MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Aaron J. Spolarich
Bennett Boehning & Clary, LLP
Lafayette, Indiana

ATTORNEY FOR APPELLEE

Richard D. Martin
Law Office of Richard D. Martin
Frankfort, Indiana

IN THE COURT OF APPEALS OF INDIANA

Matthew Roche,
Appellant-Petitioner,

v.

Melissa Roche-Pearson,
Appellee-Respondent,

August 13, 2021

Court of Appeals Case No. 21A-DR-168

Appeal from the Clinton Circuit Court

The Honorable Bradley K. Mohler, Judge

Trial Court Cause No. 12C01-1406-DR-550

Robb, Judge.

Case Summary and Issues

[1] Matthew Roche ("Father") appeals the trial court's denial of his petition to modify child support. Father raises multiple issues for our review, which we restate as: (1) whether the trial court erred by not imputing income to Melissa Roche-Pearson ("Mother"); (2) whether the trial court erred in its calculation of his parenting time credit; and (3) whether the trial court erred by not including Mother's potential bonuses in its calculation of her gross income. Concluding that the trial court did not err by not imputing income to Mother or when calculating parenting time credit but did err by not explaining its decision to exclude bonus income from Mother's gross income, we affirm in part, reverse in part, and remand.

Facts and Procedural History

[2] On December 16, 2014, Father and Mother's marriage was dissolved. Father and Mother have four children together. The parties share joint legal custody of the children with Mother having primary physical custody. Pursuant to their settlement agreement, Father was ordered to pay child support of $17 per week. Father had the option to exercise parenting time every other weekend from 3:00 p.m. Thursday to 8:30 a.m. Monday and on holidays, vacations, and birthdays pursuant to the Indiana Parenting Time Guidelines.

[3] On May 29, 2018, Father filed a Verified Motion to Modify Parenting Time, Transportation, Child Support, Expense Allocation, and Timing of Phone

Calls. Mother then filed a Motion to Modify Child Support. Following a hearing, the trial court issued its Findings of Facts, Conclusions and Order. The trial court found that Father's earnings had substantially increased since the 2014 settlement agreement and child support should therefore be modified. Effective September 30, 2019, Father was ordered to pay $225 per week in child support and commencing January 3, 2020, Father's weekly child support obligation increased to $242. Further, Father was required to pay Mother 13% of any bonus income.[1] Father's parenting time was expanded to include an additional overnight every other week during the school year and an alternating weekly schedule was introduced during the summer, with the exception of a two-week vacation period for each parent. *See* Appellee's Appendix, Volume II at 21. Accordingly, the trial court increased Father's parenting time credit from 116 overnights to 128.

[4] On October 19, 2020, Father filed a Verified Petition for Modification of Child Support. At the hearing on the motion, Father and Mother agreed that in 2020, Father had 151 overnights with the children. On December 31, 2020, the trial court issued *sua sponte* findings of fact and conclusions of law. Relevant findings included:

Findings of Fact

[1] Bonus income was defined as any income Father received in excess of $241,483.18.

* * *

2. That pursuant to the Decree filed on . . . December [16], 2014 and the Findings of Fact, Conclusions of Law, and Order filed on October 3, 2019, [Mother] has primary custody of the children and [Father] has parenting time pursuant to the Indiana Parenting Time Guidelines and additional parenting time; and [Father] is ordered to pay [Mother] child support in the amount of $242 per week plus a percentage of his bonuses.

3. That [Father] is employed by PriceWaterhouse Coopers, earning $195,000 per year plus bonuses. . . .

4. That [Mother] is employed by IU Health - Tipton, earning $230,000 per year plus bonuses. . . . Effective January 1, 2021, [Mother] will reduce her shifts and will earn $163,300 per year plus bonuses. [Mother] provides insurance for the children at a rate of $29 per week. . . .

5. That the Court's last calculation gave [Father] credit for 128 overnights. [Father] testified that he had 151 overnights in 2020. [Mother] agreed [Father] had more overnights in 2020, but disputed that such would be on-going, testifying that the increase in overnights was due to her work schedule due to COVID-19, agreements between the parties regarding certain holidays, and changes in the children's school schedule due to COVID-19. . . .

