MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT

Kevin R. Patmore (Pro Se)
Santa Claus, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Kevin R. Patmore,
Appellant-Respondent,

v.

Jodi L. Patmore,
Appellee-Petitioner.

December 30, 2021

Court of Appeals Case No. 21A-DC-986

Appeal from the Spencer Circuit Court

The Honorable Jonathan A. Dartt, Judge

Trial Court Cause No. 74C01-1511-DR-516

Tavitas, Judge.

Case Summary

[1] Kevin R. Patmore ("Father") appeals the trial court's denial of his motion for relief from judgment/motion to correct error regarding Father's child support obligation and certain expenses for the children. Finding that Father failed to

demonstrate excusable neglect under Indiana Trial Rule 60(B) to warrant relief from a judgment, we conclude that the trial court properly denied Father's motion for relief from judgment. With respect to Father's appeal of the trial court's order: (1) we conclude that the issue of any child support overpayment is not ripe for our review; (2) we remand to the trial court on the issue of college expenses; (3) we affirm the trial court's order requiring Father to pay J.P.'s uninsured medical expenses, but we reverse and remand for a recalculation of the uninsured medical expenses using the correct percentage, and we remand regarding the future uninsured medical expenses; (4) we affirm regarding the reimbursement of automobile insurance expenses, but we remand regarding the reimbursement of future automobile insurance expenses; (5) we affirm regarding the reimbursement for E.P.'s high school senior year expenses; and (6) we affirm the award of attorney fees to Mother. Accordingly, we affirm in part, reverse in part, and remand.

Issues

[2] Father raises multiple issues, which we restate as:

I. Whether the trial court properly denied, in part, Father's motion for relief from judgment.

II. Whether the trial court properly ordered the modification of child support to be effective on March 12, 2021.

III. Whether the trial court properly ordered Father to pay college expenses for J.P.

IV. Whether the trial court properly ordered Father to reimburse Mother for certain medical expenses for the children.

V. Whether the trial court properly ordered Father to maintain the children's automobile insurance.

VI. Whether the trial court properly ordered Father to reimburse Mother for E.P.'s high school senior year expenses.

VII. Whether the trial court properly ordered Father to pay Mother's attorney fees.

Facts

[3] Father and Jodi Patmore ("Mother") were married in 1994 and had two children: J.P. and E.P. In 2015, Mother filed a petition for dissolution of marriage. The parties reached a settlement agreement ("settlement agreement"), and the trial court granted the dissolution of the parties' marriage in January 2016. The parties were granted joint legal custody of the children with Mother having primary physical custody. In relevant part, Father agreed to pay $1,000.00 per month in child support; Mother agreed to maintain health insurance for the children; Father agreed to maintain automobile insurance for the children; and Mother agreed to pay annually the first $1,000.00 of uninsured medical expenses with the remainder of such expenses split sixty-five percent to Father and thirty-five percent to Mother.

[4] The relevant procedural facts are as follows: J.P. turned nineteen on June 17, 2018. Shortly before J.P.'s birthday, on June 15, 2018, Mother filed a petition to modify child support and a petition for rule to show cause. Mother claimed

that: (1) college expenses had never been addressed and J.P. would be enrolled as a full-time college student in the fall; (2) the settlement agreement requiring Mother to maintain her current residence was "unreasonable and unworkable"; and (3) Father had failed and refused to maintain automobile insurance for the children's vehicles as required by the parties' settlement agreement. Appellant's App. Vol. II p. 19. On June 19, 2018, Father, who is an attorney, also filed a pro se petition to modify child support due to J.P.'s emancipation.[1]

[5] On February 19, 2019, the parties reached an agreement pending resolution of the parties' petitions to modify ("February 2019 agreement"), which the trial court approved, as follows:

> 1. The parties' son, [J.P.], is legally emancipated at this time.
>
> 2. **[Father's] Basic Child support obligation is reduced from $1,000.00 per month to $400.00 per month, . . . , with the issue of any shortfall or overpayment of actual support being reserved by the parties for future review hearing**.
>
> The parties shall split equally, share and share alike, any and all extra-curricular expenses of [E.P.]
>
> 3. [Mother's] information to Show Cause provision alleging that [Father] is in contempt for failing to maintain automobile insurance has been withdrawn by [Mother] and is here[by] dismissed, and [Father] shall continue to maintain the liability

[1] Father's petition to modify was not provided in the record.

