NO. COA14-355

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

THOMAS E. FERGUSON,
Plaintiff

v.

Mecklenburg County
No. 04 CVD 19402

WENDY R. FERGUSON,
Defendant

Appeal by defendant from orders entered 29 October 2013 and 9 December 2013 by Judge Paige B. McThenia in Mecklenburg County District Court. Heard in the Court of Appeals 8 September 2014.

Hamilton Moon Stephens Steele & Martin, PLLC, by Amy Simpson Fiorenza, for Plaintiff (no brief).

The Law Offices of Kenneth T. Davies, by Kenneth T. Davies and Alyssa V. Andrew, for Defendant.

ERVIN, Judge.

Defendant Wendy R. Ferguson appeals from an order denying her motion to deviate from the child support guidelines and ordering Defendant to pay Plaintiff Thomas E. Ferguson child support in the amount of $919 per month, to make payments intended to reduce a child support-related arrearage in the amount of $191.43 per month, and to pay Plaintiff’s attorney’s fees and from an amended order requiring income withholding in

connection with her child support and arrearage obligation.[1] On appeal, Defendant argues that the trial court erred by refusing to deviate from the child support guidelines, by including private school tuition costs as an extraordinary expense in calculating Defendant's child support obligation, and by entering the amended withholding order after an appeal had been noted from the trial court's child support order. After careful consideration of Defendant's challenges to the trial court's orders in light of the record and the applicable law, we conclude that the trial court's child support and amended income withholding orders should be reversed and vacated, respectively, and that this case should be remanded to the Mecklenburg County District Court for further proceedings not inconsistent with this opinion.

I. Factual Background

Plaintiff and Defendant were married on 20 August 1994, separated on 28 October 2003, and divorced on 6 April 2005. The

[1]Although the $191.43 monthly arrearage amount to be paid by Defendant was determined in Finding of Fact No. 23 of the 29 October 2013 order and properly reflected in the 9 December 2013 wage withholding order, decretal paragraph No. 2 of the 29 October 2013 order reflects the monthly arrearage payment to be $100.00, an apparent typographical error that the trial court should address on remand.

parties are the parents of two minor children, Carrie and Brian.[2] On 7 January 2005, Judge Ben S. Thalheimer entered a consent judgment addressing equitable distribution, child custody, child support, and visitation issues that provided, in pertinent part, that Plaintiff would have primary physical custody of the children; that Defendant would have visitation with the children at designated times; that Defendant would pay the tuition and daycare expenses associated with the children's attendance at Northside Christian Academy; and that Plaintiff would pay the children's healthcare and all other expenses.

On 11 January 2008, Defendant filed a motion seeking to have the existing custody and support arrangements modified on the grounds that there had been substantial and material changes in circumstances affecting the welfare of the children, including a reduction in the amount of time that Defendant had been able to spend with the children and changes in the expenses that needed to be incurred on behalf of the children. On 28 January 2009, Plaintiff filed a response to Defendant's motion in which he denied the material allegations of Defendant's motion and sought the entry of an order providing for a modification of the existing child support arrangement. On 17 September 2009, the trial court entered an order awarding

[2]"Carrie" and "Brian" are pseudonyms used for ease of reading and to protect the children's privacy.

Plaintiff primary physical custody of the children, establishing a schedule pursuant to which Defendant was entitled to visitation with the children, and indicating that a separate order modifying the existing child support arrangements would be entered.

On 27 October 2010, Defendant filed a motion seeking to obtain the entry of a child support order that deviated from the child support guidelines. At a hearing held on 25 April 2012 and 6 June 2012, Defendant presented evidence regarding her net monthly income, shared family expenses, debts, and other monthly expenses affecting herself and the children and asserted that her father sometimes helped her make her mortgage payments when she needed financial assistance. In addition, Plaintiff presented evidence regarding his monthly income, shared family expenses, the cost of the children's attendance at Northside Christian Academy, and other monthly expenses for the children, including amounts associated with the purchase of food and the cost of recreational activities.