Conclusions of Law

* * *

2. That the Court declines to adjust the number of [Father's] overnights used in the [child support] calculation, finding that any increase in 2020 was due to the parties' agreements and/or

adjustments related to COVID as opposed to an on-going increase or permanent change.

3. That the Court declines to find that [Mother] is/will be underemployed beginning in January 2021, as she is still gainfully employed, she is still earning income sufficient to support her children, and she desires to spend more time with her children and their activities.

4. That [Father] shall pay [Mother] . . . child support in the amount of $168 per week, effective October 20, 2020. Additionally, [Father] shall pay [Mother] 13% of the gross amount of any bonuses received (i.e. income in excess of his base income of $195,000) on or before January 15 of the following year.

5. That [Father] shall pay [Mother] . . . child support in the amount of $251 per week, effective January 1, 2021. Additionally, [Father] shall pay [Mother] 13% of the gross amount of any bonuses received (i.e. income in excess of his base income of $195,000) on or before January 15 of the following year.

Appealed Order at 2-4. Father now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[5] Child support calculations are made utilizing the income shares model set forth in the Indiana Child Support Guidelines. *See McGill v. McGill,* 801 N.E.2d 1249,

1251 (Ind. Ct. App. 2004). The Guidelines apportion the cost of supporting children between the parents according to their means, on the premise that children should receive the same portion of parental income after a dissolution that they would have received if the family had remained intact. *See id.*

[6] 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.[2] *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).

[7] Here, the trial court *sua sponte* entered specific findings of fact and conclusions of law. *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.*

---

[2] Appellate opinions have used (and continue to use) the abuse of discretion and clearly erroneous standards interchangeably in this context, but our supreme court has clarified that clear error, and not abuse of discretion, is the proper standard of review for child support modifications. *See Bogner v. Bogner*, 29 N.E.3d 733, 738 n.2 (Ind. 2015).

II. Imputing Income

[8] Father argues that the trial court erred "when it did not impute income to Mother based on her voluntary decision to transition to part-time employment." Brief of Appellant at 11. "The starting point in determining the child support obligation of a parent is to calculate the weekly gross income for both parents." *Meredith v. Meredith*, 854 N.E.2d 942, 947 (Ind. Ct. App. 2006). The Guidelines define "weekly gross income" as "actual weekly gross income of the parent if 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).

[9] Trial courts may impute income to a parent for purposes of calculating child support upon determining that he or she is voluntarily unemployed or underemployed. *See Matter of Paternity of Buehler*, 576 N.E.2d 1354, 1355 (Ind. Ct. App. 1991); Child Supp. G. 3(A)(3) ("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."). The purposes behind determining potential income are to (1) "discourage a parent from taking a lower paying job to avoid the payment of significant support" and (2) "fairly allocate the support obligation when one parent remarries and, because of the income of the new spouse, chooses not to be employed." Child Supp. G. 3A, cmt. 2(c); *Buehler,* 576 N.E.2d at 1355-56. "To determine whether potential income should be imputed, the trial court should review the obligor's work history, occupational qualifications, prevailing job opportunities, and earning

levels in the community." *Homsher v. Homsher,* 678 N.E.2d 1159, 1164 (Ind. Ct. App. 1997).

[10] Father concedes that Mother's transition to part-time employment was not to avoid the payment of support. *See* Br. of Appellant at 17. However, Father argues that proving such motive is not necessary and "it is well within the trial court's discretion to impute potential income even under circumstances where avoiding child support is not the reason for a parent's unemployment." *Id.* (quoting *Barber v. Henry*, 55 N.E.3d 844, 852 (Ind. Ct. App. 2016)).

[11] Here, the trial court stated that it "declines to find that [Mother] is/will be underemployed beginning in January 2021, as she is still gainfully employed, she is still earning income sufficient to support her children, and she desires to spend more time with her children and their activities." Appealed Order at 3. Mother will earn $163,300 when she transitions to part-time status.

[12] Father contends that "Mother planned with her new husband to become voluntarily underemployed" by transitioning to part-time employment. Br. of Appellant at 13.[3] However, 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). "It is not our

[3] Father further contends that Mother's justification for transitioning to part-time employment "is not just cause[.]" Br. of Appellant at 11. However, because we conclude that Mother is not underemployed, we need not determine whether her reason for reducing her hours constitutes just cause.

function . . . to approve or disapprove of the lifestyle of [parents] or their career choices and the means by which they choose to discharge their obligations in general." *Id.* (citation omitted).