> insurance he currently has in place for the children pending resolution of the Petitioners [sic] to Modify.
>
> 4. Uninsured medical expenses shall be computed and paid by the parties pursuant to [Mother's] Child Support Worksheet pending resolution of the Petitions to modify. Said Worksheet is attached and incorporated herein as Exhibit "A".
>
> * * * * *

Nov. 1, 2021 Order from the Trial Court Regarding Feb. 19, 2019 Hearing ("Feb. 19, 2019 Hearing Order") (emphasis added).[2]

[6] The trial court set the pending petitions to modify for hearing on March 5, 2021, but Father failed to appear. The trial court found that Father was notified of the hearing. Mother's counsel also indicated that he had spoken with Father recently and that he expected Father to appear at the hearing. The trial court proceeded with the evidentiary hearing on the pending petitions, and Mother testified and submitted evidence on her petition. The matter was then taken under advisement.

[7] On March 22, 2021, the trial court granted Mother's petition to modify child support and issued an order as follows:

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[2] At this Court's request, the trial court submitted this order, which was not initially included as part of the record on appeal.

1) [Father's] child support obligation shall be modified to One Hundred Five Dollars ($105.00) per week beginning March 12th, 2021.

2) [Father] shall reimburse [Mother] One Thousand Twenty-seven Dollars and Twenty-six Cents ($1,027.26) for his portion of the 2019 medical expenses for the children, pursuant to [Mother's] Exhibit "A".

3) [Father] shall reimburse [Mother] Four Hundred Eighty-seven Dollars and Ninety-two Cents ($487.92) for his portion of the 2020 medical expenses for the children, pursuant to [Mother's] Exhibit "B".

4) [Father] shall reimburse [Mother] Two Thousand Nine Hundred Fifty-one Dollars ($2,951.00) for his portion of the college and senior items for the children, pursuant to [Mother's] Exhibit "C".

5) [Father] shall reimburse [Mother] Four Thousand Seven Hundred Seventy-two Dollars ($4,772.00) for vehicle insurance for [J.P.], pursuant to [Mother's] Exhibit "D".

6) [Father] shall reimburse [Mother] Two Thousand Five Dollars ($2,005.00) for vehicle insurance for [E.P.], pursuant to [Mother's] Exhibit "D".

7) [Father] shall be responsible for maintaining comprehensive and liability automobile insurance.

8) The total amount [Father] shall reimburse [Mother] is Eleven Thousand Two Hundred Forty-three Dollars and Eighteen Cents ($11,243.18) which [Father] shall pay directly to [Mother], one-

> half payable within Forty-five (45) days and the remaining one-half payable within Ninety (90) days.
>
> 9) [Father] shall pay directly to [Mother's] attorney the amount of Two Thousand One Hundred Dollars ($2,100.00) representing Seventy-five percent (75%) of [Mother's] requested attorney fees, to be paid within Sixty (60) days, for attorney fees incurred in [Mother] bringing this cause of action.

Appellant's App. Vol. II pp. 8-9.

[8] On March 23, 2021, Father, pro se, filed a "motion for relief from judgment, motion to correct errors and/or for rehearing." *Id.* at 21. Father argued that he was "unaware" of the March 5, 2021 hearing. *Id.* According to Father, "[a] review of [Father's] calendar reflects that, apparently the automated case management system which automatically populates [Father's] calendar did not enter this matter into [Father's] calendar due to the fact that he is appearing pro se, rather than as an attorney of record for a third party litigant." *Id.*

[9] Father then detailed reasons that the trial court's order was erroneous, asked the trial court to "set aside" the March 22nd order, and requested an evidentiary hearing. Specifically, Father argued that: (1) the order did not consider a $4,800.00 overpayment of child support Father paid for J.P.; (2) Mother earlier withdrew her petition for rule to show cause; however, the trial court ordered Father to reimburse Mother for automobile insurance payments; (3) it is legally impossible for Father to maintain automobile insurance on vehicles owned by Mother or the children and the court was without authority to order Father to

pay automobile insurance for J.P., who is emancipated; and (4) Mother's child support worksheet is unverified and misstates the parties' incomes.

