MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Dorothy Ferguson
Anderson, Indiana

ATTORNEY FOR APPELLEES

Robert C. Beasley
Beasley Law Office
Muncie, Indiana

IN THE COURT OF APPEALS OF INDIANA

Craig A. Fields,
Appellant-Respondent,

v.

Jane Allerton and Michael Allerton,
Appellees-Intervenors.

November 30, 2022

Court of Appeals Case No. 22A-DR-939

Appeal from the Delaware Circuit Court

The Honorable John M. Feick, Judge

Trial Court Cause No. 18C04-0506-DR-112

Mathias, Judge.

[1] Craig Fields ("Father") appeals the Delaware Circuit Court's orders on his petition to modify child support and on Jane and Michael Allerton's ("Grandparents'") petition for determination of amounts due for delinquent support, for reimbursement of healthcare expenses, and for post-secondary

educational support in this dissolution proceeding. Father presents the following issues for our review:

1. Whether the trial court abused its discretion when it modified his child support obligation.

2. Whether the trial court abused its discretion when it calculated his child support arrearage.

3. Whether the trial court abused its discretion when it ordered him to reimburse Grandparents for past medical expenses for his daughters, A.D. and A.F. (collectively, "Children").

4. Whether the trial court abused its discretion when it ordered him to partially reimburse Grandparents for a laptop they bought for A.D.

5. Whether the trial court abused its discretion when it ordered him to pay $3,500 of Grandparents' attorney's fees.

[2] We affirm.

Facts and Procedural History

[3] Father and Sara Winstead ("Mother") were married and had two children together, A.D. and A.F.[1] In 2006, Father and Mother divorced. In 2007, Grandparents were awarded custody of the Children. The trial court ordered

[1] The parties do not provide the Children's birth dates, but, in March 2022, A.D. was nineteen and A.F. was seventeen.

Father to pay child support to Grandparents in the amount of $139 per week. In 2014, the court ordered Father to pay 100% of the Children's out-of-pocket medical expenses. In 2020, A.D. graduated from high school and started college. A.D.'s college required her to have a laptop, and Grandparents bought her one.

[4] In May 2020, Father filed a petition to modify his child support obligation. In October 2020, Grandparents filed a petition for post-secondary educational support from Father for A.D. And in May 2021, Grandparents filed a petition for determination of amounts due for delinquent support, for reimbursement of healthcare expenses, and for post-secondary educational support for A.F.

[5] During a February 2022 hearing, Father requested additional time to analyze Grandparents' exhibit calculating Father's child support arrearage. The trial court granted Father "fourteen days to dispute" the Grandparents' calculation, and the court stated that, barring any dispute by Father, the court would use Grandparents' calculation. Tr. p. 82. Father agreed, and he did not dispute the calculation within fourteen days.

[6] On March 9, Grandparents filed a verified motion to establish support arrears and alleged that Father's arrearage totaled $6,897.38 as of July 23, 2021. The trial court granted that motion. On March 10, Father filed a motion to set aside the court's March 9 order "and/or Motion to Correct Error[.]" Appellant's App. Vol. 2, p. 124. Father alleged that Grandparents' calculation was incorrect and unsupported by evidence. Father alleged that his arrearage was only $191.

[7] The trial court held a hearing on all pending motions on March 11. During the hearing, Father agreed that A.D. was emancipated on January 15, 2021. And he agreed that "there needs to be a modification" of his child support obligation in light of her emancipation. Tr. p. 67. Father submitted an unverified child support worksheet to support his argument that his weekly child support obligation for A.F. should be $132. Grandparents presented an unverified child support worksheet to support their argument that Father's weekly child support obligation should be $164.94. Grandparents also presented evidence that they had paid $6,635.75 in medical bills for the Children, $1,581.39 for a laptop for A.D., and $4,536.50 in attorney's fees.

[8] The trial court's order included findings and conclusions in relevant part as follows: Father's child support obligation would be modified effective July 30, 2022, to $165 per week; Father's child support arrearage is $6,897.38; Father shall reimburse Grandparents for $6,235 in past medical expenses for the Children; Father shall pay Grandparents $500 in partial reimbursement for A.D.'s laptop; and Father shall pay $3,500 towards Grandparents' attorney's fees. This appeal ensued.

Discussion and Decision

Standard of Review

[9] The trial court entered findings and conclusions under Indiana Trial Rule 52(A). The court's judgment will not be set aside unless it is clearly erroneous. *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016). A judgment is clearly

erroneous when (1) there is no evidence supporting the findings, (2) the evidence-based findings do not support the judgment, or (3) the trial court applied the wrong legal standard. *K.I. ex rel. J.I. v. J.H.*, 903 N.E.2d 453, 457 (Ind. 2009).

