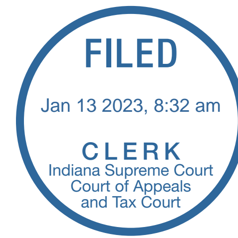
MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE

COURT OF APPEALS OF INDIANA

In re the Marriage of:

Jennifer Figg,

Appellant-Petitioner,

and

Mark Figg,

Appellee-Respondent.

January 13, 2023

Court of Appeals Case No. 22A-DC-1038

Appeal from the Morgan Superior Court

The Honorable Brian H. Williams, Judge

Trial Court Cause No. 55D02-1809-DC-1716

Robb, Judge.

Case Summary and Issues

[1] The trial court entered a judgment on April 4, 2022, settling certain issues in the dissolution of the marriage of Jennifer Figg ("Mother") and Mark Figg

("Father") (together, "Parents"). The trial court, in relevant part, ordered Mother to pay to Father $325.00 per week in child support and $13,715.00 in child support arrearages; $20,000.00 to Father for his attorney fees; and $31,527.00 to the doctor who conducted Parents' psychological evaluation, representing the entire cost of the court-ordered evaluation. The trial court also ordered the sale of the marital residence. Mother appeals, raising several issues for our review, which we restate as: 1) whether the trial court erred in calculating Mother's weekly child support obligation and child support arrearage; 2) whether the trial court erred in awarding Father $20,000.00 for the attorney fees he incurred; 3) whether the trial court erred in ordering Mother to pay the entire cost of the court-ordered psychological evaluation; and 4) whether the trial court erred in ordering the sale of the marital residence.

[2] For the following reasons, we affirm in part, reverse in part, and remand with instructions. We conclude that the trial court did not err in ordering Mother to pay Father's attorney fees, ordering Mother to pay the cost of the psychological evaluation, and ordering the sale of the marital residence, but the trial court did err in ordering Mother to pay Father $325.00 per week in child support, $13,715.00 in child support arrearages, and $20,000.00 for Father's attorney fees. We reverse the trial court's decision on those issues and remand to the trial court for further proceedings consistent with this opinion, specifically, redetermination of Parents' respective child support obligations, redetermination of the amount of reasonable attorney fees Father has incurred, reexamination of the amount of the award of attorney fees to Father, and

reexamination of Mother's responsibility for the entire cost of the court-ordered psychological evaluation.

Facts and Procedural History

[3] Parents were married in 2010 and have two children, B.F., born in December 2005, and M.F., born in July 2009 (collectively, "the Children").[1] During the marriage, Mother worked in nursing at a local hospital, serving as a clinical coordinator for cardiac critical care. Father worked at a law firm until 2014, when chronic back issues made it difficult for him to sit in a desk chair for extended periods of time. Father was a stay-at-home parent from 2014 until 2016. In March 2016, Father began working for the Hendricks County Department of Child Services ("HCDCS") as a family case manager permanency worker.

[4] In February 2018, Parents separated, and on March 22, Mother filed in the Hendricks County Circuit Court a Petition for Legal Separation of Marriage. On May 14, Father filed a Counter-Petition for Dissolution of Marriage. One day later, Mother filed a Petition for Conversion, asking the trial court to convert her Petition for Legal Separation of Marriage to a petition for dissolution of marriage and appoint a guardian ad litem ("GAL"). On June 21,

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[1] Parents' two minor children were born prior to Parents' marriage. Paternity for the Children was established by affidavits. *See* Appellant's Appendix, Volume 2 at 33; Transcript of Evidence, Volume 2 at 214.

the trial court appointed a GAL to represent the best interests of the Children. On June 26, following a series of hearings on provisional matters, the trial court issued an order from the bench establishing Parents' parenting time and the protocol for exchanging the Children. Approximately one month later, on July 24, Father filed his first petition to show cause ("First Petition to Show Cause"), asking the trial court to hold Mother in contempt of court for violating the protocol the trial court had established for the exchange of the Children during parenting time.

[5] On July 27, the trial court issued a preliminary order, awarding Parents joint legal custody of the Children, Mother temporary physical custody of the Children, and Father parenting time in accordance with the Indiana Parenting Time Guidelines. The trial court ordered Father to pay child support to Mother in the amount of $163.00 per week. Father subsequently filed a motion to reconsider his child support determination, which the court granted, reducing Father's child support obligation to $140.00 per week. The preliminary order did not include a determination on Father's First Petition to Show Cause, but the order did direct Mother to "ensure [Father] receive[d] parenting time" and Parents to "not . . . discuss with the [C]hildren the other parent in any way other than a positive and complimentary fashion." Appellant's Appendix, Volume 2 at 41.