[10] On April 27, 2021, the trial court denied Father's motion as follows:

> 1. The Court declines to rehear evidence on the majority of the issues decided at this time as the Court's CCS shows good service by automated notice to the parties and the CCS reflects counsel Wetherill as an officer of the Court informed the Court at said hearing he had recent conversations with [ ] Father about the hearing.
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> 2. The Court endeavors to treat everyone the same and declines to make an exception even if someone is an attorney.
>
> 3. However, the Court agrees with [ ] Father that the issue of a possible child support arrearage payment was specifically reserved for future review hearing and has not been addressed by this Court. The Court shall allow [ ] Father to be heard on that issue.
>
> 4. There was a prior hearing where the parties indicated they had certain agreements which were reported to the Court "orally", including that [ ] Mother was withdrawing her show cause petition regarding auto insurance because they "have an understanding". The parties agreed that the auto insurance was to stay in place until further order of the Court. However, a "written" order was never filed reflecting what that agreement was so the Court continues to follow its prior order (reaffirmed orally by the parties) that [ ] Father was responsible for the auto insurance for the children.
>
> 5. That same prior hearing contained the "oral" agreement that [ ] Father was reserving the issue of an arrearage payment [or]

> overpayment of support so it is fair and appropriate to hear evidence on that issue since it has never been addressed by the Court.
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> 6. [ ] Father's Motion For Relief From Order, Motion To Correct Errors, and/or For Rehearing, is denied in all parts except for the child support arrearage issue. The parties shall contact the Court and get a hearing date to resolve said issue with one (1) hour set aside.
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> 7. The Court reaffirms its other rulings in its March 22, 2021 Order.

Id. at 24-25. On May 25, 2021, Father filed his notice of appeal.

Analysis

[11] We begin by noting that Mother has not filed an appellee's brief in this matter. "[W]here, as here, the appellees do not submit a brief on appeal, the appellate court need not develop an argument for the appellees but instead will 'reverse the trial court's judgment if the appellant's brief presents a case of prima facie error.'" *Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020) (quoting *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014)). "Prima facie error in this context means 'at first sight, on first appearance, or on the face of it.'" *Id*. This less stringent standard of review relieves us of the burden of controverting arguments advanced in favor of reversal where that burden properly rests with the appellee. *See, e.g., Jenkins v. Jenkins*, 17 N.E.3d 350, 352 (Ind. Ct. App. 2014). We are obligated, however,

to correctly apply the law to the facts in the record in order to determine whether reversal is required. *Id.*

[12] Father argues that the trial court abused its discretion by denying Father a rehearing to submit evidence. Father's motion requested in essence two types of relief: (1) vacate the judgment and set the petitions to modify child support for hearing; and (2) correct errors and/or set an evidentiary hearing. Father, however, does not cite Trial Rule 59 (motion to correct error) or Trial Rule 60 (relief from judgment). The trial court denied the relief requested with the exception that the court agreed that Father is entitled to a hearing on the issue of a possible child support arrearage or overpayment.

I. Motion for Relief from Judgment

[13] Father argues that the trial court abused its discretion by denying Father's motion for relief from judgment and refusing Father's request to present evidence regarding the petitions to modify. Father failed to mention Indiana Trial Rule 60(B) in his motion or on appeal. Additionally, the trial court's denial of Father's motion does not mention Trial Rule 60(B). Nonetheless, we review a trial court's denial of a motion for relief from judgment pursuant to Trial Rule 60(B) under an abuse of discretion standard. *Berg v. Berg*, 170 N.E.3d 224, 227 (Ind. 2021). Further, a decision whether to set aside a judgment "is entitled to deference and is reviewed for abuse of discretion." *Fields v. Safway Grp. Holdings, LLC*, 118 N.E.3d 804, 809 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs where the trial court's judgment is clearly against the logic and effect of the facts and circumstances before it or where the trial court

errs on a matter of law. *Berg*, 170 N.E.3d at 227. "Any doubt about the propriety of a default judgment should be resolved in favor of the defaulted party." *Fields*, 118 N.E.3d at 809. "Indiana law strongly prefers disposition of cases on their merits." *Id.*

> Where the trial court has entered findings of fact and conclusions of law, our standard of review is two-tiered: we determine whether the evidence supports the trial court's findings, and whether the findings support the judgment. *Indianapolis Ind. Aamco Dealers Adver. Pool v. Anderson*, 746 N.E.2d 383, 386 (Ind. Ct. App. 2001). We will not disturb the trial court's findings or judgment unless they are clearly erroneous. *Id*. Findings of fact are clearly erroneous when the record lacks any reasonable inference from the evidence to support them. *Culley v. McFadden Lake Corp.*, 674 N.E.2d 208, 211 (Ind. Ct. App. 1996). A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Carroll v. J.J.B. Hilliard, W.L. Lyons, Inc.*, 738 N.E.2d 1069, 1075 (Ind. Ct. App. 2000), *trans. denied*.