On 29 October 2013, the trial court entered an order denying Defendant's motion to deviate from the child support guidelines, ordering Defendant to pay child support in the amount of $919 per month, requiring Defendant to pay a $15,314 child support-related arrearage at the rate of $191.43 per

month, compelling Defendant to pay Plaintiff's attorney's fees, and imposing a wage withholding requirement to ensure the making of the required support and arrearage reduction payments. On 15 November 2013, Defendant noted an appeal from the 29 October 2013 order to this Court. On 9 December 2013, the trial court entered an amended wage withholding order. On 19 December 2013, Defendant noted an appeal from the 9 December 2013 order to this Court.

II. Substantive Legal Analysis

A. Motion to Deviate from Child Support Guidelines

In her first challenge to the trial court's order, Defendant contends that the trial court erred by refusing to deviate from the child support guidelines in calculating the amount of child support that she owed Plaintiff. More specifically, Defendant asserts that the trial court erred by failing to make adequate findings of fact concerning the reasonable needs of the children and the relative ability of each party to provide support. Defendant's argument has merit.

1. Standard of Review

"Child support orders entered by a trial court are accorded substantial deference by appellate courts and our review is limited to a determination of whether there was a clear abuse of discretion." *Leary v. Leary*, 152 N.C. App. 438, 441, 567 S.E.2d

834, 837 (2002). Similarly, "[a] trial court's deviation from the [child support] [g]uidelines is reviewed under an abuse of discretion standard." *Beamer v. Beamer*, 169 N.C. App. 594, 597, 610 S.E.2d 220, 223 (2005). "Under this standard of review, the trial court's ruling will be overturned only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *Ludlam v. Miller*, __ N.C. App. __, __, 739 S.E.2d 555, 558 (2013) (quoting *Spicer v. Spicer*, 168 N.C. App. 283, 287, 607 S.E.2d 678, 682 (2005)). "The trial court must, however, make sufficient findings of fact and conclusions of law to allow the reviewing court to determine whether a judgment, and the legal conclusions that underlie it, represent a correct application of the law." *Id.* (quotations and citations omitted).

2. Sufficiency of the Trial Court's Findings

"Child support is to be set in such amount 'as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties.'" *Buncombe Cnty. ex rel. Blair v. Jackson*, 138 N.C. App. 284, 287, 531 S.E.2d 240, 243 (2000) (quoting N.C. Gen. Stat. § 50-13.4(c)). "Child support set consistent with the Guidelines is conclusively presumed to be in such amount as to

meet the reasonable needs of the child and commensurate with the relative abilities of each parent to pay support." *Id.*

"If the trial court imposes the presumptive amount of child support under the Guidelines, it is not . . . required to take any evidence, make any findings of fact, or enter any conclusions of law 'relating to the reasonable needs of the child for support and the relative ability of each parent to [pay or] provide support.'" *Biggs v. Greer*, 136 N.C. App. 294, 297, 524 S.E.2d 577, 581 (2000) (quoting *Browne v. Browne*, 101 N.C. App. 617, 624, 400 S.E.2d 736, 740 (1991)). "However, upon a party's request that the trial court deviate from the Guidelines . . . or the court's decision on its own initiative to deviate from the presumptive amounts . . . [,] the court must hear evidence and find facts related to the reasonable needs of the child for support and the parent's ability to pay." *Id.* at 297, 524 S.E.2d at 581; *Gowing v. Gowing*, 111 N.C. App. 613, 618, 432 S.E.2d 911, 914 (1993) (stating that "[t]he second paragraph of N.C. [Gen. Stat. §] 50-13.4(c) provides that[,] when a request to deviate is made and such evidence is taken, the court should hear the evidence and 'find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support'"). In other words, "evidence of, and findings of fact on, the parties'

income, estates, and present reasonable expenses are necessary to determine their relative abilities to pay." *Brooker v. Brooker*, 133 N.C. App. 285, 291, 515 S.E.2d 234, 239 (1999) (quoting *Norton v. Norton*, 76 N.C. App. 213, 218, 332 S.E.2d 724, 728 (1985)). In the course of making the required findings, "the trial court must consider 'the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.'" *Beamer*, 169 N.C. App. at 598, 610 S.E.2d at 224 (quoting *State ex rel. Fisher v. Lukinoff*, 131 N.C. App. 642, 645, 507 S.E.2d 591, 594 (1998)). "These 'factors should be included in the findings if the trial court is requested to deviate from the [G]uidelines.'" *Spicer*, 168 N.C. App. at 293, 607 S.E.2d at 685 (quoting *Gowing*, 111 N.C. App. at 618, 432 S.E.2d at 914). As a result, given that Defendant requested the trial court to deviate from the child support guidelines, the trial court was required to "hear evidence and find facts related to the reasonable needs of the child for support and the parent's ability to pay." *Biggs*, 136 N.C. App. at 297, 524 S.E.2d at 581.

