

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Roger Dale Robinson,
Appellant-Petitioner

v.

Sharon Dawn Robinson,
Appellee-Respondent.

July 27, 2022

Court of Appeals Case No.
21A-DR-1849

Appeal from the Orange Superior
Court

The Honorable Frank M. Nardi,
Special Judge

Trial Court Cause No.
59D01-1109-DR-33

Pyle, Judge.

Statement of the Case

- [1] Roger Dale Robinson (“Father”) appeals the trial court’s denial of his petition to modify his child support. Because we find that there was ample evidence supporting the trial court’s judgment, we affirm.
- [2] We affirm.

Issue

Whether the trial court erroneously denied Father’s request for a child support modification?

Facts

- [3] Father and Sharon Dale Robinson (“Mother”) were divorced in 2014. They are the parents of three children: R.R. and L.R., who are minors, and M.R., who was emancipated in 2020. Father is a farmer and auctioneer, who remarried in 2018, and operated a farming business as a sole proprietorship under the name Robinson Farm. Under that business entity, Father grew crops and raised livestock.
- [4] In 2018, the trial court calculated Father’s annual income to be \$89,418.20 or \$1,719.58 per week. He was ordered to pay child support in the amount of \$244.00 per week, retroactive to January of 2018.

[5] Because of a downturn in the agriculture sector of the economy, Father ceased operating under Robinson Farm and restructured his farming operation under three limited liability companies he co-owned with his current wife: Lost River Land, Lost River Cattle, and Lost River Transport. Under this structure, Father no longer grows crops, but raises cattle and produces hay. As a result, business is no longer conducted through the bank account associated with Robinson Farm. Instead, that bank account has become “a personal account now.” (Tr. Vol. 2 at 71). From this account, Father has paid his current child support obligation along with other personal expenses such as food, utility and cell phone bills, vehicle expenses, and property insurance. Father’s current wife is employed as a nurse; her salary “keeps the lights on in the house” (Tr. Vol. 2 at 72).

[6] On July 15, 2020, Father filed a petition requesting a modification of his child support order. In his petition, Father argued that the economic downturn and COVID19 pandemic had materially changed his income. As a result, “the previous weekly support order is no longer reasonable.” (App. Vol. 2 at 68).

[7] During March and May of 2021, the trial court held hearings on Father’s petition. After considering the evidence, the trial court issued detailed findings regarding Father’s child support obligation. Specifically, the trial court noted as follows:

* * *

10. The evidence presented by [Father] is inconsistent. [Father] argues that his income has decreased because of the decline in the agriculture economy and therefore his current weekly child support for [L.R.] and [R.R.] should be based upon an imputed weekly income for earnings as full time minimum wage for [Father] and reduced to the amount of \$33.00 per week for these two teenage children. At the same time, [Father] presented evidence that [M.R.] might not be admitted to her program of choice at Purdue University and that therefore the parties should be ordered to pay the increased expense for [M.R.] to attend a college or university outside of Indiana.

11. The evidence shows that [Father] has historically earned income from farming and auctioneering. In the past, his farming operation has consisted of both growing crops and raising livestock, however, he has now re-structured his operation to essentially a livestock operation with related hay production. He has re-structured his former farm operation of Robinson Farm and transferred all business and assets to three separate limited liability companies that he owns with his current wife, specifically, Lost River Cattle LLC, Lost River Land LLC, and Lost River Transport LLC. He continues to operate his auction business. He testified that Robinson Farm is no longer in operation and that any account associated with Robinson Farm is his personal checking account. As noted already, [Father] asserts that his income has decreased significantly, that he is operating his farm business(s) at a loss, and that his income should be imputed at full time minimum wage, or \$290.00 per week.

12. [Father's] tax returns show that his farm business operates at a loss. In 2015 [Father] had a net profit in the amount of \$16,750.00 from his farm business, which included a depreciation expense in the amount of \$96,277.00. In 2016, the business showed a loss of \$58,948.00, with a depreciation expense in the amount of \$108,648.00. For 2017, the farm business had a profit of \$25,168.00, with a depreciation expense of \$83,992.00. For 2019, the business had a loss of \$52,722.00 with a depreciation expense of \$77,781.00. [Father] placed \$213,031.00 worth of property in service in 2018, of which \$17,500.00 was claimed as a section 179 expense. The balance was depreciated over 5 or 7 years. It appears that no property was placed in service in 2019 and that the depreciation expense was based on property placed

in service prior to 2019. [Father's] tax records show that he has operated at a loss for three of the past five years.

13. [Father's] bank records, however, show that thousands of dollars are paid from his LLCs to his private checking account. According to [Father's] exhibit 9, that during the period of January through September, 2020, there were cash transfers in the amount of \$77,331.21 from Lost River Cattle, LLC to [Father], excluding the transfers to the other two LLC[s]. [Father] testified that the Robinson Farm account was his personal account, insofar as all business was now transacted through the LLC's. Even though the tax returns may show a loss in farm income, the bank records show that there has been no significant change in [Father's] income since the last calculation of child support. [Father] testified that he has not sought employment because he is trying to rebuild his farm operation. If [Father] has chosen to remain in a business that according to him is failing, with the result that he only contributes \$16.50 per child in child support, then he has voluntarily chosen to be underemployed to the detriment of his children. To the contrary, [Father's] bank accounts show that his income has not decreased. The Court denies [Father's] request to modify [] current child support.