[6] On August 1, Mother filed a motion for change of venue, arguing that due to Father's employment with HCDCS and frequent contact with the Hendricks County Courts, she was unlikely to receive a fair trial or hearing. The trial

court granted the motion on August 7, and transferred Parents' dissolution case to Morgan County.

[7] On October 18, Father filed a second petition to show cause ("Second Petition to Show Cause"), arguing that on multiple occasions Mother had denied Father parenting time with the Children. Father asked the trial court to find Mother in contempt of court for the alleged violations of his parenting time and to award Father additional parenting time, attorney fees, and temporary custody of the Children pending the final hearing in Parents' dissolution case.

[8] On November 2, the trial court held a hearing on Father's First and Second Petitions to Show Cause. On November 13, the trial court issued an order, finding Mother in contempt of court for "willfully interfering with Father's scheduled parenting time" but denying Father's request for emergency change of custody. Appellant's App., Vol. 2 at 70. The trial court awarded Father additional parenting time and took Father's request for attorney fees under advisement. The trial court set the final hearing for the dissolution for February 8, 2019.

[9] On January 29, 2019, the GAL issued her first report.[2] On February 7, Parents filed a joint Agreement to Continue Final Hearing and for Interim Modification of Father's Parenting Time. Parents agreed to expand Father's parenting time according to the recommendation made by the GAL in her first report. The

[2] The GAL filed supplemental reports on October 8, 2019, and February 7, 2020.

expansion resulted in an increase in Father's parenting time credit to 150 overnights and a reduction in Father's child support obligation to $32.00 per week.

[10] The final hearing for Parents' dissolution case took place over three days – on October 18, October 21, and November 26, 2019 – during which Parents presented testimony and evidence. During the hearing held on October 21, Mother testified that she fell behind in making the mortgage payments for the marital residence. *See* Transcript of Evidence, Volume 3 at 178-79. She also testified that she had filed for Chapter 13 bankruptcy protection to, among other things, save the marital residence from falling into foreclosure. *See id.* at 89-91. At the conclusion of the November 26 hearing, the trial court took the matters under consideration and asked Parents to prepare proposed final orders.

[11] However, on December 24, a physical altercation occurred between Father and B.F., "in the context of [B.F.] being insubordinate and gravely disrespectful" of Father, that resulted in Father striking B.F. and leaving a mark on B.F.'s cheek. Appellant's App, Vol. 2 at 193. M.F. called Mother and told her about the incident, and Mother called 911. Father was criminally charged with one count of battery, and a no contact order was issued between Father and B.F. The incident was reported to the Department of Child Services ("DCS"), and DCS

substantiated an allegation of child abuse against Father. Father's employment with the HCDCS was terminated due to the substantiation of the allegation.[3]

[12] As a result of the incident that occurred between Father and B.F., Mother filed on January 7, 2020, an emergency motion to modify parenting time. Mother asked the trial court to suspend Father's parenting time with the Children and order Father to attend counseling. The trial court held a hearing on Mother's emergency motion on February 10 and 21. At the conclusion of the hearing, the trial court determined that both Mother and Father should undergo a psychological evaluation.

[13] On July 6, 2020, the trial court issued its Partial Findings. In its Partial Findings, the trial court noted that it had already prepared a decree granting custody of the Children to Father, but due to the incident that occurred between Father and B.F., the trial court had subsequently ordered Parents to undergo a psychological evaluation with Dr. Celestine DeTrana to assist in "interpreting the evidence regarding the actions of [P]arents in regard to their children." *Id.* at 194. The trial court ordered Mother to be responsible for the costs of the evaluation, subject to re-allocation after the evaluation was completed. *Id.* Dr. DeTrana filed the results of her evaluation with the trial court on September 24, and an addendum to the evaluation on December 16.

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[3] Father successfully appealed the substantiation of the child abuse allegation to an administrative law judge who ruled in his favor. *See* Tr., Vol. 4 at 74, 144, 162. However, Father's employment with HCDCS was not reinstated.

[14] On December 23, 2020, the trial court issued its Findings and Final Order on Custody Issues ("Custody Order") and incorporated its Partial Findings into the Custody Order. In its Custody Order, the trial court found:

> Father is the fit and proper person to raise and parent the [C]hildren. The results of the [psychological] evaluation . . . provided to the court are entirely consistent with the courts [sic] own observations and concerns as to the Mother's problematic behaviors and parenting, as well as Father's overall fitness for parenting the [C]hildren.
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> Mother has clearly demonstrated that she cannot collaboratively parent in the context of the divorce. