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IN THE
COURT OF APPEALS OF INDIANA

CHRISTINA M. GRAHAM,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 62A05-0706-CV-316
	)	
TERRY A. GRAHAM,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE PERRY CIRCUIT COURT
The Honorable Lucy Goffinet, Judge
Cause No. 62C01-0507-DR-289

December 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Christina M. Graham ("Mother") appeals the trial court's granting of the motion to correct error filed by Terry A. Graham ("Father").

We reverse and remand.

ISSUE

Whether the trial court abused its discretion in granting Father's motion to correct error.

FACTS

The parties were married on August 15, 1998, and their only child, M.A.G., was born on May 28, 1999. The parties separated on or about July 6, 2005. On July 7, 2005, Father filed a petition for dissolution of marriage in Perry County Circuit Court.

The trial court held a provisional hearing in October of 2005. After hearing evidence and arguments, the trial court assigned to Father the following debts: Dell, Sam's Club, Old National Bank, Verizon Cellular, and Home Depot.

On December 12, 2005, the trial court entered a provisional order, ordering Father to "pay, holding [Mother] harmless on the following debt: Dell Computer, CitiFinancial; Sam's Club; Lowe's; Old National Bank debt consolidation loan; Verizon Cellular; and Home Depot." (App. 27). The provisional order further gave possession of the marital residence and the items contained therein to Father; the trial court ordered Father to "pay as the same become due and owing the first mortgage indebtedness with Old National Bank, the insurance premiums on the residence and real estate taxes on the residence . . . ." *Id.* The provisional order ordered Mother to "pay, holding [Father] harmless on the following debt: Beneficial Finance; and, Fingerhut." *Id.*

On February 6, 2006 and March 21, 2006, the trial court conducted a final hearing, over which Judge James A. McEntarfer presided. During the hearing, Father testified that his medical insurance, obtained through his employer, covered both Mother and M.A.G. and that he wished to maintain coverage for M.A.G. after the dissolution. Father also testified that the cost to maintain health insurance for M.A.G. would be a "difference" of "$1.87 a week." (Tr. 113).

Father, however, submitted into evidence a letter from Mother's employer, Best Chairs, stating that Mother was paying $14.80 per week to maintain M.A.G. on her employer-sponsored medical and dental insurance. Furthermore, the child support obligation worksheet ("CSOW") submitted by Father indicated that Mother paid a weekly premium in the amount of $14.80 for M.A.G.'s health insurance. During the hearing, Mother testified that she maintained health insurance coverage for M.A.G. through her employment and intended to continue coverage after the dissolution.

On December 29, 2006, the trial court entered its final decree of dissolution, which reads, in pertinent part, as follows:

> 1. The parties were married on August 15, 1988 [sic].
>
> * * *
>
> 7. The Husband is presently employed at Thyssenkrup Waupaca and his average weekly wage is [$1,095.00].
>
> 8. The Husband maintains his employer offered health and hospitalization on the minor child of the parties[.] The Husband expends the sum of [$14.80] as an additional premium to maintain his employer offered health and hospitalization insurance of the minor child of the parties.

9. The Husband shall continue to maintain his employer offered health and hospitalization insurance on the minor child of the parties.

* * *

11. The Husband expends the sum of [$99.60] per week for child support pursuant to a court order for prior born children.

12. Pursuant to the stipulation regarding parenting time and this Court's approval of the same, it is anticipated the husband will exercise ninety-eight (98) overnights of parenting time with the minor child of the parties and accordingly is entitled to a parenting time credit of [$29.44] per week.

13. Pursuant to the Indiana Parenting Time guidelines, the Husband shall pay . . . the sum of One hundred twenty dollars and thirty-eight cents ($128.38) [sic] per week beginning January 5, 2007 . . . .

* * *

15. The Husband shall become the sole owner of the former marital residence and real estate located at 208 South Oakridge Road, Bristow, Indiana which the Court values at [$82,700.00]. Further, the Husband shall assume, pay and hold the Wife harmless on the outstanding mortgage indebtedness due and owing thereon which had a date of separation balance of [$84,452.52].

16. The Wife shall become the sole owner of the 1988 Chevrolet Celebrity automobile, which the court values at [$1,000.00].

17. The Husband shall become the sole owner of the 1989 Ford F-10 [sic] truck and the 1991 Ford Escort automobile. The Husband shall assume, pay and hold the Wife harmless on the outstanding indebtedness due and owing on the 1989 F-150 truck, which the Court finds is equal to the value of said truck. The Court values the Ford Escort automobile at [$200.00].

