MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Mark Edward Hervey
Krasutsky & Hervey, LLC
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

William Q. Lambert,
Appellant-Respondent,

v.

Lisa Lambert,
Appellee-Petitioner.

April 28, 2023

Court of Appeals Case No. 22A-DR-1880

Appeal from the Johnson Superior Court

The Honorable Peter D. Nugent, Judge

Trial Court Cause No. 41D02-1201-DR-37

Memorandum Decision by Judge Robb
Judges Crone and Kenworthy concur.

Robb, Judge.

Case Summary and Issues

[1] In 2013, the trial court dissolved the marriage of William Lambert ("Father") and Lisa Lambert ("Mother") and approved their Property Settlement and Child Care Agreement ("Settlement Agreement"). In 2022, Father filed a petition to modify his child support. Following a hearing, the trial court issued an order modifying Father's child support obligation. Father now appeals, raising multiple issues for our review which we restate as: (1) whether the trial court erred in calculating Father's parenting time credit; and (2) whether the trial court erred in awarding Mother the right to claim the tax dependency exemptions for all the parties' children. Concluding the trial court erred in calculating Father's parenting time credit and erred by awarding Mother the right to claim all the children as tax dependents, we reverse and remand.

Facts and Procedural History

[2] Father and Mother were married in 2005 and had four children together: I.L., born in 2002; L.L., born in 2005; G.L., born in 2007; and X.L., born in 2009. In 2013, the parties' marriage was dissolved. Contemporaneously with signing the Decree of Dissolution, the trial court approved the Settlement Agreement ordering Father to pay $279.00 per week in child support. *See* Appellant's Appendix, Volume 2 at 13. The Settlement Agreement also generally provided Father would have parenting time with all the children every Monday overnight, every Wednesday overnight, and alternating weekends from "Friday

evening at 5:00 p.m. through Sunday evening at 7:00 p.m." *Id.* at 12.[1] Further, each parent was entitled to claim two of the four children for tax dependency purposes.

[3] On April 8, 2022, Father filed a petition to modify his child support obligation, claiming "a substantial and continuous change in circumstances" rendered the child support terms of the Settlement Agreement unreasonable. *Id.* at 22. On May 17, 2022, the trial court held a hearing on the petition. At the hearing, Father presented evidence that his income had decreased since the Settlement Agreement was approved and that I.L was emancipated.[2] When discussing parenting time that Father had with the remaining three children, Mother testified that L.L. and X.L had not been to Father's home in months. *See* Transcript of Evidence, Volume 2 at 18. However, Mother testified that Father continued to exercise parenting time with G.L.

[4] The parties also addressed their tax exemption entitlements. The Settlement Agreement stated Father shall be entitled to claim L.L. and G.L. while Mother is entitled to claim I.L. and X.L. *See* Appellant's App., Vol. 2 at 13. However, Father disclosed to the court that since the divorce the parties had been claiming the wrong two children on their taxes. The parties did not have an

---

[1] The parties agreed to a different schedule during school breaks. The trial court awarded Father parenting time credit for 165 overnights. *See* Appellant's Appendix, Volume 2 at 21.

[2] Mother disputed Father's income but presented no evidence that his proposed income was inaccurate. *See* Transcript of Evidence, Volume 2 at 19.

issue with this mix-up until I.L. became emancipated.[3] Father and Mother testified that in 2022, the year of the hearing, Father had only claimed X.L. on his taxes—due to I.L.'s emancipation—while Mother had claimed G.L. and L.L. Father asked the trial court that he be allowed to claim two children next year and then proposed that he and Mother alternate who gets to claim two children thereafter.

[5] Following the hearing, the trial court issued an order concluding as follows:

> 10. That the Father has proposed that his weekly child support be based upon 165 overnight, which were utilized in the initial child support calculation. Mother, however, testified that Father currently has overnights with [G.L.] pursuant to the Decree (5/14) but that he currently has no overnights with either [L.L.] or [X.L.]. Father agreed that this has been the situation for the past few months.
>
> 11. That the Court FINDS and ORDERS that there has been a substantial change in circumstances which renders the prior Court Order regarding child support unreasonable. The Court MODIFIES Father's weekly child support obligation to $151.00 per week[.]
>
> 12. That the Court calculated Father's overnights as follows:

[3] We note that the Settlement Agreement does have multiple names crossed out and re-written, which could have caused the confusion.

