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.

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IN THE COURT OF APPEALS OF INDIANA

Isaac Agbolosoo,
Appellant-Respondent,

v.

Ruth Agbolosoo,
Appellee-Petitioner.

September 2, 2022

Court of Appeals Case No. 22A-DC-497

Appeal from the Bartholomew Circuit Court

The Honorable Kim Van Valer, Commissioner

Trial Court Cause No. 03C01-2101-DC-426

Robb, Judge.

Case Summary and Issues

[1] Isaac Agbolosoo ("Father") and Ruth Agbolosoo ("Mother") sought to dissolve their marriage. Following a hearing, the trial court issued a decree of dissolution of marriage which, in relevant part, ordered Father to pay Mother $352 per week in child support and $14,712 in retroactive child support. Father now appeals, raising multiple issues for our review which we restate as: (1) whether the trial court erred in calculating Father's weekly child support obligation; and (2) whether the trial court erred in calculating Father's retroactive child support. Concluding the trial court did not err in calculating Father's weekly child support, but the trial court's assessment of credits owed to Father relative to the retroactive child support calculation is contrary to the record, we affirm in part and reverse and remand in part.

Facts and Procedural History

[2] Mother and Father were married in 2008 and share three minor children. On January 25, 2021, Mother filed a petition for dissolution of the marriage. On April 6, 2021, Father filed a counter-petition for dissolution. Both Mother and Father cited irreconcilable differences and requested the trial court determine custody, child support, and property division.

[3] On December 16, 2021, the trial court held a final hearing. At the hearing, evidence regarding the parties' gross weekly income was presented. Father's pay stub indicated that his gross weekly income was $1,854 and Mother

testified her gross weekly income was $647.55. Mother testified that she had a master's degree, but her gross weekly income was based on an expired ten-week contract position that did not utilize her education. Father submitted evidence that the average yearly salary for someone in Mother's field with a master's degree was $78,809. *See* Exhibits, Volume 3 at 39. Father requested that the trial court base Mother's gross weekly income on her potential income.

[4] Father presented evidence of monetary support that he provided to Mother for the children while their dissolution was pending. Father's evidence indicated he had provided $3,700 through PayPal, transferred $1,300 to Mother through Zelle, and incurred $4,938.98 in Discover Card charges. *See id.* at 45-46.[1] Mother testified that she used the Discover Card for supporting the children but that it was possible Father had also used it on his own. Father also presented evidence that he covers the children's medical and dental insurance.

[5] On March 4, 2022, the trial court issued its Findings of Fact, Conclusions of Law and Decree of Dissolution. The trial court granted Mother primary physical custody of the children and granted Father parenting time pursuant to the "Indiana Parenting Time Guidelines ("IPTG") When Distance is a Major Factor." Appealed Order at 4 (emphasis omitted). Further, Father was ordered to pay child support in the amount of $352 per week. The trial court determined Father's child support obligation was "retroactive and shall commence on

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[1] Father introduced Exhibit 8 to show the PayPal, Zelle and Discover Card sums. *See id.*

January 24, 2021." *Id.* The trial court calculated Father's retroactive child support amount to be $14,712.

[6] 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 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] Child support calculations are made by using 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.*

[9] 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).

II. Calculation of Weekly Child Support[2]

A. Overnight Credit

[10] Father argues the trial court erred in calculating his overnight credits when determining his child support obligation. 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. *Bogner v. Bogner*, 29 N.E.3d 733, 743 (Ind. 2015). Here, Father was awarded an overnight credit for "66-70 overnights." Appealed Order at 9. Father contends the Guidelines "contemplate a baseline of around 98 overnights for a noncustodial parent, with the typical parenting time credit set to the 96-100 overnight range." Brief of Appellant at 10.

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[2] Father also challenges the trial court's calculation of his health insurance credit. Specifically, Father contends that he presented "uncontroverted evidence that the medical health insurance cost $85.00 biweekly and the dental was $10.00 per month." Brief of Appellant at 12. However, Father's submitted evidence clearly indicates that these charges are coverage for "You + Child(ren)[,]" Ex., Vol. 3 at 43-44, and the trial court's calculation for Father's support obligation considers only the "Children's portion[,]" Appealed Order at 9. We agree with the trial court's calculation.