18. The Husband shall become the sole owner of his 401K account through his employment with Waupaca, which had a date of separation balance of [$7,162.43]. The Wife shall become the sole owner of her St. Meinrad Arch Abbey profit sharing plan, which the Court finds had a date of separation balance of [$1,375.66].

19. The Husband shall become the sole owner of the Dell computer and shall assume, pay and hold the Wife harmless on the outstanding indebtedness due and owing thereon, which the Court finds is equal to the value of the computer.

20. The Husband shall assume, pay and hold the Wife harmless on the outstanding credit card indebtedness due and owing to CitiFinancial, which had a balance of [$1,400.00] and which the Husband has paid off during the [p]endency of this action; the Sam's Club account, which was used to purchase a TV and VCR and has a balance of [$370.00]; the Lowe's account which had a balance of [$1,145.00]; the Old National Bank consolidation loan which had a balance of [$517.85]; the Home Depot account used to purchase lawn equipment which had a balance of [$377.00]; Drs. Norris and Love Orthopedic and Sports which had a balance of [$1,164.00]; the deficiency judgment to Ford Motor Credit which had a balance of [$6,176.30]; the Verizon contract which had a balance of [$190.00] in which the [H]usband has paid during the pendency of this action; the First Premium Bank Visa which had a balance of [$345.00]; the MasterCard credit card which had a balance of [$295.00]; and his personal loan which was incurred for the posting of bond and attorney fees. The Court is further aware that both of the Old National Bank accounts have been paid in full by the Husband during the pendency of this action.[1]

21. The Wife shall assume, pay and hold the Husband harmless on the Beneficial Finance account which had a balance of [$5,712.80]; Fingerhut account which had a balance of [$207.00] in which the Wife had paid in full during the pendency of this action; and any outstanding amounts due and owing in connection with the dog Alfie, which is awarded to the Wife; and a Wells Fargo account, which has a balance of [$800.00].

22. The Wife shall become the sole owner of all items of personal property set forth on the attached "Exhibit 1" and the Wife [sic] shall become the sole owner of all items on the attached "Exhibit 2". The Court finds the value of the items awarded to the Husband is [$8,000] and the value of the items awarded to the Wife is [$1,500.00].

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[1] Father presented evidence of two loans obtained from Old National Bank: a mortgage on the marital residence and an unsecured loan. Father did not assert, and the evidence does not show, that Father paid off these loans. Rather, according to the statements provided by Father during the final hearing, the principal balance on the mortgage was $84,452.52 as of November 7, 2005, and the pay-off amount for the unsecured loan was $517.85 as of February 1, 2006.

> 23. The Husband's profit sharing account at Waupaca had a separation balance of [$20,327.31,] which the Court finds should be divided between the parties pursuant to a Qualified Domestic Relations Order where [40%] of said date of separation balance or [$8,130.92 shall be] set off to the Wife.
>
> 24. The Court declines to order the parties to file any amended tax returns for 2005 and in lieu thereof, directs that the federal return of [$2,209.00] and the State return of [$155.00] is awarded to the Wife as her separate property.
>
> 25. The Court further declines to order any reimbursement from the Wife to the Husband for payments he has made during the pendency of this action. Notwithstanding, the Court has considered such payments in making the final division of property.
>
> 26. The Husband shall pay to the Wife the sum of [$1,345.00] as an equity equalization payment.

(App. 13-20). The trial court did not complete a CSOW.

On January 24, 2007, Father filed a motion to correct error, in which he raised, in pertinent part, the following errors:

> 2. The findings of fact upon which the Court determined and calculated [Father]'s weekly child support obligation are set forth in paragraphs 7 inclusive of 13 of the Decree . . . . [Father]'s weekly child support obligation is stated to be [$120.38] in words and [$128.38] in figures in paragraph 13 . . . . Using the same figures used by the Court contained in paragraphs 7 inclusive of 13 of the Decree . . ., [Father]'s weekly child support obligation should be [$105.58] pursuant to the Indiana Child Support Obligation Guidelines.
>
> * * *
>
> 8. Paragraph 22 of the Decree . . . awards virtually all of the personal property acquired before or during the marriage to [Mother].
>
> * * *
>
> 11. [Father] has been prejudiced by the unreasonable delay in the determination of this case by reason of the fact that [Father] was obligated under the terms and conditions of a Provisional Order entered in this case

> on October 19, 2005 to pay virtually all of the marital debt during the pendency of the case for which he received no credit in the division of assets and debts . . . . Failure to consider the amount of debt retired by the Petitioner during the pendency of this case is unreasonable and not supported by the evidence, thus making the final division of property unequal in amount and value or not just and reasonable.