[10] In reviewing the court's findings and conclusions, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). We consider the evidence in the light most favorable to the court's decision, and we will not reweigh the evidence or substitute our judgment for that of the trial court. *Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011). Such deference is particularly important here as the trial court was in "a superior position 'to assess credibility and character through both factual testimony and intuitive discernment.'" *Gold v. Weather*, 14 N.E.3d 836, 841 (Ind. Ct. App. 2014) (quoting *Best*, 941 N.E.2d at 502), *trans. denied*.

Issue One: Child Support Modification

[11] Father first contends that the trial court erred when it modified his child support obligation. Indiana Code section 31-16-8-1 provides in relevant part that child support may be modified 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.

[12] Father maintains that the trial court did not make findings relevant to either element under the statute. And he asserts that the evidence does not support a modification under either element. However, as Grandparents point out, Father invited any error here when he conceded during the hearing that "there needs to be a modification [of child support] because [A.D.] is emancipated[.]" Tr. p. 67. Indeed, this Court has held that a child's emancipation "causes a change in circumstances so substantial and continuing as to necessitate a modification of child support." *Sutton v. Sutton*, 773 N.E.2d 289, 295 (Ind. Ct. App. 2002). The trial court did not err when it modified Father's child support obligation.

Issue Two: Child Support Arrearage

[13] Father next contends that the trial court erred when it calculated his child support arrearage. Specifically, Father asserts that the court's order is not supported by any evidence. We do not agree.

[14] During a hearing on February 8, 2022, the trial court considered an emergency motion to continue the hearing filed by Father. Both Father and Father's counsel had Covid-19 at that time, but Father's counsel was able to appear via Zoom. Grandparents' counsel argued that the hearing had already been "continued several times" and advised the court that Grandparents were

"prepared to go ahead and submit evidence" of Father's child support arrearage, which had been recalculated each time the hearing had been continued. Tr. p. 80. Father's counsel acknowledged having received exhibits from Grandparents to support their calculation of Father's arrearage. The trial court asked Father's counsel whether Father agreed with Grandparents' calculation or whether he was "disputing" the amount. *Id.* at 81. Father's counsel asked for additional time to consider the issue, and the court agreed to give Father "fourteen days to dispute it." *Id.* at 82. And the court stated that, if Father did not dispute the calculation, the court would adopt it.

[15] Father did not dispute Grandparents' arrearage calculation until March 10, which was more than fourteen days after the February 8 hearing. Accordingly, in its order, the trial court found that Father's child support arrearage "as of July 23, 2021, was $6,897.38[.]" Appellant's App. Vol. 2, p. 39. During the March 11 hearing, Father asked the trial court to "set aside" its order on the arrearage. Tr. p. 6. Father's counsel explained that she did not object to Grandparents' calculation within the allotted fourteen days because she was under the impression that Grandparents were going to submit a revised calculation, which she never received. The trial court denied Father's motion to set aside its determination of the arrearage amount.

[16] By Father's failure to object to Grandparents' calculation of his arrearage, Father, in effect, stipulated to the amount and cannot now complain. *See, e.g.*, *Trout v. Trout*, 638 N.E.2d 1306, 1308 (Ind. Ct. App. 1994) (holding husband assented to summary proceeding in dissolution action by his failure to object),

trans. denied. In any event, Grandparents provided testimony and exhibits to support their calculation of the arrearage. The trial court did not err when it calculated Father's arrearage.

Issue Three: Children's Medical Bills

[17] Father contends that Grandparents "did not submit any admissible evidence" to show that they had paid the Children's medical bills as alleged in their summary exhibit submitted to the trial court. Appellant's Br. at 16. Father asserts that the summary exhibit is barred under collateral estoppel. In support, Father states that it "appears from testimony of the parties that the issue of medical bills was heard at a hearing in 2014." *Id.* at 17. But Father does not support that speculative contention with cogent argument, and it is waived.

[18] Waiver notwithstanding, Father cannot show that the trial court erred when it ordered him to reimburse Grandparents for past medical bills for the Children. In 2014, the trial court had ordered that Father would be responsible for 100% of the Children's medical bills. Grandparents testified that the medical bills for which they were seeking reimbursement had been incurred by the Children since that time. The trial court did not err when it ordered Father to reimburse Grandparents $6,235 in past medical expenses for the Children.