[13] In *Carmichael v. Siegel*, the trial court imputed income to the mother, finding that she was underemployed based on her education and training but without considering her work history. The trial court also found that the mother's new spouse contributed substantially to her living expenses, but there was no dollar amount specified and no indication that the contributions were being imputed to the mother as income. 754 N.E.2d 619, 626 (Ind. Ct. App. 2001). We reversed, holding:

> There is no suggestion that Mother has chosen her current job and/or lowered her earnings *because of* her new spouse's income. Thus, because child support orders cannot be used to force persons to work to their full economic potential, there is no basis in the record for a finding that Mother is underemployed, even if she could theoretically earn more than she currently is earning.

Id.

[14] The case at hand is analogous to *Carmichael*. When asked why she decided to go part-time, Mother stated, "I've been thinking about it for a few years. [M]y husband . . . and I have worked pretty hard . . . budgeting and saving in order to prepare for this and allow it to happen[,]" and explained that she wanted to be able to spend more time with her children. Transcript of the Evidence, Volume 2 at 29. However, there is nothing in the record pertaining to Mother's new husband's income or how it impacted her decision. Although it is clear that

Mother could be earning more if she continued to work full-time, the trial court appropriately considered the reasons behind her employment choice and the impact of that choice on her economic circumstances. Therefore, we conclude the trial court's finding that Mother is not underemployed is not clearly erroneous.

III. Parenting Time Credit

[15] When Father filed his motion to modify child support, the child support calculation gave him credit for 126-130 overnights. The parties agree that Father had more overnights than that in 2020. But the trial court's December 31, 2020 modification order stated:

> [T]he Court declines to adjust the number of [Father's] overnights used in the calculation, finding that any increase in 2020 was due to the parties' agreements and/or adjustments related to COVID as opposed to an on-going increase or permanent change.

Appealed Order at 3.

[16] Father argues that the trial court erred by not increasing the number of overnights and giving him a greater parenting time credit. The commentary to the Child Support Guidelines provides that, "[t]he computation of the parenting time credit will require a determination of the annual number of overnights of parenting time exercised by the parent who is to pay child support, the use of the standard Child Support Obligation Worksheet, a Parenting Time Table, and a Parenting Time Credit Worksheet." Child Supp.

G. 6. Parenting time credit "represents the total of transferred and duplicated expenses by the noncustodial parent as a percentage of the weekly basic child support obligation." *Miller v. Carpenter*, 965 N.E.2d 104, 113 (Ind. Ct. App. 2012); Child Supp. G. 3(G)(4). "[T]he number of visits a noncustodial parent receives parenting time credit for cannot exceed the number of visits in which the children physically stay overnight with the parent." *Young*, 891 N.E.2d at 1048.

[17] Parenting time credit is awarded out of recognition 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." *Vandenburgh v. Vandenburgh,* 916 N.E.2d 723, 727 (Ind. Ct. App. 2009) (citing *Young,* 891 N.E.2d at 1048). The prior language under the Guidelines stated that the trial court "*may* grant the noncustodial parent a credit," *Bogner*, 29 N.E.3d at 743, and while the Guidelines currently provide that "[a] credit *should* be awarded for the number of overnights each year that the child(ren) spend with the noncustodial parent[,]" Child Supp. G. 6 (emphasis added), our supreme court has held that the trial court is not required to award parenting time credit based upon overnights, *Bogner*, 29 N.E.3d at 743.

[18] The Guidelines and precedent recognize that "calculating the amount of financial burden alleviated by an overnight visit is difficult." *Vandenburgh,* 916 N.E.2d at 727. Not all visits in which a child stays overnight may qualify for the parenting time credit. *Id.* Flexible standards allow trial courts to "fashion child support orders that are tailored to the circumstances of the particular

case[.]" *Johnson v. Johnson,* 999 N.E.2d 56, 60 (Ind. 2013). Further, our supreme court, citing with approval a trial court's finding that "extra time the noncustodial parent spends with the child should not be for the purpose of reducing that parent's support obligations [but] for the benefit of everyone[,]" has stated that it "does not believe that exercising additional overnights should be used as a bargaining tool for parents to decrease their child support obligations." *Bogner*, 29 N.E.3d at 744.

