

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Henry Sincere,  
*Appellant-Respondent,*

v.

Celia Britton,  
*Appellee-Petitioner*

September 27, 2023

Court of Appeals Case No.  
23A-DC-384

Appeal from the Marion Superior  
Court

The Honorable Joel A. Schneider,  
Magistrate

Trial Court Cause No.  
49D16-2008-DC-26515

**Memorandum Decision by Judge Crone**  
Judges Brown and Felix concur.

**Crone, Judge.**

## Case Summary

- [1] Henry Sincere (Father) appeals the trial court’s dissolution decree dissolving his marriage to Celia Britton (Mother). Specifically, he challenges the trial court’s determination of his parenting time and child support obligation for the parties’ minor son. We remand.

## Facts and Procedural History

- [2] Father and Mother were married on February 14, 2020. One child, H.B. (Child), was born of the marriage on May 11, 2020. Mother filed a petition for dissolution of marriage on August 5, 2020. The trial court entered a decree dissolving the marriage on January 20, 2023. Mother was granted sole legal and physical custody of Child, and Father was granted parenting time and also ordered to pay \$273.00 per week in child support. Father now appeals.

## Discussion and Decision

- [3] Before addressing Father’s arguments, we must note that Mother did not file an appellee’s brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments, and we apply a less stringent standard of review, that is, we may reverse if the appellant establishes prima facie error. *Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). “Prima facie is defined as ‘at first sight, on first appearance, or on the face of it.’” *Graziani v. D & R Constr.*, 39 N.E.3d 688, 690 (Ind. Ct. App. 2015). “This rule was established so that we might be relieved of the burden of controverting the

arguments advanced in favor of reversal where that burden properly rests with the appellee.” *Bixler v. Delano*, 185 N.E.3d 875, 877-78 (Ind. Ct. App. 2022).

[4] Father first challenges the trial court’s parenting time order. Parenting time decisions require us to “give foremost consideration to the best interests of the child.” *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013) (citation omitted). We review parenting time decisions for an abuse of discretion. *Id.* “Judgments in custody matters typically turn on the facts and will be set aside only when they are clearly erroneous.” *Id.* (citing *Baxendale v. Raich*, 878 N.E.2d 1252, 1257 (Ind. 2008)). This Court will not substitute our own judgment if any evidence or legitimate inferences support the trial court’s judgment. *Id.*

[5] The dissolution decree here provided that “Father shall have Parenting Time from Saturday at 10:00 AM to Sunday at 6:00 PM every other weekend when the following occurs:”

a. [Child] turns three years of age;<sup>[1]</sup> and

b. Father completes a co-parenting class, such as COPE, uptoparents.org or a similar co-parenting program and provides notice to this Court of completion.

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<sup>1</sup> The record indicates that although Child was less than three years of age when the decree was entered in late January 2023, Child would be turning three in May 2023.

Appealed Order at 2. For children three years of age or older, the Indiana Parenting Time Guidelines (IPTG) provide for “Regular Parenting Time,” which is defined as follows:

(a) On alternating weekends from Friday at 6:00 P.M. until Sunday at 6:00 P.M. (the times may change to fit the parents’ schedules);

(b) One (1) evening per week, preferably mid-week, for a period of up to four hours but the child returned no later than 9:00 P.M.; and,

(c) On all scheduled holidays.

Ind. Parenting Time Guidelines § II.D.1.

[6] Father argues that the trial court erred in deviating from the parenting time schedule laid out in the IPTG without explaining the reasons for such deviation. We agree. As another panel of this Court recently noted, the IPTG specifically allow “[d]eviations from these Guidelines by either the parties or the court that result in parenting time less than the minimum time set forth[,]” provided that the deviations are “accompanied by a written explanation indicating why the deviation is necessary or appropriate in the case.” *Randolph v. Randolph*, 210 N.E.3d 890, 897-98 (Ind. Ct. App. 2023) (quoting Ind. Parenting Time G. Preamble (C)(3)). Here, because the trial court’s parenting time schedule deviated from the IPTG, the trial court was required to issue a written explanation for the deviation. The trial court failed to do so, and therefore remand on this issue is appropriate.

[7] Father also challenges the trial court’s weekly child support order of \$273.00. A trial court’s calculation of child support is presumed to be valid, and we review the court’s decision for abuse of discretion. *Thompson v. Thompson*, 811 N.E.2d 888, 924 (Ind. Ct. App. 2004), *trans. denied* (2005). Reversal of a trial court’s child support order is merited only where its determination is clearly against the logic and effect of the facts and circumstances before it or if it has misinterpreted the law. *Matter of Paternity of T.M.-B.*, 131 N.E.3d 614, 618 (Ind. Ct. App. 2019), *trans. denied*. “As a general matter, child support awards comporting with the Indiana Child Support Guidelines bear a rebuttable presumption of correctness.” *Quinn v. Threlkel*, 858 N.E.2d 665, 670 (Ind. Ct. App. 2006). Conversely, awards that deviate from the guidelines “must be supported by proper written findings justifying the deviation.” *Id.*; see Ind. Child Support Rule 3 (“If the court concludes from the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a written finding articulating the factual circumstances supporting that conclusion.”).

[8] Father points out that the trial court failed to credit him for any “overnights” with Child as provided on the Child Support Obligation Worksheet. Appellant’s App. Vol. 2 at 53. Indeed, although the dissolution decree prospectively provided for Father to have weekly overnight parenting time once Child turned three years old, Father’s child support obligation did not reflect any overnight credit. Indiana Child Support Guideline 6 provides that “[a] credit should be awarded for the number of overnights each year that the

child(ren) spend with the noncustodial parent.” Our supreme court has explained that “[t]he rationale behind the parenting time credit is that overnight visits with the noncustodial parent may alter some of the financial burden of the custodial and noncustodial parents in caring for the children.” *Young v. Young*, 891 N.E.2d 1045, 1048 (Ind. 2008). And, “[b]ecause calculating the amount of financial burden alleviated by an overnight visit is difficult, the guidelines provide a standardized parenting time credit formula.” *Id.* The trial court’s child support order here fails to reflect any credit for overnights and lacks any written finding explaining a deviation from the standardized parenting time credit formula. Consequently, the order is erroneous.

[9] In sum, Father has established prima facie error in both the trial court’s parenting time order and its child support order. Accordingly, we remand with instructions for the trial court to either amend both orders to comport with the respective applicable guidelines or to enter written findings justifying a deviation therefrom.

[10] Remanded.

Brown, J., and Felix, J., concur.