The trial court's order contained the following findings of fact, among others:

> 16. The Court finds that [Plaintiff] is employed full-time with the Mecklenburg County Police Department and part-time as head of security for Northside Christian Church. Throughout the time period in question, [Plaintiff] has enjoyed earnings from sporadic contract jobs.
>
> 17. The Court finds that [Defendant] is employed full-time with the Charlotte-Mecklenburg County School system. Throughout the time period in question[,] [Defendant] has enjoyed earnings from sporadic summer jobs and tutoring.
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> . . . .
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> 19. The Court heard evidence regarding the reasonable needs of the children for support and the relative ability of each parent to provide support based upon [Defendant's] request to deviate from the North Carolina Child Support Guidelines.
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> 20. The Court finds by the greater weight of the evidence that the application of the Guidelines <u>would</u> in fact meet the reasonable needs of the children considering the relative ability of each parent to provide support and there should be no deviation.
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> 21. Specifically, the Court finds that any inability of [Defendant] to balance a reasonable monthly budget (sufficient to meet the children's reasonable expenses) is as a result of [Defendant's] own actions, her refusal to obtain summer employment, or to work on alternate weeks, and her choices with regard to incurring debt. The Court finds she is intentionally underemployed and depressing her income as a result.

> 22. [In this finding of fact, the trial court provided a chart reflecting the parties' actual monthly incomes, Plaintiff's payments of the children's health insurance premiums, Plaintiff's work-related child care costs, and "extraordinary expenses" from 2008 to 2012.]
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> 23. The total amount that [Defendant] owes is $2,600.00 in child support arrears and $600.00 in attorneys' fees per the Contempt Order plus . . . $11,814 . . . =$15,314. There are 80 months until the youngest child turns 18 so [Defendant] will repay these arrears in the amount of $191.43 per month until the full amount is paid. This amount shall be paid by wage withholding.
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> 24. The amount of child support which [Defendant] will owe beginning September 1, 2013 and continuing until the earlier of the date that child support is modified or terminated by a court of law is Nine Hundred Nineteen Dollars and no/100 ($919) per month. This amount shall be paid by automatic wage withholding. Until the wage withholding process is activated [Defendant] shall pay the child support amount directly to [Plaintiff].

A careful examination of these findings establishes that the trial court failed to make specific findings regarding the relative ability of each parent to provide support as required by N.C. Gen. Stat. § 50-13.4(c).[3] Aside from the parties'

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[3]Although our dissenting colleague has concluded that "the trial court's findings demonstrate that the court determined the presumptive amount of child support, heard evidence regarding the children's needs and the ability of the parents to provide support, including the cost of the extraordinary expense, and determined that the presumptive Guidelines provided reasonable support for the children," we do not believe, for the reasons

monthly incomes from 2008 to 2012, the amount of which is set forth in the chart contained within Finding of Fact. No. 22, we are unable to determine from an examination of the trial court's findings whether the trial court gave any consideration to the relative ability of each parent to provide support. In addition, there is no indication that the trial court considered "the accustomed standard of the living of the child[ren] and the parties" as required by N.C. Gen. Stat. § 50-13.4(c). *Spicer*, 168 N.C. App. at 294, 607 S.E.2d at 686 (stating that, "[w]ithout findings regarding the child's or parties' accustomed standard of living and the reasonableness of the expenses in light of that standard of living, we cannot determine whether the trial court considered the standard of living factor and whether the trial court's finding of reasonable needs . . . is supported by the evidence"). As a result, given the absence of findings of fact concerning the reasonable needs of the children and the relative ability of each party to pay child support, we have no way to evaluate the correctness of the trial court's

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outlined in the text of this opinion, that a trial court is entitled to simply state, without further explanation or the making of specific findings concerning the level of income reasonably available to each party and the amount of expenses that must reasonably be incurred for the benefit of the children, that an application of the guidelines results in the establishment of an appropriate amount of child support in a case in which a party has requested the trial court to deviate from the guidelines.

determination "that the application of the Guidelines would in fact meet the reasonable needs of the children considering the relative ability of each parent to provide support" so that there should be "no deviation" from the Guidelines.