[19] Here, the December 31, 2020 modification order makes no changes to Father's parenting time as determined by the October 3, 2019 order. As to the increase in overnights, Mother testified that "at least twelve of those over nights were from Spring Break[,]" more nights came from "Easter weekend where [she] had to work and there were covid patients" so the children stayed with Father, and "school closing down a week early, which . . . added a couple other extra overnights." Tr., Vol. 2 at 31. Therefore, the trial court's decision to have Father's parenting time credit remain in the 126-130 range based on a determination that any increase in parenting time in 2020 is not an on-going increase or permanent change is not clearly erroneous.

IV. Irregular Income

[20] Father argues that the trial court erred when "it did not include Mother's dependable bonuses in her gross income." Br. of Appellant at 12. "Weekly gross income of *each parent* includes income from any source . . . and includes, but is not limited to, income from salaries, wages, commissions, [and]

bonuses."[4] Child Supp. G. 3(A)(1) (emphasis added). Whether to include irregular income when calculating gross income is "very fact sensitive." *Id.*, cmt. 2(b). We have stated that "it is clear that the decision to exclude overtime or bonus income centers around the dependability of such income" and "[i]t is also clear that if the income is dependable, it should not be excluded without proper consideration." *Thompson v. Thompson*, 696 N.E.2d 80, 83 (Ind. Ct. App. 1998). The Guidelines commentary states, "When the court determines that it is not appropriate to include irregular income in the determination of the child support obligation, the court should express its reasons." Child Supp. G. 3(A)(1), cmt. 2(b).

[21] The trial court found that "[e]ffective January 1, 2021, [Mother] will reduce her shifts and will earn $163,300 per year plus bonuses." Appealed Order at 2. Mother testified that she gets quarterly bonuses and an end of the year bonus. *See* Tr., Vol. 2 at 35. Mother further testified that when she goes part-time, her number of shifts will decrease from 168 to 129 per year and that her bonuses will be pro-rated accordingly. *Id.* Thus, there is evidence to support the trial court's finding that Mother will receive bonus income and yet the trial court did not factor that income into Mother's gross income and the child support calculation. The trial court must "articulat[e] its reasons for excluding this type

[4] Mother argues that "[u]nfortunately, the Guidelines make no recommendation for treating irregular income received by a support payee, nor has any authority been located regarding the appropriate method of treating irregular income received by the support payee." Brief of Appellee at 33. However, Child Support Guideline 3(A)(1) clearly states weekly gross income must be calculated for "each parent" and includes "bonuses."

of income" and "must indicate that its determination was made in light of these principles." *Marshall v. Marshall*, 92 N.E.3d 1112, 1121 (Ind. Ct. App. 2018); *see also Salser v. Salser*, 75 N.E.3d 553, 563 (Ind. Ct. App. 2017) (finding the trial court's exclusion of a bonus from gross income based on the bonus being "uncertain and not predictable" was "unpersuasive" and clearly erroneous). The trial court failed to express why it did not include Mother's bonus income in its child support calculation.

[22] We conclude that the trial court must either specify the reasoning behind excluding Mother's bonus income or include it as a fixed percentage on a predetermined basis.[5] *See* Child Supp. G. 3(A)(1), cmt. 2(b) ("When the court determines that it is appropriate to include irregular income, an equitable method of treating such income may be to require the obligor to pay a fixed percentage of overtime, bonuses, etc., in child support on a periodic but predetermined basis[.]").

Conclusion

[23] We conclude that the trial court did not err by not imputing income to Mother or when calculating parenting time credit. However, the trial court's failure to explain its decision to exclude bonus income in the determination of Mother's

[5] The trial court ordered Father to pay Mother "13% of the gross amount of any bonuses received (i.e. income in excess of his base income of 195,000)[.]" Appealed Order at 4. Unless the trial court provides a sufficient explanation to exclude Mother's bonus income, her bonuses should be treated in the same manner as Father's.

gross income was clearly erroneous. Accordingly, we affirm in part, reverse in part, and remand with instructions to the trial court to either include Mother's bonus income in its child support calculations or articulate the reasoning behind excluding it.

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

Bailey, J., and May, J., concur.