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IN THE
COURT OF APPEALS OF INDIANA

Jeremy A. Walters,
Appellant-Respondent,

v.

Jamie E. Walters,
Appellee-Petitioner.

April 22, 2022

Court of Appeals Case No. 21A-DC-2218

Appeal from the Fountain Circuit Court

The Honorable Stephanie Campbell, Judge

Trial Court Cause No. 23C01-1907-DC-293

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, Jeremy Walters (Husband), appeals the trial court's child support order entered pursuant to the dissolution of his marriage to Appellee-Petitioner, Jamie Walters (Wife).[1]

[2] We affirm in part, reverse in part, and remand for further proceedings.

ISSUES

[3] Husband presents this court with three issues, which we consolidate and restate as the following two:

(1) Whether the trial court's determination that he was voluntarily underemployed is clearly erroneous; and

(2) Whether the trial court's order imputing a certain amount of weekly gross income to Husband is clearly erroneous.

FACTS AND PROCEDURAL HISTORY

[4] Husband and Wife are the parents of three children (Children), A.W., born in 2011, L.W., born in 2013, and R.W., born in 2017. On April 4, 2014, the parties married. On July 27, 2019, Wife filed a petition for dissolution.

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[1] As part of its decree of dissolution, the trial court restored Wife's surname before her marriage, Ehlenfeld.

[5] The parties twice engaged in mediation, resolving issues related to the division of the marital estate but leaving the issues of custody of Children and child support unresolved . On May 21, 2021, and June 28, 2021, the trial court held a final hearing at which the following evidence supporting the judgment was admitted. Husband has approximately twenty years of experience in the pipeline industry as a boom operator and supervisor. Prior to 2019, Husband had never been unemployed for more than one month at a time. From 2016 to 2018, Husband was the sole breadwinner of the family, working primarily in West Virginia. This working arrangement required Husband to live apart from Wife and Children for months at a time. Husband's adjusted gross income during those years was $215,050 (2016), $185,866 (2017), and $210,480 (2018). Husband was an active member of two unions during the marriage, and, as of the final hearing in this matter, he continued to pay his union dues.

[6] While married to Wife, Husband told her on occasions "too many to count" that, should they get a divorce, he would not pay child support, he would become a "deadbeat" and a "bum", and that he refused to allow anyone to dictate his access to Children. (Transcript p. 29). Husband last said this to Wife sometime in 2019. Following Wife's filing of the petition for dissolution, Husband did not return to work in the pipeline industry. Husband was unemployed until May 24, 2021, when he began work as a car salesman at a dealership in Tilton, Illinois, making $2,500 a month. Husband never told Wife that he had been laid off in the fall of 2019 from his pipeline job.

[7] At the final hearing, Wife requested that the trial court impute a gross weekly income of $3,920 per week to Husband, a figure she derived by averaging Husband's 2016 to 2018 income. Husband requested that his child support obligation be based on his gross weekly income from the car dealership, $577. When asked about his previously-expressed unwillingness to pay child support, Husband denied ever making those statements to Wife. Husband testified that he had been laid off in the fall of 2019 and that, since then, he had contacted "Chad" at his union six times, but that no employment was available. (Tr. p. 54). Husband expressed his desire not to live apart from Children as he had when he worked in West Virginia. Husband also stated that he was unsure when or if he would receive a commission for any car sales he made at his current job at the dealership.

[8] On September 13, 2021, the trial court entered its order granting primary physical custody of Children to Wife and setting the parties' respective child support obligations based on the following relevant findings:

> 25. [Husband did not dispute Wife's evidence of his employment history and earnings as evinced by their tax returns.] Furthermore, while Husband testified that he was laid off from said employment in or around August 2019, Husband also testified that he has made little effort to find similar employment since that time with either union or in the same industry in which he holds union cards . . . Husband has made comments to Wife on multiple occasions that he would not pay child support and would become a deadbeat. []

> 26. No evidence was presented by Husband that the pay scale for union or similar employment in the Midwest is different than he earned in West Virginia. Husband continues to pay his union dues and is a member in good standing with the pipefitters and operating engineers union. []
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> 27. The [c]ourt finds that Husband is voluntarily underemployed. The [c]ourt imputes income to Husband consistent with the income he earned as a pipeline operator and the income he has the ability to earn. []
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> * * * *
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> 31. [The c]ourt again notes that it has no intent to require Husband to return to West Virginia to work and thus be away from [C]hildren.