At the hearing before the trial court, Plaintiff and Defendant presented extensive evidence concerning the cost of caring for the children, including the amounts deemed appropriate for the children's healthcare, maintenance, education, food, and recreational activities. In addition, both parties introduced evidence concerning their incomes and expenses and Defendant described the amount of the debts that she owed. "It is not enough[, however,] that there [is] evidence in the record sufficient to support findings which *could have been made*"; instead, "[t]he trial court must itself determine what pertinent facts are actually established by the evidence before it[.]" *Beamer*, 169 N.C. App. at 599, 610 S.E.2d at 224 (quoting *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (1980)) (emphasis in original). In other words, the fact that the record contains evidence from which the necessary findings could have been made does not have the effect of absolving the trial court from the obligation to actually make the required findings concerning the needs of the children and the parties' relative abilities to pay in a case in which a

deviation from the guidelines has been requested. As a result, given that a trial court's failure to make findings of fact addressing the relative ability of the parents to provide support and the expenses that are needed to meet the children's needs requires a reviewing court to remand the relevant case to the trial court for the entry of a new order containing additional findings of fact, *Brooker*, 133 N.C. App. at 291, 515 S.E.2d at 239, we hold that the trial court's order must be reversed and this case must be remanded to the Mecklenburg County District Court for the entry of a new order addressing the parties' request for a modification of the existing child support arrangement and the validity of Defendant's request for a deviation from the child support guidelines that contains adequate findings of fact concerning reasonable needs of the children and the parties' relative ability to pay support.[4]

B. Extraordinary Expenses

Secondly, Defendant contends that the trial court erred by concluding that the cost of the children's attendance at a private school constituted an extraordinary expense and by requiring Defendant to pay the cost of their attendance at a

[4]As part of this process, the trial court is, of course, entitled to reconsider and make appropriate findings of fact and conclusions of law concerning the extent, if any, to which Defendant has inappropriately depressed her income in an attempt to reduce her child support payment obligation.

specific private school. More specifically, Defendant argues that the trial court erred by failing to make adequate findings of fact in support of its determination that the cost of the children's private school education constitutes an extraordinary expense and abused its discretion by requiring Defendant to pay the cost of their attendance at the Northside Christian Academy based on the religious benefits of the education that the children would receive at that educational institution. Once again, we conclude that Defendant's argument has merit.

1. Standard of Review

"The trial court is vested with discretion to make adjustments to the guideline amounts for extraordinary expenses, and the determination of what constitutes such an expense is likewise within its sound discretion." *Doan v. Doan*, 156 N.C. App. 570, 574, 577 S.E.2d 146, 149 (2003) (citing *Biggs*, 136 N.C. App. at 298, 524 S.E.2d at 581). "It is well established that[,] where matters are left to the discretion of the trial court, appellate review is limited to a determination of whether there was a clear abuse of discretion." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). As a result, we will review the trial court's determination that the cost of the children's private school constituted an extraordinary expense and should be included in calculating Defendant's child support

obligation under the guidelines utilizing an abuse of discretion standard of review.

2. Validity of Court's Extraordinary Expense Decision

According to the child support guidelines, the trial court "may make adjustments for extraordinary expenses and order payments for such term and in such manner as the [c]ourt deems necessary." *Mackins v. Mackins*, 114 N.C. App. 538, 548, 442 S.E.2d 352, 358, *disc. review denied*, 337 N.C. 694, 448 S.E.2d 527 (1994). The "extraordinary expenses [contemplated by the child support guidelines] include . . . [a]ny expenses for attending any special or private elementary or secondary schools to meet the particular educational needs of the child(ren)," *Mackins*, 114 N.C. App. at 549, 442 S.E.2d at 359, with a trial court having the authority to "add [these expenses] to the basic child support obligation and order [them to be] paid by the parents in proportion to their respective incomes if the court determines the expenses are reasonable, necessary, and in the child's best interest." *Ludlam*, __ N.C. App. at __, 739 S.E.2d at 563. However, "incorporation of such adjustments into a child support award does *not* constitute deviation from the Guidelines," so that, "absent a party's request for deviation, the trial court is not required to set forth findings of fact related to the child's needs and the non-custodial parent's

ability to pay extraordinary expenses. *Biggs*, 136 N.C. App. at 298, 524 S.E.2d at 581-82. As a result of the fact that Defendant requested a deviation from the child support guidelines, however, the trial court was obligated to make such findings regarding the extraordinary expense request at issue here.