Id.

[14] Trial Rule 60(B) provides in part: "On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons: (1) mistake, surprise, or excusable neglect . . . ." Trial Rule 60(B) also requires such a motion to be filed "not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2), (3), and (4)." Moreover, "[a] movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense." The burden is on the movant to establish

grounds for Trial Rule 60(B) relief.[3] *In re Paternity of P.S.S.*, 934 N.E.2d 737, 740 (Ind. 2010).

[15] Father's arguments here are reviewed within the context of "excusable neglect."[4] "[A] Trial Rule 60(B)(1) motion does not attack the substantive, legal merits of a judgment, but rather addresses the procedural, equitable grounds justifying the relief from the finality of a judgment." *Huntington Nat. Bank v. Car-X Assoc. Corp.*, 39 N.E.3d 652, 655 (Ind. 2015). "[T]here is no general rule as to what constitutes excusable neglect under Trial Rule 60(B)(1)." *Id.* Rather, "[e]ach case must be determined on its particular facts." *Id.* In *Huntington Nat. Bank*, our Supreme Court quoted the following language with approval: "Excusable neglect . . . is just that: excusable neglect, not just neglect. It is something that can be explained by an unusual, rare, or unforeseen circumstance, for instance." *Id.* at 656 (quoting *Huntington Nat. Bank v. Car-X Assoc. Corp.*, 22 N.E.3d 687, 694 (Ind. Ct. App. 2014) (Barnes, J., dissenting), *trans. granted*). "The judicial system simply cannot allow its processes to be stymied by simple inattention." *Id.* (quoting *Smith v. Johnston*, 711 N.E.2d 1259, 1262 (Ind. 1999)).

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[3] Father makes no argument that he was entitled to a hearing on the motion for relief from judgment.

[4] Father also seems to argue that the trial court should have reopened the evidence. In support of this argument, he relies upon an opinion addressing the criminal appeal of a child molesting conviction, which held: "When a party asks to re-open its case after the close of evidence, the trial court's decision to grant that request lies within its sound discretion." *Alvarado v. State*, 89 N.E.3d 442, 447 (Ind. Ct. App. 2017), *trans. denied*. We do not find *Alvarado* persuasive or applicable here. Father complains that the trial court permitted Mother to introduce evidence post-hearing; however, the child support worksheet and attorney fee invoices were specifically requested by the trial court at the March 5, 2021 hearing.

[16] The trial court declined to grant Father's motion for relief from judgment because the trial court's CCS showed "good service by automated notice to the parties." Appellant's App. Vol. II p. 24. Father claims that he was unaware of the hearing because the automated system failed to place the matter on his calendar because he was appearing pro se rather than as an attorney for a party. Additionally, Mother's counsel, "as an officer of the Court, informed the Court at said hearing he had recent conversations with [ ] Father about the hearing." *Id.*

[17] Our Supreme Court, in *Huntington Nat. Bank*, found no excusable neglect in a similar situation. The Court held that: "A savvy, sophisticated bank exceedingly familiar with foreclosure actions that fails to respond to a complaint and summons for no reason other than an employee's disregard of the mail cannot successfully allege a breakdown in communication sufficient to establish excusable neglect." *Huntington Nat. Bank*, 39 N.E.3d at 658. Similarly, here, Father is an attorney accustomed to calendaring and attending hearings; Father discussed the hearing with Mother's counsel; and the trial court found that Father received service of the hearing notice. Father's failure to ensure that his automated calendaring system properly calendared a hearing on his own child support modification petition does not necessarily demonstrate excusable neglect.

