assistance to be available, and he testified he was willing to have joint custody of the boys if it would help them qualify for assistance. Thus the court ordered joint legal and physical custody but calculated support in accordance with Rennaker's testimony that Z.R. does not stay with Poole because they had a falling out.

Because Poole filed worksheets indicating she did not pay insurance for the boys, she cannot now be heard to complain the court failed to give her such a credit.

Because we have the information before us, we can re-calculate child support excluding the erroneous inclusion of a parenting-time credit for Rennaker. For the time period from June 28, 2005,[4] to December 31, 2005, Poole's support obligation for Z.R. remains $113.37. (Appellant's App. at 65.) By adding the $51.12 parenting time credit to the obligation listed for Rennaker on the worksheet for J.R., we find Rennaker's corrected obligation to be $156.63. (*See id.* at 68.) Thus, during that time, Rennaker's weekly obligation to Poole was $43.26.

For the period after January 1, 2006, Poole should have been paying $121.89 to Rennaker each week for support of Z.R., while Rennaker should have been paying $151.11 to Poole each week for support of J.R. (*See id.* at 70.) Thus, Rennaker's weekly obligation to Poole after January 1, 2006, was $29.22.

5. Reimbursement

Finally, Poole asserts the court should not have ordered her to reimburse Rennaker for overpayments in support retroactive to his petition. While Rennaker did not blame Poole for the delay in the hearings and had not objected to the continuances requested by Poole, we cannot say the court erred in finding Poole brought on many of the delays in the hearing. The trial court was in the better position to determine why that delay occurred. As that finding is not clearly erroneous, there was no error in the court's

[4] We modified the date from which the modification in support should have occurred, in accordance with our holding in Section 3.

conclusion Poole should repay the excess support Rennaker had paid after filing his petition for modification. Thus, we calculate those amounts.

For the period between June 28, 2005, and December 31, 2005, Rennaker was paying support to Poole in the amount of $215 per week. He should have been paying only $43.26. The difference is $171.74. By our count, Rennaker should have made 27 payments at that amount. Therefore, Poole must reimburse Rennaker $4,636.98 for those weeks.

For the period between January 1, 2006 and April 28, 2006, Rennaker was paying $215 per week when he should have been paying $29.22. Thus, he overpaid by $185.78 per week for 17 weeks. Therefore, Poole must reimburse Rennaker $3,158.26 for those weeks.

After April 28, 2006, Rennaker's support payments were being held by the Clerk and presumably were returned to him pursuant to the trial court's order. Thus he would not be entitled to a refund for overpayment. However, Poole was ordered to pay $23.95 each week to Rennaker, and she should be reimbursed for that amount. We trust the parties can determine how many weeks passed between April 28, 2006, and the date of this order, such that Poole can be reimbursed appropriately both for her overpayment and for the support due from Rennaker.

From the date of this order forward, until the trial court enters a new order, Rennaker should pay $29.22 per week to Poole for child support.

For all these reasons, we affirm in part and reverse in part.

CRONE, J., and DARDEN, J., concur.