(Appellant's App. Vol. II, pp. 14-15). The trial court imputed weekly gross income of $3,875.06[2] to Husband based on his average weekly income from 2016 to 2018.

[9] Husband now appeals. Additional facts will be provided as necessary.

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[2] This amount differs from the amount requested by Wife. Husband does not base any of his appellate arguments on this difference.

DISCUSSION AND DECISION

I. *Standard of Review*

[10] Husband challenges the trial court's determination that he is voluntarily underemployed and the amount of potential income imputed to him. We begin by noting that, while the chronological case summary indicates that the parties were twice directed by the trial court to submit proposed decrees of dissolution, there is no evidence in the record that either party submitted any. Therefore, we consider the trial court's findings of fact and conclusions thereon to be sua sponte. In such cases,

> [s]ua sponte findings only control issues that they cover, while a general judgment standard applies to issues upon which there are no findings. We may affirm a general judgment with findings on any legal theory supported by the evidence. As for any findings that have been made, they will be set aside only if they are clearly erroneous. A finding is clearly erroneous if there are no facts in the record to support it, either directly or by inference.

Miller v. Miller, 72 N.E.3d 952, 954 (Ind. Ct. App. 2017). In conducting our review, we will not reweigh the evidence or reassess the credibility of the witnesses, and we will consider only that evidence and reasonable inferences that favor the judgment. *Hickey v. Hickey*, 111 N.E.3d 242, 245 (Ind. Ct. App. 2018). This court has recognized the latitude with which we review a trial court's decisions in such matters. *Miller*, 72 N.E.3d at 954. We will reverse decisions regarding a parent's underemployment and imputing potential

income to that parent only for an abuse of the trial court's discretion. *In re Paternity of C.B.*, 112 N.E.3d 746, 761 (Ind. Ct. App. 2018), *trans. denied*.

II. *Voluntary Underemployment*

[11] Husband challenges the trial court's determination that he was voluntarily underemployed. The Indiana Child Support Guidelines (the Guidelines) provide that a parent's child support obligation is based upon his or her weekly gross income, which is defined as "actual weekly gross income of the parent employed to full capacity, potential income if unemployed or underemployed, and the value of 'in-kind' benefits received by the parent." Ind. Child Support Guideline 3(A)(1). For purposes of imputing potential income as weekly gross income, the Guidelines further provide as follows:

> If a court finds a parent is voluntarily unemployed or underemployed without just cause, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's employment and earnings history, occupational qualifications, educational attainment, literacy, age, health, criminal record or other employment barriers, prevailing job opportunities, and earnings levels in the community.

Child Supp. G. 3(A)(3). One of the purposes of imputing potential income to a parent is "to discourage a parent from taking a lower paying job to avoid the payment of significant support." *Id.*, cmt (2)(c). A trial court may properly impute potential income to a parent who it has determined has purposefully become underemployed in order to avoid paying child support. *See In re*

Paternity of Pickett, 44 N.E.3d at 766 ("the Guidelines clearly indicate that a parent's avoidance of child support is grounds for imputing potential income[.]").