[18] Courts have broad discretion when ruling on Trial Rule 60(B) motions. Although we may have decided this case differently than the trial court here, our role is to apply the standard of review. Because we find that the trial court

did not abuse its discretion by finding that Father failed to demonstrate excusable neglect, we need not address whether Father established a meritorious defense. Accordingly, we conclude that the trial court did not abuse its discretion by denying in part Father's motion for relief from judgment. *See, e.g., id.* (holding that "under the facts of this case, we hold that the trial court did not abuse its discretion and affirm its denial of Huntington's motion to set aside the default judgment for excusable neglect under Trial Rule 60(B)(1)").

II. Child Support

[19] Father challenges the trial court's modification of his child support obligation. Specifically, Father argues that the trial court erred by ordering: (1) the modification of child support as of March 12, 2021; (2) Father to pay college expenses for J.P.; (3) Father to pay a portion of uninsured medical expenses for both children; (4) Father to reimburse Mother for automobile insurance for both children; and (5) Father to pay expenses for E.P. for her senior year of high school.

[20] A trial court's calculation of child support is "presumptively valid", and we will reverse a support order only for clear error. *Bogner v. Bogner*, 29 N.E.3d 733, 738 (Ind. 2015). Reversal is proper only where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the trial court. *See id*.

> We recognize of course that trial courts must exercise judgment, particularly as to credibility of witnesses, and we defer to that

> judgment because the trial court views the evidence firsthand and we review a cold documentary record. Thus, to the extent credibility or inferences are to be drawn, we give the trial court's conclusions substantial weight. But to the extent a ruling is based on an error of law or is not supported by the evidence, it is reversible, and the trial court has no discretion to reach the wrong result.

MacLafferty v. MacLafferty, 829 N.E.2d 938, 941 (Ind. 2005). The modification of a child support order is governed by Indiana Code Section 31-16-8-1.[5] *See also* Ind. Child Support Guideline 4 ("The provisions of a child support order may be modified only if there is a substantial and continuing change of circumstances which makes the present order unreasonable or the amount of support ordered at least twelve [ ] months earlier differs from the Guideline amount [ ] by more than twenty percent (20%).").

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[5] Indiana Code Section 31-16-8-1 provides, in part, as follows:

> (a) Provisions of an order with respect to child support or an order for maintenance . . . may be modified or revoked.
>
> (b) Except as provided in section 2 of this chapter, and subject to subsection (d), modification may be made 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. . . .

A. Determination of Child Support

[21] Father first argues that the trial court's award of child support "has the effect of requiring [Father] to continue payment of Basic Child Support pursuant to the [Settlement] Agreement for nearly three (3) years after [J.P.'s] emancipation—from June 17, 2018 to March 12, 2021." Appellant's Br. p. 10. Father argues that, because J.P. was emancipated on June 17, 2018, his child support obligation should have been modified retroactive to June 17, 2018.

[22] The trial court's March 5, 2021 order provides that Father's child support obligation shall be modified to one hundred and five dollars ($105.00) per week beginning March 12, 2021. The child support worksheet attached to the March 5, 2021 Order lists only E.P., and accordingly, we conclude this support order pertains to E.P. only. Father suggests that he was paying child support for J.P. until March 12, 2021, but Father fails to mention that, in February 2019, after J.P.'s emancipation, Father agreed to a revised child support payment of $400.00 per month with "the issue of any shortfall or overpayment of actual support being reserved by the parties for future review hearing." Feb. 19, 2019 Hearing Order. Both children are reflected on the child support worksheet attached to the February 19, 2019 hearing order. Father's child support for J.P. ended in February 2019, and thus, only child support for J.P. from June 17, 2018, to February 2019 would have been at issue.

[23] After Father filed his motion for relief from judgment/motion to correct error, the trial court ordered: "[T]he Court agrees with [ ] Father that the issue of a possible child support arrearage payment was specifically reserved for future

review hearing and has not been addressed by this Court. The Court shall allow [ ] Father to be heard on that issue." Appellant's App. Vol. II p. 25. Accordingly, beginning in February 2019, Father was no longer responsible for paying child support for J.P., and the trial court reserved the issue of any overpayment that resulted prior to the February agreement for a future hearing. That determination of overpayment has not yet occurred, and Father's argument, accordingly, is not ripe for our review.