* * *

(App. Vol. 2 at 50-51).

[8] Father now appeals.

Decision

[9] At the outset, we note that there is a well-established preference in Indiana for granting latitude and deference to the trial court in family law matters. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). Appellate courts “are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their

testimony as it came from the witness stand, did not properly understand the significance of the evidence.” *Id.* (cleaned up). “On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal.” *Id.* (cleaned up). “Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.” *Id.* (cleaned up).

[10] Where, as here, the trial court has entered findings and conclusions, we apply the following two-tiered standard of review: (1) whether the evidence supports the findings; and (2) whether the findings support the judgment. *Hazelett v. Hazelett*, 119 N.E.3d 153, 157 (Ind. Ct. App. 2019). The trial court’s findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting the judgment. *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.* Again, we neither reweigh the evidence nor assess the credibility of the witnesses but consider only the evidence most favorable to the judgment. *Id.*

[11] Father argues that the trial court erroneously denied his petition to modify his child support order. Specifically, Father argues that findings number 11 and 13 are clearly erroneous because Father did not testify that the Robinson Farm account was his “personal checking account or that all business-related transactions were totally separated from the Robinson Farm account.” (Father’s Br. at 11). Further, Father argues that the trial court ignored evidence

that showed Father’s weekly gross income had significantly decreased since entry of the last child support order. Finally, Father claims that the trial court erroneously determined that he was voluntarily underemployed because there was no evidence that Father was attempting to avoid paying child support.

[12] INDIANA CODE § 31-16-8-1(b)(1) allows for the modification of a child support order when there has been a “showing of changed circumstances so substantial and continuing as to make the terms unreasonable” The Indiana Child Support Guidelines require a trial court to determine the proper level of child support by calculating each parent's weekly gross income. Ind. Child Support Guideline 1. Courts are guided in determining the amount of each type of income by the Guidelines and their commentary. *Glass v. Oeder*, 716 N.E.2d 413, 416 (Ind. 1999). Weekly gross income is the sum of actual income, potential income if a parent is underemployed and imputed income based on “in kind” benefits. *Id.* “Weekly gross income of each parent includes income from any source, except as excluded below, and includes, but is not limited to, income from salaries, wages, commissions, bonuses, overtime, partnership distributions, dividends, severance pay, pensions, interest, trust income, annuities, structured settlements, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, inheritance, prizes, and alimony or maintenance received.” Child Supp. G. 3(A)(1). In addition, “[e]xpense reimbursements or in-kind payments received by a parent in the course of employment, self-employment,

or operation of a business should be counted as income if they are significant and reduce personal living expenses. *Id.*

[13] Here, we conclude that there are ample facts or inferences supporting the trial court's denial of Father's petition to modify child support. Despite evidence that Father's farming operation has operated at a loss, the evidence from the hearing showed that Father was receiving income. Father clearly testified that the Robinson Farm account was used as his personal account. The evidence revealed that Father used that account to pay his child support obligation and other expenses. In addition, Father's current wife acknowledged that she was mainly responsible for the household finances and would regularly "throw money into the account to cover it." (Tr. Vol. 3 at 162). The most compelling evidence relied upon by the trial court was the transfer of \$77,331.21 from the Lost River Cattle, LLC to Father between January and September 2020. While Father argues that these transfers were to pay for loans taken out under the Robinson Farm entity, it is clear that weekly gross income includes reimbursements for expenses and any in-kind payments. *See Ind. Child Supp. G. 3(A)(1)*. In other words, the determining factor is not the purpose for which Father intended to use the money; the determining factor is that the money was income capable of being applied toward his child support obligation.

[14] While Father and his current wife testified that they would have had to declare bankruptcy without her assistance, the record also shows that Father purchased a tractor, tedder, and bailer for haymaking in 2019. Those purchases were accounted for in Father's tax returns and considered by the trial court. In

addition, Father acknowledged that he had been in the auctioneering business. However, he was not currently doing any work like that because he “didn’t have time for it . . . ;” he was trying to save his farm. Tr. Vol. 3 at 131. While there was no evidence that the purpose behind Father’s failure to seek additional income streams was to avoid paying child support, that does not prevent a trial court from imputing income upon a finding of underemployed. *See Sandlin v. Sandlin*, 972 N.E.2d 371, 375 (Ind. Ct. App. 2012) (While trial courts *may* impute income upon a determination that a parent is voluntarily unemployed or underemployment to discourage the avoidance of child support obligations, evidence of avoidance is not a prerequisite.).

[15] Based upon the evidence before the trial court, we conclude that there is ample evidence supporting the trial court’s determination that there was not a change in circumstances making the terms of Father’s child support order unreasonable. As a result, we affirm the trial court.

[16] Affirmed.

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