[12] Here, Wife testified at the final hearing that Husband had told her on numerous occasions that he had decided that he would not pay child support if they divorced and would become a "deadbeat" and a "bum". (Tr. p. 29). The trial court cited this testimony in its order, thus crediting Wife's testimony over Husband's denial that he had made the remarks. After making these statements, Husband, who had never been unemployed for more than a month during the marriage, was unemployed for a year and a half after Wife filed for dissolution. According to Husband, after the fall of 2019, he checked with his union six times to inquire about employment. The trial court, within its considerable discretion, found that this was not a serious attempt on Husband's part to find employment within his field and area of expertise. Husband remained unemployed until after the first evidentiary hearing took place in this matter, only then taking work as a car salesman, a field in which he had no previous experience, earned approximately 15% of what he had earned in his union employment, and about which he claimed to not know the terms of his pay. In addition, Husband continued to maintain his membership in two unions by paying dues, from which it could reasonably be inferred that he did not intend to leave his previous field of employment permanently. In light of the totality of this evidence and the reasonable inferences it provides, the trial court's determination that Husband was voluntarily underemployed was

supported by the evidence and was, therefore, not clearly erroneous. *See Miller*, 72 N.E.3d at 954.

[13] In assessing Husband's argument that the trial court abused its discretion by finding him to be voluntarily underemployed, we observe that Husband does not address the evidence in the record that he repeatedly told Wife of his intention not to pay child support and to refrain from working as part of that effort. Indeed, our own research uncovered no reported cases wherein a parent appealed, let alone appealed successfully, a finding of voluntary underemployment where the trial court credited such evidence. Rather than addressing the evidence of his statements, Husband directs our attention to his testimony that he had been laid off in the fall of 2019, something that Wife disputed, his lack of opportunity to return to work in West Virginia or to any job in his field that would produce similar earnings, and his efforts to look for employment outside his field prior to taking the car salesman job. These arguments are unpersuasive given the conflicting evidence in the record about whether Husband had been laid off and our standard of review which requires us to refrain from reweighing the evidence and to consider only the evidence which supports the trial court's determination. *See Hickey*, 111 N.E.3d at 245.

[14] Husband also asserts that the trial court improperly determined that he was voluntarily underemployed given his testimony that he did not wish to continue to work in West Virginia because he wanted to be closer to Children. Husband essentially contends that he had another, good-faith reason for not returning to West Virginia to work which had nothing to do with child support avoidance.

This argument is also unpersuasive for several reasons, the first of which is that, like Husband's previous arguments, it is contrary to our standard of review in that it requires us to consider evidence which does not support the trial court's determination and requires us to reweigh the evidence of Husband's intent. *See id*. In addition, Husband's argument fails on its own terms, as this court has "rejected the notion that income may be imputed only if the trial court finds that a parent has purposefully reduced his or her income to avoid child support." *See Miller*, 72 N.E.3d at 955 (citing *Pickett*, 44 N.E.3d at 766, in which this court found that the Guidelines do not require child support avoidance as a prerequisite for imputing income).

[15] Lastly, we decline to credit Husband's argument that we must reverse the trial court's determination that he was voluntarily underemployed or else "the floodgates of litigation in this area would be opened wide" because litigants will now request what they believe the other party "'could' be earning notwithstanding the historical employment and income" of the other party. (Appellant's Br. pp. 18-19). However, as noted above, the Guidelines provide for the imputation of potential income to parents who are underemployed, and a parent making such a claim must necessarily argue that the other parent could be earning more. The Guidelines also provide that a trial court must consider a parent's previous employment and income as part of its determination to impute income. *See* Child Supp. G. 3(A)(3). Our review of the trial court's findings reveals that it did, in fact, consider Husband's employment and income history as part of its determination. Therefore, we cannot conclude that our

decision today will unnecessarily promote litigation in our courts. Accordingly, we do not disturb the trial court's determination that Husband was voluntarily underemployed.

