MEMORANDUM DECISION

APPELLANT PRO SE

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Meleeka Clary-Ghosh
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IN THE COURT OF APPEALS OF INDIANA

Michael Ghosh,
Appellant / Cross-Appellee-Petitioner,

v.

Meleeka Clary-Ghosh,
Appellee / Cross-Appellant-Respondent.

August 8, 2022

Court of Appeals Case No. 21A-DC-2882

Appeal from the Madison Circuit Court

The Honorable Mark K. Dudley, Judge

The Honorable C. William Byer, Jr., Master Commissioner

Trial Court Cause No. 48C06-1906-DC-305

Najam, Senior Judge.

Statement of the Case

[1] Michael Ghosh ("Father") appeals the trial court's denial of his motion to correct error and motion to set aside judgment following the court's order granting, in part, Meleeka Clary-Ghosh's ("Mother's") petition to modify child support. Father presents two issues for our review, which we consolidate and restate as whether the trial court abused its discretion when it denied Father's motion to correct error and motion to set aside judgment. On cross-appeal, Mother contends that the trial court abused its discretion when it did not consider her financial obligation to her prior-born, adult children when it calculated child support.

[2] We affirm.

Facts and Procedural History

[3] Father and Mother were married, and in 2009, Father filed a petition for dissolution of the marriage. The parties share one child ("Child"), who was born on June 26, 2008, and Mother has two adult daughters ("Daughters") from a prior relationship. In August 2010, the trial court awarded physical and legal custody of Child to Father, and the court awarded parenting time to Mother. The trial court did not order Mother to pay child support. However, in July 2014, the trial court ordered Mother to pay Father child support in an amount of $63 per week based on imputed income to Mother of $40,000 per year.

[4] In 2015, Mother filed a petition to modify her child support obligation. During a hearing on that petition, Father testified that his income had decreased, and the trial court found that evidence "persuasive." *Clary-Ghosh v. Ghosh*, No. 18A-DR-821, 2018 WL 6332540 at * 8 (Ind. Ct. App. Dec. 5, 2018). Accordingly, in its order dated October 26, 2016, the trial court *increased* Mother's child support obligation to $131 per week. Mother appealed from that order, and we held in relevant part that the trial court abused its discretion when it denied her petition to modify her child support obligation. *Id.* In particular, we noted that "Mother offered testimony of her changed income," and we remanded for further proceedings. *Id.*

[5] Mother moved for a change of venue, which motion was granted. The trial court did not hold another hearing on Mother' petition, but the parties submitted their proposed findings and conclusions. On November 10, 2020, the trial court issued an order reducing Mother's child support obligation to $16 per week retroactive to December 5, 2016. However, the court rejected Mother's contention that she was entitled to a credit for her support of Daughters. The court found that Mother did not have a "legal duty to support [her] prior[-]born daughters" because it found that "no court order exists." Appellee's App. Vol. 2 at 3.

[6] On November 16, Mother filed a notice of appeal with this Court. And on November 23, Father filed a "Motion to Correct Errors and to Supplement Record" with the trial court. On December 8, the trial court denied that motion. On December 11, Father filed a "Motion to Correct Error and/or

Reconsider" with the trial court. And on December 21, Father filed with this Court a motion to remand to the trial court, which we granted.[1]

[7] On remand to the trial court, Father filed a motion for relief from the court's November 10, 2020, order under Trial Rule 60(B). On September 29, 2021, the trial court held a hearing on Father's pending motions. On November 24, the court issued an order finding that "there was no error [in its order modifying Mother's child support obligation] due to mistake, newly discovered evidence, fraud, misrepresentation, or other misconduct by [Mother]." Accordingly, the trial court denied Father's December 11, 2020, motion to correct error and his April 7, 2021, motion for relief. This appeal ensued.

Discussion and Decision

Father's Appeal

[8] Father contends that the trial court abused its discretion when it modified Mother's child support obligation. Father first asserts that the trial court clearly erred when it found that Mother had proven a change of circumstances, namely, her "reduced hours and hourly rate due to her pursuit of obtaining a doctorate degree." Appellee's App. Vol. 2 at 3. And Father maintains that, given the newly discovered evidence he presented to the trial court in opposition to a modification of Mother's child support obligation, the trial court

[1] We dismissed Mother's appeal without prejudice and remanded to the trial court.

abused its discretion when it denied his motion to correct error and motion to set aside under Trial Rule 60(B). We address each contention in turn.

> "The paramount concern of a court in any case involving child support must be focused on the best interests of the child." *Ward v. Ward*, 763 N.E.2d 480, 482 (Ind. Ct. App. 2002). "A trial court's calculation of child support is presumptively valid." *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008). "We will reverse a trial court's decision in child support matters only if it is clearly erroneous or contrary to law." *Id.* To the extent we address issues raised . . . [in a] motion to correct error, we review the trial court's ruling on the motion for an abuse of discretion. *Tucker v. Tom Raper, Inc.*, 81 N.E.3d 1088, 1090 (Ind. Ct. App. 2017). "An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law." *Id.*

In re Paternity of C.B., 112 N.E.3d 746, 757 (Ind. Ct. App. 2018).