B. College Expenses

[24] Father argues that the trial court erred by ordering Father to reimburse Mother for a portion of J.P.'s college expenses. In general, the duty to support a child ceases when the child becomes nineteen, but support for educational needs may be ordered. *See* Ind. Code § 31-16-6-6(a). "If a court has established a duty to support a child in a court order issued after June 30, 2012, the: (1) parent or guardian of the child; or (2) child; may file a petition for educational needs until the child becomes nineteen (19) years of age." I.C. § 31-16-6-6(f). An educational support order may also include, where appropriate:

> (1) amounts for the child's education . . . at postsecondary educational institutions, taking into account:
>
> > (A) the child's aptitude and ability;
> >
> > (B) the child's reasonable ability to contribute to educational expenses through:
> >
> > > (i) work;

(ii) obtaining loans; and

(iii) obtaining other sources of financial aid reasonably available to the child and each parent; and

(C) the ability of each parent to meet these expenses;

(2) special medical, hospital, or dental expenses necessary to serve the best interests of the child; and

(3) fees mandated under Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669).

I.C. § 31-16-6-2(a).[6]

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[6] We note that Indiana Child Support Guideline 8 provides, in part:

> b. Post-Secondary Education. The authority of the court to award post-secondary educational expenses is derived from IC 31-16-6-2. It is discretionary with the court to award post-secondary educational expenses and in what amount. In making such a decision, the court should consider post-secondary education to be a group effort, and weigh the ability of each parent to contribute to payment of the expense, as well as the ability of the student to pay a portion of the expense.
>
> When determining whether or not to award post-secondary educational expenses, the court should consider each parent's income, earning ability, financial assets and liabilities. If the expected parental contribution is zero under Free Application for Federal Student Aid (FAFSA), the court should not award post-secondary educational expenses. If the court determines an award of post-secondary educational expenses would impose a substantial financial burden, an award should not be ordered.
>
> If the court determines that an award of post-secondary educational expenses is appropriate, it should apportion the expenses between the parents and the child, taking into consideration the incomes and overall financial condition of the parents and the child, education gifts, education trust funds, and any other education savings program. The court should also take into consideration scholarships, grants, student loans, summer and school year employment and other cost-reducing programs available to the student. These latter sources of assistance should be credited to the child's share of the educational expense unless the court determines that it should credit a portion of any scholarships, grants and loans to either or both parents' share(s) of the education expense.

[25] The trial court ordered Father to reimburse Mother for a portion of J.P.'s tuition, books, and a refund of an overpayment for J.P. Father correctly points

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> Current provisions of the Internal Revenue Code provide tax credits and preferences which will subsidize the cost of a child's post-secondary education. While tax planning on the part of all parties will be needed to maximize the value of these subsidies, no one party should disproportionately benefit from the tax treatment of post-secondary expenses. Courts may consider who may be entitled to claim various education tax benefits and tax exemptions for the minor child(ren) and the total value of the tax subsidies prior to assigning the financial responsibility of post-secondary expenses to the parents and the child.
>
> A determination of what constitutes educational expenses will be necessary and will generally include tuition, books, lab fees, course related supplies, and student activity fees. Room and board may be included when the child does not reside with either parent.
>
> The impact of an award of post-secondary educational expenses is substantial upon the custodial and non-custodial parent and a reduction of the Basic Child Support Obligation attributable to the child under the age of nineteen years will be required when the child does not reside with either parent.
>
> The court should require that a student maintain a certain minimum level of academic performance to remain eligible for parental assistance and should include such a provision in its order. The court should also consider requiring the student or the custodial parent to provide the noncustodial parent with a copy of the child's high school transcript and each semester or trimester post-secondary education grade report.
>
> The court may limit consideration of college expenses to the cost of state supported colleges and universities or otherwise may require that the income level of the family and the achievement level of the child be sufficient to justify the expense of private school.
>
> c. Use of Post-Secondary Education Worksheet. The Worksheet makes two calculations. Section One calculates the contribution of each parent for payment of post-secondary education expenses based upon his or her percentage share of the weekly adjusted income from the Child Support Obligation Worksheet after contribution from the student toward those costs. Notwithstanding this calculation, the court retains discretion to award and determine the allocation of these expenses taking into consideration the ability of each parent to meet these expenses and the child's reasonable ability to contribute to his or her educational expenses. The method of paying such contribution should be addressed in the court's order.
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> * * * * *
>
> 2. The More Than One Child Situation. When the parties have more than one child, Section Two requires the preparation of a regular Child Support Obligation Worksheet applicable only to the child(ren) who regularly reside with the custodial parent, and for a determination of that support obligation. The annualized obligation from Line J of the Post-Secondary Education Worksheet is then inserted on Line 7 of the regular support Worksheet as an addition to the Parent's Child Support Obligation on Line 6. An explanation of the increase in the support obligation should then appear in the order or decree.
>
> In both situations the Child Support Obligation Worksheet and the Post-Secondary Education Worksheet must be filed with the court. This includes cases in which agreed orders are submitted. . . .