II. *Amount of Husband's Weekly Gross Income*

[16] Husband also challenges the trial court's imputation of $3,875.06 to him as his weekly gross income. Trial courts are accorded great discretion in determining the amount of potential income to be imputed to a parent who is found to be underemployed. *See* Child Supp. G. 3(A)(3), cmt 2(c) ("Obviously, a great deal of discretion will have to be used in this determination."). However, the Guidelines also caution that "attributing potential income that results in an unrealistic child support obligation may cause the accumulation of an excessive arrearage, and be contrary to the best interests of the child(ren)." *Id*. This court has recognized that "the Guidelines do not require or encourage parents to make career decisions based strictly upon the size of potential paychecks, nor do the Guidelines require that parents work to their full economic potential." *Sandlin v. Sandlin*, 972 N.E.2d 371, 375 (Ind. Ct. App. 2012). The parent arguing for the imputation of income to another parent bears the burden of persuasion. *See In re Paternity of C.B.*, 112 N.E.3d at 761 (observing that it was Father's burden to present evidence on his claim that income should be imputed to Mother), *trans. denied*. As we have already noted, the Guidelines provide that a trial court should consider a number of factors in determining whether to impute potential income to a parent, including "employment and earnings history, occupational qualifications, educational attainment, literacy,

age, health, criminal record or other employment barriers, prevailing job opportunities, and earnings levels in the community." Child Supp. G. 3(A)(3). Husband argues that the trial court's order was deficient because there was a lack of evidence presented at the final hearing regarding prevailing job opportunities and earnings levels in the community.

[17] Husband relies on *Miller*, in which Father challenged the trial court's determination that he was voluntarily underemployed and the amount of potential income imputed to him. *Miller*, 72 N.E.3d at 955-57. We found that there was sufficient evidence to support the trial court's conclusion that Father was underemployed, but we reversed the trial court's order setting the amount of imputed income, where Father argued that there was no evidence in the record regarding prevailing job opportunities and earnings levels in the community and Mother had failed to cite to any in her appellate brief. *Id*. at 957. As a result, we remanded for an evidentiary hearing on those factors and observed that, after hearing additional evidence, the trial court was free to decide whether a revision of the amount of imputed income was proper, to exercise its discretion to reevaluate, and to adjust other determinations regarding child support. *Id*.

[18] Husband argues that the same result should obtain here, and we agree. The trial court entered a finding that it was not ordering Husband to return to work in West Virginia and be apart from Children. Thus, the trial court implicitly recognized that the relevant area of inquiry regarding job opportunities and earnings levels encompassed Husband's current location in the Midwest. On

appeal, Wife does not address *Miller*, nor does she present us with any evidence supported by citations to the record on the two challenged factors as they apply to Husband's potential for employment in the Midwest. Therefore, we find the trial court's order to be clearly erroneous and remand for additional evidence to be presented on these two factors, observing as we did in *Miller* that the trial court is free to reevaluate and revise its order if it deems it to be necessary. *See id*.

[19] In addition, because the issue may arise on remand, we also briefly address Husband's argument that the trial court's order was deficient because the trial court entered no specific findings regarding prevailing job opportunities and earnings levels in the community. The Guidelines provide that determinations to impute potential income "shall be made" by considering the enumerated factors. Child Supp. G. 3(A)(3). However, while a trial court is required to consider evidence of the enumerated factors, nothing in the Guidelines requires a trial court to enter specific findings on each of those factors to support its determination. *See Sexton v. Sedlak*, 946 N.E.2d 1177, 1190 (Ind. Ct. App. 2011) ("Father cites no authority for the proposition that the trial court is required to make special findings as to each of the factors set forth in the Guidelines."), *trans. denied*. Therefore, on remand, the trial court shall hear additional evidence on the enumerated factors, but it is not required to enter findings of fact and conclusions thereon as to each.

CONCLUSION

[20] Based on the foregoing, we conclude that the trial court's determination that Husband was voluntarily underemployed was supported by the evidence and was not clearly erroneous. However, we remand for a hearing on Husband's prevailing job opportunities and earnings level in the community.

[21] Affirmed in part, reversed in part, and remanded for further proceedings.

[22] May, J. and Tavitas, J. concur