In determining that the cost of the children's private school education constituted an appropriate extraordinary expense, the trial court found that:

> 18. The Court finds that the cost for the children to attend Northside Christian Academy is an extraordinary expense to be considered when applying the North Carolina Child Support Guidelines. Specifically[,] the Court finds, that such expenses are justified because the children have grown up with Northside Christian Academy, it is where the entirety of their educational experience has occurred. The Court finds that this private school can supply something that public school cannot. Public schools cannot provide God. That is what the children have grown up with. God is a part of their lessons.

Although Finding of Fact No. 18 describes in detail the reasoning process underlying the trial court's determination that the cost of the children's attendance at Northside Christian Academy constituted an appropriate extraordinary expense for purposes of calculating the amount of child support that Defendant owed under the guidelines, the trial court,

despite the existence of a request for a deviation from the guidelines, did not make any findings addressing the issue of the parties' relative abilities to pay the cost of the children's attendance at Northside Christian Academy, particularly given the fact that Defendant presented evidence tending to show that she lacked the ability to pay the cost of the children's matriculation at that institution. In the absence of sufficient factual findings addressing the issue of Defendant's ability to pay for the children's education at Northside Christian Academy, we are unable to determine whether the trial court abused its discretion by requiring Defendant to pay for the cost of the children's private school education.[5] As a result, the trial court's order must be reversed and this case must be remanded to the trial court for the entry of a new order that contains sufficient findings of fact addressing the issue of Defendant's ability to pay the cost of the children's education at Northside Christian Academy.[6]

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[5]As should be obvious, the trial court would have been under no obligation to make findings of fact concerning Defendant's ability to pay the educational expenses discussed in the text of this opinion in the event that Defendant had not requested a deviation from the child support guidelines. *Biggs*, 136 N.C. App. at 298, 524 S.E.2d at 581-82.

[6]In light of our determination that the trial court's order must be reversed and that this case must be remanded to the trial court for the making of findings relating to Defendant's ability to pay the extraordinary expense of the children's

C. Jurisdiction to Enter Amended Withholding Order

Finally, Defendant argues that the trial court lacked the authority to enter the amended withholding order. More specifically, Defendant argues that the trial court lacked jurisdiction to enter the amended withholding order in light of the fact that Defendant had noted, and subsequently perfected, an appeal from the 29 October 2013 order. Once again, we conclude that Defendant's argument has merit.

1. Standard of Review

"Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). "When the record shows a lack of jurisdiction in the lower court, the appropriate action on the part of the appellate court is to arrest judgment or vacate any order entered without authority." *State v. Felmet*, 302 N.C. 173, 176, 273 S.E.2d 708, 711 (1981).

2. Trial Court's Jurisdiction

According to well-established North Carolina law, "once an appeal is perfected, the lower court is divested of jurisdiction." *Faulkenbury v. Teachers' & State Employees'*

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private school tuition, we need not address and should not be understood to have commented upon the merits of Defendant's remaining challenges to the trial court's decision to require Defendant to pay the cost of privately educating the children at Northside Christian Academy.

Retirement System, 108 N.C. App. 357, 364, 424 S.E.2d 420, 422, *disc. review denied in part*, 334 N.C. 162, 432 S.E.2d 358, *aff'd,* 335 N.C. 158, 436 S.E.2d 821 (1993); N.C. Gen. Stat. § 1-294. "An appeal is not 'perfected' until it is docketed in the appellate court, but when it is docketed, the perfection relates back to the time of notice of appeal, so any proceedings in the trial court after the notice of appeal are void for lack of jurisdiction." *Romulus v. Romulus*, 216 N.C. App. 28, 33, 715 S.E.2d 889, 892 (2011).