[9] In addition, Father bore the burden to establish grounds for Trial Rule 60(B) relief. *See In re Paternity of P.S.S.*, 934 N.E.2d 737, 740 (Ind. 2010). A motion made under subdivision (B) of Trial Rule 60 is addressed to the "equitable discretion" of the trial court; the grant or denial of the Trial Rule 60(B) motion "will be disturbed only when that discretion has been abused." *Id.* at 740-41 (quoting *Fairfield v. Fairfield*, 538 N.E.2d 948, 949-50 (Ind. 1989)). An "[a]buse of discretion will be found only when the trial court's action is clearly erroneous, that is, against the logic and effect of the facts before it and the inferences which may be drawn therefrom." *Id.* at 741.

Trial Court's Finding

[10] First, Father asserts that there is no evidence to support the trial court's finding that Mother had "reduced hours and hourly rate due to her pursuit of obtaining a doctorate degree." Appellee's App. Vol. 2 at 3. In particular, Father maintains that "[t]he testimony and evidence in the record support the contention that Mother's financial condition was no different [at the time of the court's modification order] than when she was ordered on October 26, 2016, to pay weekly child support in the amount of $131.00[.]" Appellant's Br. at 11. However, as we pointed out in *Clary-Ghosh*, the trial court's prior child support orders were based on imputed income to Mother because she was unemployed. 2018 WL 6332540 at * 8. But, in support of her petition to modify child support, Mother testified at the January 2018 hearing that she was a full-time student, working twenty hours per week, and making $8 per hour. And we held that, given Mother's "testimony of her changed income," the trial court abused its discretion when it denied her petition to modify her child support obligation. *Id.*

[11] Father's contentions on appeal amount to a request that we reweigh the evidence, which we cannot do. In particular, Father directs us to the newly discovered evidence that he submitted with his motion to correct error which, he contends, proves that Mother's income increased after she filed her petition to modify child support. Father testified that Mother was hiding income and assets, and he submitted several exhibits in support of that testimony. But the trial court had discretion to discount that evidence. Given the evidence that

Mother's income was reduced to $160 per week, down from the imputed $769 per week, we cannot say that the trial court clearly erred when it found that Mother had "reduced hours and hourly rate" while pursuing her Ph.D. Appellee's App. Vol. 2 at 3.

Abuse of Discretion

[12] Father also contends that the trial court abused its discretion when it modified Mother's child support obligation. As relevant here, Indiana Code Section 31-16-8-1 (2022) governs the modification of support orders and provides that a trial court may modify a child support order "upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable[.]" Father asserts that he "presented newly discovered evidence [to the trial court] that was previously not attainable, that showed that Mother provided false information as to her financial condition, which resulted in fraud, misrepresentation or misconduct by Mother[.]" Appellant's Br. at 8. Thus, he maintains that Mother did not show a change in circumstances to support the modification of the child support order.

[13] Again, Father's contention on appeal amounts to a request that we reweigh the evidence, which we cannot do. Disregarding our standard of review and his burden on appeal to show error, Father attempts to relitigate the evidence he finds favorable but that the trial court in the first instance did not find worthy of credit or controlling. Mother presented evidence showing that she was a full-time student and worked part-time earning $8 per hour, which was less income than the $40,000 per year income the trial court had previously imputed to her.

Father presented evidence to refute Mother's testimony, but the trial court, in its broad discretion, rejected Father's evidence. Given our standard of review, we cannot say that the trial court abused its discretion when it modified Mother's child support obligation.

Mother's Cross-Appeal

[14] Mother cross-appeals and contends that the trial court abused its discretion when it did not give her credit for her alleged legal obligation to provide for Daughters, who are both adults. In granting Mother's petition to modify child support in part, the court entered findings of fact and conclusions thereon following an evidentiary hearing. In such appeals, we review the court's judgment under our clearly erroneous standard. *Jones v. Gruca*, 150 N.E.3d 632, 640 (Ind. Ct. App. 2020), *trans. denied*. We neither reweigh evidence nor judge witness credibility. *Id.* Rather, a judgment is clearly erroneous only when there are no record facts that support the judgment or if the court applied an incorrect legal standard to the facts. *Id.*

[15] Here, as the trial court found, Mother did not present evidence that her financial support for Daughters was court-ordered. Still, Mother asserts that she presented "uncontroverted evidence" by her testimony and financial declaration form that she spent $647.47 per week on Daughters. Appellee's Br. at 9. Be that as it may, Indiana Child Support Guideline 3(C)(2) provides in relevant part that "[t]he amount(s) of any court order(s) for child support for prior-born children shall be deducted from Weekly Gross Income." And Guideline 3(C)(3) provides that, in the absence of a court order, a party's "legal

duty to financially support" prior-born children supports a deduction in weekly gross income. Here, Mother does not direct us to any evidence that her financial support of Daughters, who are well past the age of majority, is based on either a court order or a legal duty. Accordingly, Mother has not shown that the trial court abused its discretion when it declined to give her a credit for her claimed expenses related to Daughters.

[16] Affirmed.

Bradford, C.J., and Bailey, J., concur.