[G.L.]: 5 x 26 = 13[0]
[L.L.]: 0 x 26 = 0
[X.L.]: 0 x 26 = 0

130/3 = 43

> 13. That the Court recognizes that Mother bears the financial brunt of raising the parties' minor children, and accordingly, the Court awards Mother the tax exemptions for all three (3) minor children[.]

Appealed Order at 2.[4]

[6] Father then filed a motion to correct error which, in relevant part, was denied by the trial court.[5] Father now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[7] At the outset, we note that Mother has failed to file an appellee's brief. "In such a case, we need not undertake the burden of developing arguments for the appellee." *Painter v. Painter*, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). Instead, we apply a less stringent standard of review and may reverse the trial court if

---

[4] The trial court did not include a Child Support Obligation Worksheet with its order.

[5] In its Order on Motion to Correct Error, the trial court affirmed that I.L. was emancipated as a matter of law.

the appellant establishes prima facie error. *Id*. Prima facie is defined as "at first sight, on first appearance, or on the face of it." *Id*. (citation omitted).

[8] A trial court's calculation of a child support obligation is presumptively valid and will be reversed only if it is clearly erroneous or contrary to law. *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008). A decision is clearly erroneous if it "leaves us with a definite and firm conviction that a mistake has been made." *Masters v. Masters,* 43 N.E.3d 570, 575 (Ind. 2015) (citation omitted). In conducting our review, we will not reweigh the evidence and will consider only the evidence most favorable to the judgment. *Saalfrank v. Saalfrank*, 899 N.E.2d 671, 674 (Ind. Ct. App. 2008).

[9] Here, the trial court *sua sponte* entered specific findings of fact and conclusions thereon. *Sua sponte* findings control only as to the issues they cover, and a general judgment will control as to the issues upon which there are no findings. *Ratliff v. Ratliff*, 804 N.E.2d 237, 244 (Ind. Ct. App. 2004). A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence. *Id*.

II. Modification of Child Support

[10] The trial court entered an order decreasing Father's weekly child support obligation from $279.00 to $151.00. However, Father argues the trial court's modification should have decreased his obligation even more because the trial court erred in calculating his parenting time credit. Pursuant to the Indiana Child Support Rules and Guidelines, "[a] credit should be awarded for the

number of overnights each year that the child(ren) spend with the noncustodial parent." Ind. Child Support Guideline 6. However, the trial court is "not required to award parenting time credit based upon overnights" because an overnight does not always shift the financial burden between the parents. *Bogner v. Bogner*, 29 N.E.3d 733, 743 (Ind. 2015). "If the court determines it is necessary to deviate from the parenting time credit, it shall state its reasons in the order." Ind. Child Support Guideline 6 (cmt.).

[11] Father contends the trial court erred in calculating his overnight credit as it pertained to G.L. The trial court credited Father for five overnights with G.L. every two weeks for a total of 130 overnights per year. The trial court then divided 130 by three, because Father was not exercising parenting time with the other two children at the time, and credited Father for forty-three overnights, as shown in the trial court's order:

> [G.L.]: 5 x 26 = 13[0]
> [L.L.]: 0 x 26 = 0
> [X.L.]: 0 x 26 = 0
>
> 130/3 = 43

Appealed Order at 2. Father argues this was an error and that he should have been credited for seven overnights with G.L. every two weeks for a total of 182 overnights a year, resulting in a total credit for sixty-one overnights.

[12] At the modification hearing, Mother and the trial court had the following exchange:

[Mother]: [G.L.] goes Mondays and Wednesdays and every other weekend.

The Court: Overnight?

[Mother]: Uh-huh.

The Court: Okay. Monday overnight, Wednesday overnight, every other weekend?

[Mother]: Yes sir.

The Court: So is every other weekend Friday night and Saturday night?

[Mother]: Friday and Saturday and Sunday night.

The Court: Sunday night as well? Okay. So every two weeks dad has [G.L.] five overnights?

[Mother]: Correct.

Tr., Vol. 2 at 18-19.

[13] Based on Mother's testimony (and despite her agreement with the trial court's calculation), Father has G.L. seven nights every two weeks, not five. Again, we note that the trial court is not required to grant Father parenting time credit for every overnight. *Bogner*, 29 N.E.3d at 743. However, it appears the trial court's decision to award Father credit for five nights every two weeks was not a decision wherein the court considered the actual financial burden shifted from

Mother to Father and reduced Father's credits but rather a simple mathematical error.