out that a post-secondary education support worksheet and order have not been entered in this case. Although Mother's petition to modify requested that college expenses be addressed, the trial court's March 2021 order did not do so.[7] Father requests that we remand "for the trial court to either adopt a verified, properly completed post-secondary education expense worksheet submitted by one of the parties, or to enter its own findings based upon the requirements of the worksheet." Appellant's Br. p. 16. Accordingly, per Father's request, we remand to the trial court on the issue of college expenses.

C. Uninsured Medical Expenses

[26] Next, Father argues that the trial court erred by ordering him to pay medical expenses for both children. Specifically, Father contends that: (1) J.P. was emancipated, and Father was no longer responsible for J.P.'s uninsured medical expenses; and (2) the parties' agreement required Father to pay 42.26%, not 65% of uninsured medical expenses.

[27] The parties' settlement agreement required: (1) Mother to maintain the health insurance on the children; (2) Mother to pay the first $1,000.00 in uninsured medical expenses annually; and (3) Father to pay sixty-five percent of remaining uninsured medical expenses. In February 2019, Father agreed that "Uninsured medical expenses shall be computed and paid by the parties pursuant to [Mother's] Child Support Worksheet pending resolution of the

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[7] Although the record does not contain a post-secondary support order, Mother presented evidence that Mother and Father were sharing J.P.'s college expenses.

Petitions to Modify." Feb. 19, 2019 Hearing Order. The Child Support Worksheet, *which names both children*, provided that Mother would pay the initial $670.80 with the balance of uninsured medical expenses to be split 42.26% by Father and 57.74% by Mother. Thus, despite J.P.'s emancipation, Father agreed to continue sharing J.P.'s uninsured medical expenses.

[28] At the March 5, 2021 hearing, at which Father did not appear, Mother presented evidence of the children's 2019 uninsured medical expenses of $2,251.20, for both J.P. and E.P. Mother requested that Father reimburse her for $1,027.26 (65% of the difference between $2,251.20 and $670.80). Mother also presented evidence of the children's 2020 uninsured medical expenses of $1,421.44, for both J.P. and E.P. Mother requested that Father reimburse her for $487.92 (65% of the difference between $1,421.44 and $670.80). The trial court then ordered Father to reimburse Mother for $1,027.26 for his portion of the 2019 medical expenses for the children and $487.92 for his portion of the 2020 medical expenses for the children.

[29] Father agreed in February 2019 to continue sharing J.P.'s uninsured medical expenses. It is clear, however, that Father was required to pay 42.26% of the uninsured medical expenses, not 65%, as the trial court ordered. Accordingly, we reverse and remand for the trial court to recalculate the uninsured medical expenses with the correct percentage.

[30] As for future uninsured medical expenses, Father correctly points out that a post-secondary education support worksheet and order, which should address

uninsured medical expenses for an emancipated child attending college, have not been entered in this case. As noted above, we are remanding for the trial court to address the issue of college expenses, including whether uninsured medical expenses are an appropriate college expense. Accordingly, we remand also for the trial court to consider future uninsured medical expenses for the children as part of the college expenses issue.

D. Automobile Insurance for Children

[31] Next, Father argues that the trial court erred by ordering Father to reimburse Mother for automobile insurance for the children and by ordering Father to maintain future automobile insurance on E.P.'s vehicle. According to Father, (1) the automobile insurance issue was resolved when Mother dismissed the contempt petition; (2) Father provided adequate automobile insurance for the children; (3) Father could not provide the requested insurance on vehicles owned by Mother; (4) J.P. is now emancipated and a college graduate; and (5) an award of future automobile insurance is a departure from the Child Support Guidelines.

[32] The parties' settlement agreement provided that "[Father] shall maintain automobile insurance on the children." Appellant's App. Vol. II p. 16. The February 2019 agreement between the parties provided:

> [Mother's] information to Show Cause provision alleging that [Father] is in contempt for failing to maintain automobile insurance has been withdrawn by [Mother] and is here dismissed, and [Father] shall continue to maintain the liability insurance he

> currently has in place for the children pending resolution of the Petitioners [sic] to Modify.