(App. 29-30). Father submitted a CSOW, crediting Father $14.80 for weekly health insurance premiums.

The trial court held a hearing, presided over by Judge Lucy Goffinet, on March 6, 2007 and March 12, 2007. On April 11, 2007, the trial court entered its order on Father's motion to correct error. In pertinent part, the order stated as follows:

> 2. Pursuant to the Indiana Parenting Time Guidelines, the Husband shall pay to the clerk of this court the sum of [$105.58], beginning January 5, 2007 . . . .
>
> * * *
>
> 6. [Father] shall become owner of all property listed in "Exhibit 2" attached to the Decree . . . filed December 29, 2006.
>
> 7. [Mother] shall reimburse [Father] half of all payments made by [Father] toward the marital debt during the pendency of the divorce action.
>
> 8. The findings in the Decree . . . entered on December 29, 2006 not affected by the above corrections shall remain in full force and effect.

(App. 9-10). The trial court's order on the motion to correct error included a CSOW, which credited Father $14.80 for M.A.G.'s weekly health insurance premium.

DECISION

Initially, we note that Father did not file an appellee's brief.

> In such a situation, we do not undertake the burden of developing arguments for the appellee. Applying a less stringent standard of review with respect to showings of reversible error, we may reverse the lower court

> if the appellant can establish prima facie error. Prima facie is defined in this context as "at first sight, on first appearance, or on the face of it." The purpose of this rule is not to benefit the appellant. Rather, it is intended to relieve this court of the burden of controverting the arguments advanced for reversal where that burden rests with the appellee. Where an appellant is unable to meet that burden, we will affirm.

State Farm Ins. v. Freeman, 847 N.E.2d 1047, 1048 (Ind. Ct. App. 2006) (internal citations omitted).

Mother contends that the trial court improperly granted—in part—Father's motion to correct error. Specifically, Mother asserts that the trial court "miscalculated the child support when it placed the support at the $105.58 figure suggested by Father" and abused its discretion in ordering Mother to reimburse Father for half of the payments Father made toward the marital debt during the pendency of the dissolution proceeding.

> The trial court is permitted to alter, amend, or modify its judgment without limitation "up to and including the ruling on a motion to correct error." A trial court is vested with broad discretion to determine whether it will grant or deny a motion to correct error. A trial court has abused its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable inferences therefrom. The trial court's decision comes to us cloaked in a presumption of correctness, and the appellant has the burden of proving that the trial court abused its discretion. In making our determination, we may neither reweigh the evidence nor judge the credibility of witnesses. Instead, we look at the record to determine if (a) the trial court abused its judicial discretion; (b) a flagrant injustice has been done to the appellant; or (c) a very strong case for relief has been made by the appellant.

Jones v. Jones, 866 N.E.2d 812, 814 (Ind. Ct. App. 2007).

1. Child Support

Mother argues that the evidence does not support a decrease in Father's child support obligation. We agree.

A trial court's calculation of a child support obligation under the child support guidelines is presumptively valid. *Thompson v. Thompson*, 811 N.E.2d 888, 924 (Ind. Ct. App. 2004), *trans. denied*. We review a trial court's decision to award child support for an abuse of discretion. *Id*. "An abuse of discretion occurs if the trial court's decision is clearly against the logic and the effect of the facts and circumstances before the court or if the court has misinterpreted the law." *Id*.

During the final hearing, Father submitted evidence that Mother expended $14.80 on weekly health insurance premiums for M.A.G. and offered a CSOW, which credited Mother $14.80 for weekly health insurance premiums. Furthermore, Mother testified that she maintained health insurance coverage for M.A.G.

Father submitted a revised CSOW along with his motion to correct error. Despite the evidence presented at trial, the revised CSOW credited Father with $14.80 for weekly health care premiums.

Given the evidence, the trial court first improperly found that Father expends $14.80 for M.A.G.'s health care coverage and then improperly credited Father with $14.80 in its order on Father's motion to correct error. We therefore conclude that the trial court abused its discretion in granting Father's motion to correct error as to child support.

Accordingly, we remand with instructions to 1) hold a new hearing to determine which parent can obtain "the most comprehensive coverage at the least cost," *see* Ind. Child Support Guideline 3(E) cmt. 2; 2) determine the amount of the weekly health care

premium to be credited to that parent; and 3) enter a revised dissolution decree and child support order accordingly.