Issue Four: Laptop

[19] Father contends that the trial court erred when it ordered him to partially reimburse Grandparents for a laptop they bought for A.D. to use in college. Father asserts that the trial court did not make required findings under Indiana

Code section 31-16-6-6(f), which permits a parent or child to petition for child support to continue "for educational needs" until a child turns nineteen years old. Father alleges that the court was required to consider A.D.'s "aptitude and ability" and her ability to contribute financially to her educational needs. Appellant's Br. p. 17. But Father does not support that assertion with citation to authority. In any event, Father has not shown that the trial court was required to make specific findings on those issues. And Father's contentions on appeal amount to a request that we reweigh the evidence, which we will not do. The trial court did not err when it ordered Father to reimburse Grandparents $500 towards the purchase of A.D.'s laptop.

Issue Five: Attorney's Fees

[20] Finally, Father contends that the trial court erred when it ordered him to pay $3,500 of Grandparents' attorney's fees. Indiana Code section 31-16-11-1 provides that a court may order a party in a post-dissolution proceeding to pay a reasonable amount for attorney's fees. The determination of the payment of attorney's fees in proceedings to modify a child support award is within the sound discretion of the trial court and will be reversed only upon a showing of a clear abuse of that discretion. *Himes v. Himes*, 57 N.E.3d 820, 830 (Ind. Ct. App. 2016).

> In assessing attorney's fees, the court *may consider* such factors as the resources of the parties, the relative earning ability of the parties, and other factors that bear on the reasonableness of the award. [*Selke v. Selke*, 600 N.E.2d 100, 102 (Ind. 1992)]. In addition, any misconduct on the part of one of the parties that

> directly results in the other party incurring additional fees may be taken into consideration. *Claypool*[*v. Claypool*], 712 N.E.2d [1104,] 1110[(Ind. Ct. App. 1999), *trans. denied*]. *The court need not give reasons for its determination*. *In re Marriage of Tearman*, 617 N.E.2d 974, 978 (Ind. Ct. App. 1993).

Gilbert v. Gilbert, 777 N.E.2d 785, 795 (Ind. Ct. App. 2002) (emphases added).

[21] Here, the trial court found in relevant part as follows:

> [T]he Intervenors have requested reimbursement of their attorney fees in the amount of $4,536.50. This case has been more complicated than necessary and due to no fault of [Grandparents]. ln addition, they have served as exclusive custodian[s] for the children for many years, with little parenting time provided by the parents. The Court finds [Father] should reimburse [Grandparents'] attorney fees in the amount of $3,500.00. Respondent shall pay one-half (1/2) of any income tax refunds he receives for calendar year 2021, within ten (10) days following his receipt of the same. Any remaining balance shall be paid at the rate of $50.00 per week until paid in full.

Appellant's App. Vol. 2, p. 41.

[22] Father contends that "a conclusion that Father created complications in the case" is unsupported by the evidence and is, therefore, "without merit." Appellant's Br. p. 19. Father also asserts that the trial court was *required* to consider Grandparents' income and failed to do so. Father argues that the American Rule should apply here. Father is incorrect.

[23] First, it was Father's accrual of a substantial child support arrearage and refusal to pay the Children's medical bills over the years that led to Grandparents'

litigation of those issues. Second, while a trial court *may* consider the parties' relative earning abilities and resources, it is not required to do so. *See Gilbert*, 777 N.E.2d at 795. Finally, Grandparents are entitled to attorney's fees under Indiana Code section 31-16-11-1, so the American Rule does not apply here. *See River Ridge Dev. Auth. v. Outfront Media, LLC*, 146 N.E.3d 906, 912 (Ind. 2020).

[24] Father also contends that the trial court erred when it ordered him to pay Grandparents out of his 2021 tax refund. While his argument on this issue is somewhat difficult to discern, he appears to allege that he files taxes jointly with his current wife and, therefore, one-half of his tax refund belongs to his wife. He argues that

> [s]ince [Father's current] wife is not a party to this action [Grandparents] lack standing to seek damages in this form as [Father's] Wife cannot assert any claim in defense, nor should she be liable to give up her property without due process. Therefore, the Court cannot award a portion of possible tax return to [Grandparents].

Appellant's Br. p. 21. However, the trial court's order clearly states that Father shall pay "one-half (1/2) of any income tax refunds *he* receives for calendar year 2021," which plainly exempts any tax refund his wife receives. Appellant's App. Vol. 2, p. 41. Father's contention on this issue is without merit. The trial court did not err when it ordered Father to pay $3,500 of Grandparent's attorney's fees.

Conclusion

[25] The trial court did not err when it modified Father's child support obligation. The trial court did not err when it calculated Father's child support arrearage. The trial court did not err when it ordered Father to reimburse Grandparents for medical expenses for the Children. The trial court did not err when it ordered Father to reimburse Grandparents for $500 towards A.D.'s laptop. And the trial court did not err when it ordered Father to pay $3,500 for Grandparents' attorney's fees.

[26] Affirmed.

Robb, J., and Weissmann, J., concur.