As the record clearly reflects, Defendant noted an appeal from the 29 October 2013 order on 15 November 2013 and perfected her appeal by filing a record on appeal on 28 March 2014. For that reason, the trial court lost jurisdiction over this case as of 15 November 2013. Thus, given that the amended withholding order was entered after the date upon which Defendant noted her appeal from the 29 October 2013 order, the amended withholding order is "void for lack of jurisdiction." *Romulus*, 216 N.C. App. at 33, 715 S.E.2d at 892. As a result, the amended withholding order must be vacated.[7]

III. Conclusion

[7]As an aside, we note that N.C. Gen. Stat. § 50-13.4(f)(9) authorizes the enforcement of a child support obligation through the use of the contempt power during the course of the appellate process. However, as the record clearly reflects, the entry of the amended withholding order did not constitute an exercise of the trial court's contempt power.

Thus, for the reasons set forth above, we conclude that Defendant's challenges to the trial court's orders have merit. As a result, the trial court's child support order should be, and hereby is, reversed; the trial court's amended withholding order should be, and hereby is, vacated; and this case should be, and hereby is, remanded to the Mecklenburg County District Court for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

Judge MCCULLOUGH concurs.

Judge BELL concurs in part and dissents in part in separate opinion.

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Plaintiff,

v.

Mecklenburg County
No. 04 CVD 19402

WENDY R. FERGUSON,
Defendant.

BELL, Judge, concurring in part, dissenting in part.

Although I agree with my colleagues that the trial court lacked the authority to enter the amended withholding order, I respectfully dissent from the majority's position that the trial court failed to make adequate findings of fact concerning the reasonable needs of the children and the relative ability of each party to provide support or the cost of private school tuition as an extraordinary expense.

As noted by the majority, here, the trial court made findings regarding the parties' incomes and payments made by Plaintiff for health insurance, work-related child care, and extraordinary expenses. It then made the following relevant findings of fact:

> 19. The Court heard evidence regarding the reasonable needs of the children for support and the relative ability of each parent to provide support based upon

> Defendant/Mother’s request to deviate from the North Carolina Child Support Guidelines.
>
> 20. The Court finds by the greater weight of the evidence that the application of the Guidelines would in fact meet the reasonable needs of the children considering the relative ability of each parent to provide support and there should be no deviation.
>
> 21. Specifically, the Court finds that any inability of Defendant/Mother to balance a reasonable monthly budget (sufficient to meet the children’s reasonable expenses) is as a result of Defendant/Mother’s own actions, her refusal to obtain summer employment, or to work on alternate weeks, and her choices with regard to incurring debt. The Court finds she is intentionally underemployed and depressing her income as a result.

Further, the trial court’s order includes as Finding of Fact number 22 a detailed spreadsheet reflecting the parties’ respective incomes, the costs of health insurance and childcare expenses, and the extraordinary expense.

I would conclude that the trial court’s findings demonstrate that the court determined the presumptive amount of child support, heard evidence regarding the children’s needs and the ability of the parents to provide support, including the cost of the extraordinary expense, and determined that the presumptive Guidelines provided reasonable support for the children. The findings noted above relate to the ability of each

parent to provide support. I believe these findings of fact adequately satisfy N.C. Gen. Stat. § 50-13.4(c) and support the trial court's decision not to deviate from the Guidelines.

Further, "[c]hild support set in accordance with the Guidelines is conclusively presumed to be in such amount as to meet the reasonable needs of the child and commensurate with the relative abilities of each parent to pay support." *Beamer v. Beamer*, 169 N.C. App. 594, 596, 610 S.E.2d 220, 222-23 (2005) (citation and internal quotation marks omitted). Because the trial court applied the presumptive guidelines in calculating Defendant's child support obligation, its "determination as to the proper amount of child support will not be disturbed on appeal absent a clear abuse of discretion, *i.e.* only if manifestly unsupported by reason." *Row v. Row*, 185 N.C. App. 450, 461, 650 S.E.2d 1, 8 (2007) (citation and internal quotation marks omitted). After thoroughly reviewing the record, I cannot conclude that the trial court's decision not to deviate from the Guidelines was manifestly unreasonable.

Accordingly, because the record does not support a conclusion that the trial court's adherence to the presumptive guidelines was "so arbitrary that it could not have been the result of a reasoned decision," *Leary v. Leary*, 152 N.C. App.

438, 441, 567 S.E.2d 834, 837 (2002), I respectfully dissent. I would affirm the trial court's order denying Defendant's request for a deviation from the Child Support Guidelines and including the private school tuition as an extraordinary expense.