[11] The commentary to Guideline 6 states: "If the parents are using the Parenting Time Guidelines without extending the weeknight period into an overnight, the noncustodial parent will be exercising approximately 96-100 overnights." Child Supp.G. 6, cmt. ("Computation of Parenting Time Credit"). However, Father was awarded parenting time pursuant to the IPTG "*When Distance is a Major Factor*." Appealed Order at 4. "Where there is a significant geographical distance between the parents, scheduling parenting time is fact sensitive and requires consideration of many factors[.]" Ind. Parenting Time Guidelines § III.

[12] At the dissolution hearing, Mother proposed a schedule of seventy overnights. Mother testified that she believed this to be appropriate given the distance between the parties' houses and the fact Father only had approximately forty-two overnights the previous year. *See* Transcript of Evidence, Volume 1 at 16. Given this testimony, we are not convinced that the trial court's use of "66-70 overnights" as the initial range for Father's parenting time credit was clearly erroneous.[3] Appealed Order at 9. Therefore, we conclude the trial court did not err.

B. Imputing Income

[13] Father also argues that "Mother should be imputed a part-time, weekly income commensurate with her education and experience." Br. of Appellant at 13.

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[3] This number does not dictate the amount of parenting time Father will receive and can be recalculated later based on Father's actual number of overnights.

"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." Child Supp.G. 3(A)(1).

[14] 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. 3(A), 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).

[15] Here, Mother testified that she did not work full time due to homeschooling the children as well as taking care of her elderly mother. Mother also testified that

she made $647.55 per week at a contract job that did not require her to use her educational background. Father presented evidence that Mother has a "master's degree in clinical social work ("LCSW") . . . [and] the average salary of an LCSW rang[es] between $78,000 and $87,000 annually[.]" Br. of Appellant at 13. Because of this, Father argues that Mother could obtain a part-time position in her field and therefore, the trial court should have imputed at least $750 of gross weekly income to Mother. We disagree.

[16] Mother's decision to seek employment outside of her educational field does not automatically require the court to impute income upon her because 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 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). Further, the record establishes a reasonable explanation for Mother's choice to not work full time and there is no indication that she is choosing to be underemployed to avoid child support obligations or because of the income of a new spouse. *See* Child Supp.G. 3(A), cmt. 2(c); *Buehler,* 576 N.E.2d at 1355-56.

Therefore, we conclude the trial court did not err in calculating Mother's gross weekly income.[4]

III. Retroactive Child Support

[17] It is within the trial court's discretion to retroactively apply a child support award back to the date the petition for dissolution was filed. *Carmer v. Carmer*, 45 N.E.3d 512, 518 (Ind. Ct. App. 2015). Father does not dispute this; however, he argues the trial court erred in calculating his retroactive support obligation. After determining that Father's weekly child support obligation was $352, the trial court concluded that Father retroactively owed $19,712. The trial court then credited Father $5,000 for payments he made to Mother in 2021 through PayPal and Zelle in support of the children. Father contends the trial court should have also credited him the $4,938.98 balance on the Discover Card in his name because it was used for the children's food and care.

[18] The record is clear that the Discover Card was used in support of the children. Father testified that "everything under Discover Card is what [Mother] used for food and . . . for the kids." Tr., Vol. 1 at 76. This is corroborated by Mother's testimony that she used the Discover Card on groceries, gas, and food for the kids every week, and that she had physical possession of the card until Father

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[4] We note that Mother's gross weekly income of $647.55 was based on a ten-week contract job that had ended. The record is clear that at the time of the dissolution hearing, Mother did not have any other significant income. *See* Tr., Vol. 1 at 27. The trial court's use of $647.55 was already essentially imputing income as it did not reflect Mother's actual income over the course of the year.

asked her to cut it up. *See id.* at 85. Mother also testified that because she "didn't have access to the bill" she couldn't attest to whether the entire amount was spent by her on the children, and it was possible that Father had spent money on the Discover Card on his own. *Id.* at 84. However, Mother's testimony is equivocal regarding such a possibility, and there is no testimony suggesting that she had actual knowledge of any purchases made by Father with the Discover Card. Conversely, Father testified that Mother spent the *entire* amount shown for the Discover Card in Exhibit 8 which includes $4,938.98 in 2021. *See id.* at 46-49.

[19] We conclude that Father established prima facie error. Therefore, we remand with instructions to the trial court to credit the 2021 Discover Card balance to Father's retroactive child support obligation.

Conclusion

[20] We conclude the trial court did not err in calculating Father's weekly child support obligation. However, the trial court's assessment of credits owed to Father for his retroactive child support is contrary to the record. Accordingly, we affirm in part and reverse and remand in part with instructions.

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

Pyle, J., and Weissmann, J., concur.