[14] This is further highlighted by the trial court's order where the court found Mother "testified that Father currently has overnights with [G.L.] pursuant to the Decree (5/14)[.]" Appealed Order at 2. However, under the Settlement Agreement Father would have parenting time with all the children every Monday and Wednesday overnight and alternating weekends from "Friday evening at 5:00 p.m. through Sunday evening at 7:00 p.m.[,]" which equates to six overnights every two weeks, not five. Appellant's App., Vol. 2 at 12.

[15] We conclude the trial court erred in calculating Father's parenting time credit. Accordingly, we reverse and remand with instructions for the trial court to re-calculate Father's parenting time credit, and in turn his child support obligation, using the same method as in its previous order but giving Father credit for seven overnights with G.L. every two weeks.

III. Tax Exemption

[16] Father argues the trial court erred by re-allocating all the tax exemptions for the children to Mother.[6] The federal tax code automatically grants to a custodial

[6] Father claims that he did not ask the trial court to alter the tax exemptions. However, because Father had inadvertently only claimed X.L the previous year, he did ask the court that he be allowed to claim "both children next year" and then proposed the parties alternate claiming G.L. Tr., Vol. 2 at 17. Under Indiana Trial Rule 15(B), the issues of a case are not necessarily determined by the pleadings, but can be altered by the evidence adduced at trial and the implied consent of the parties. *Sutton v. Sutton*, 773 N.E.2d 289, 295-96 (Ind. Ct. App. 2002).

parent the dependency exemption for a child but permits an exception where the custodial parent executes a written waiver of the exemption for a particular tax year. *Harris v. Harris*, 800 N.E.2d 930, 940 (Ind. Ct. App. 2003), *trans. denied.* Under certain circumstances, a trial court may order the custodial parent to sign a waiver of the dependency exemption. *Id.* A decision regarding the dependency exemption falls within the trial court's "equitable discretion[.]" *Lamon v. Lamon*, 611 N.E.2d 154, 159 (Ind. Ct. App. 1993). The Child Support Guidelines require "each case [to] be reviewed on an individual basis and that a decision be made in the context of each case." Child Supp. G. 9.

[17] When deciding whether to order a release of an exemption, the trial court must consider the following factors:

> (1) the value of the exemption at the marginal tax rate of each parent;
>
> (2) the income of each parent;
>
> (3) the age of the child(ren) and how long the exemption will be available;
>
> (4) the percentage of the cost of supporting the child(ren) borne by each parent;
>
> (5) the financial aid benefit for post-secondary education for the child(ren);
>
> (6) the financial burden assumed by each parent under the property settlement in the case; and

> (7) any other relevant factors . . . (including health insurance tax subsidies or tax penalties under the Affordable Care Act).

Id.

[18] Here, in deciding to allocate all the children's tax exemptions to Mother, the trial court found the following:

> [T]he Court recognizes that Mother bears the financial brunt of raising the parties' minor children, and accordingly, the Court awards Mother the tax exemptions for all three (3) minor children[.]

Appealed Order at 2. The trial court's order indicates that it only considered factor six, "the financial burden assumed by each parent[.]" Child Supp. G. 9. This is insufficient.

[19] Further, the court's finding is not supported by the record and contradicts its child support calculation. The record shows that Father is current on his weekly child support obligation and that the parties essentially share equal parenting time with G.L. Also, although Father testified that G.L. was the only child he currently exercised parenting time with, the trial court took this into account when calculating Father's parenting time credit by giving him zero overnight credit for the remaining two children. Thus, Father's lack of time spent with X.L. and L.L. is already reflected in the child support calculation. We conclude the trial court erred by allocating all three children's tax exemptions to Mother.

[20] Accordingly, we reverse and remand with instructions for the trial court to enter a new order re-assigning the allocation of the children's tax exemptions.[7] On remand, the trial court should make its decision in light of the factors discussed above and make specific findings supporting the decision.[8] *See Carpenter v. Carpenter*, 891 N.E.2d 587, 597 (Ind. Ct. App. 2008).

Conclusion

[21] We conclude the trial court erred in calculating Father's parenting time credit and in awarding Mother the right to claim all the children as tax dependency exemptions. Accordingly, we reverse and remand with instructions.

[22] Reversed and remanded.

Crone, J., and Kenworthy, J., concur.

---

[7] We note that under the terms of the Settlement Agreement if the tax exemptions were not modified after I.L.'s emancipation, then Father would have been entitled to claim two children while Mother was only entitled to claim one.

[8] We leave to the trial court's discretion whether additional evidence need be presented to resolve this matter.