2. Debt Payments

Mother contends the trial court improperly ordered her to reimburse Father for half of the payments he made toward the marital debt after the final separation date. As to the division of property, Indiana Code section 31-15-7-4 provides, in relevant part, as follows:

> (a) In an action for dissolution of marriage under IC 31-15-2-2, the court shall divide the property of the parties, whether:
> (1) owned by either spouse before the marriage;
> (2) acquired by either spouse in his or her own right:
> (A) after the marriage; and
> (B) before final separation of the parties; or
> (3) acquired by their joint efforts.
> (b) The court shall divide the property in a just and reasonable manner by:
> (1) division of the property in kind; [or]
> (2) setting the property or parts of the property over to one (1) of the spouses and requiring either spouse to pay an amount, either in gross or in installments, that is just and property[.]

The trial court "shall presume that an equal division of the marital property between the parties is just and reasonable." I.C. § 31-15-7-5. "However, this presumption may be rebutted by a party who presents relevant evidence . . . ." *Id.*

Marital property includes both assets and liabilities. *Gard v. Gard*, 825 N.E.2d 907, 910 (Ind. Ct. App. 2005). Thus, "[i]n making a division of marital property, the court properly considers the separate property rights of the parties as well as all debts of the parties." *White v. White*, 425 N.E.2d 726, 728 (Ind. Ct. App. 1981). "Generally, the marital estate closes on the date the dissolution petition was filed, and debts incurred by

one party after that point are not to be included in the marital estate." *Thompson*, 811 N.E.2d at 913.

In his motion to correct error, Father asserted that the trial court erred in failing to credit him for the amounts he paid toward the marital debt pursuant to the provisional order. Again, the provisional order assigned to Father the following debt obligations: Dell, CitiFinancial, Sam's Club, Lowe's, the Old National Bank consolidation loan, Verizon Cellular, and Home Depot. The trial court also awarded the use and possession of the marital residence while holding Father responsible for making the mortgage payments.

During the final hearing, the trial court admitted several statements into evidence. The statements showed that Father paid $86.00 on the Dell account in December of 2005; $59.00 on the Sam's Club account in October-November of 2006; and $48.00 on the Home Depot account in October of 2005. Father did not present any evidence regarding amounts paid, if any, on the Old National Bank account or the Lowe's account.

As to the CitiFinancial account, Father testified during the provisional hearing that as of the date of the parties' separation, the parties owed $500.00 to CitiFinancial and that he had paid that debt prior to the provisional hearing.[2] Thus, Father presented evidence that he had paid $779.00 toward unsecured debt during the parties' separation. Finally, Father testified that he had made mortgage payments in the amount of $605.00 per month during the separation.

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[2] During the final hearing, however, Father testified that he had paid $1,400.00 in August of 2005, thereby paying "CitiFinancial off . . . ." (Tr. 137).

Father testified that the parties incurred the debt to Sam's Club when they purchased a television and VCR; the parties incurred the debt to Home Depot when they purchased a weed eater, a push mower and electrical wiring for the marital residence; and the parties incurred the debt to CitiFinancial when they purchased furniture for the marital residence. The trial court awarded possession of these items to Father in the provisional order and later in the dissolution decree. The trial court also awarded him the marital residence, the possession and use of which Father had maintained during the parties' separation.

Given that Father retained the use and possession of the property for which the parties incurred the debts from the date of the provisional hearing until the dissolution and that the trial court awarded—in the decree of dissolution—such property to Father, the decree of dissolution properly denied Father credit for debt payments.

Furthermore, we note that the trial court's original distribution resulted in a 54%-46% division of the marital estate in favor of Father.[3] It appears, however, that the trial court intended to arrive at an equal division of the marital property, as evidenced by the original order for Father to pay Mother an equalization payment, as contemplated by Indiana Code section 31-15-7-4(b)(2).

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[3] The trial court set aside the marital residence, valued at $82,700.00, and personal property, valued at $29,91418, to Father. Thus, the trial court awarded Father assets in the amount of $112,614.08. The trial court also set aside marital debt, including the mortgage on the marital residence, in the amount of $100,737.93, to Father and ordered Father to make an equalization payment in the amount of $1,345.00 to Mother, for a total of $102,082.93. Therefore, Father received an award of $10,531.15. Mother received an award of $8,995.78, which included marital assets in the amount of $15,715.58 and marital debts in the amount of $6,719.80.

An additional award to Father, however, would result in a further deviation from an equal division of the marital assets. Father has presented no evidence that such a deviation is just and reasonable. We therefore conclude that the trial court abused its discretion in granting Father's motion to correct error.

Reverse and remand accordingly.

BAKER, C.J., and BRADFORD, J., concur.