Feb. 19, 2019 Hearing Order.

[33] Father contends that, because Mother withdrew her contempt petition, the automobile insurance was a "non-issue." Appellant's Br. p. 14. The February 2019 agreement between the parties, however, merely withdrew the contempt petition. Father agreed to continue providing automobile insurance pending resolution of the petitions to modify, and the order from the February 19, 2019 hearing provided that the automobile insurance expenses would be resolved through the petition to modify. Accordingly, the issue of automobile insurance was still pending at the time of the March 2021 order, and Father's argument fails.

[34] Mother presented evidence at the hearing that Father provided liability-only automobile coverage for J.P. on a vehicle that J.P. did not drive. Mother investigated the automobile coverage and learned that the children should be insured on the car each actually drives and which are owned by Mother. Tr. Vol. II p. 17. Mother obtained automobile insurance for the children and requested that Father reimburse her for that expense. Mother also requested that Father reimburse her for future automobile insurance expenses. In its March 2021 order, the trial court ordered Father to reimburse Mother $4,772.00 for automobile insurance for J.P. for 2016 through 2020 and $2,005.00 for automobile insurance for E.P. for 2019 and 2020. The trial court also ordered that Father "shall be responsible for maintaining comprehensive and liability

automobile insurance" but failed to specify if the order applied to both children. Appellant's App. Vol. II p. 9.

[35] Father argues that legally he could not provide comprehensive and liability insurance on a vehicle that he does not own. We cannot say the trial court erred when it found, based upon the evidence presented, that the insurance provided by Father was inadequate. Mother, moreover, requested that Father be ordered to reimburse her for the automobile insurance expenses that she incurred. The trial court's order merely required that Father "shall be responsible for maintaining comprehensive and liability automobile insurance" without specifying how that insurance would be obtained or paid. Appellant's App. Vol. II p. 9. If Father cannot purchase the required insurance on his own, Father could reimburse Mother for the costs of such insurance. The trial court's order regarding the reimbursement of automobile insurance expenses is not clearly erroneous.

[36] As for future automobile insurance expenses, Father correctly points out that a post-secondary education support worksheet and order, which should address automobile insurance for an emancipated child attending college, have not been entered in this case. As noted above, we are remanding for the trial court to address the issue of college expenses, including whether automobile insurance is an appropriate college expense. Accordingly, we remand for the trial court to consider future automobile insurance expenses for the children as part of the college expenses issue.

E. High School Senior Year Items

[37] Father also argues that the trial court erred by ordering Father to reimburse Mother for a portion of the "senior items for the children . . . ." Appellant's App. Vol. II p. 8. This reimbursement concerned expenses for E.P., who was a senior in high school. We note that, in the February 2019 agreement, the parties agreed to "split equally, share and share alike, any and all extra-curricular expenses of [E.P.]." Feb. 19, 2019 Hearing Order. Accordingly, the trial court properly ordered Father to pay half of the "senior items" for E.P.

III. Attorney Fees

[38] Finally, Father challenges the trial court's order that he pay $2,100.00 of Mother's attorney fees. "The determination of the payment of attorney 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), *trans. denied*. Indiana Code Section 31-16-11-1 authorizes the award of post-dissolution attorney fees. "In assessing attorney 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." *Id.* "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." *Id.*

[39] Here, Father failed to appear at the hearing on the petition to modify custody, which resulted in additional attorney services for Mother due to Father's

motion to set aside the March 2021 order; failed to timely pay his portion of uninsured medical expenses despite his earlier agreement to do so; failed to timely pay his portion of extracurricular expenses for E.P.; and failed to procure proper automobile insurance for the children despite his agreement to provide such automobile insurance. Under these circumstances, we cannot say the trial court abused its discretion by awarding Mother attorney fees.

Conclusion

[40] Father has failed to demonstrate that the trial court abused its discretion by denying, in part, his motion for relief from judgment. We conclude, however, that Father demonstrated that portions of the trial court's March 2021 order resulted in clear error. Accordingly, we affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

[41] Affirmed in part, reversed in part, and remanded.

Mathias, J., and Weissmann, J., concur.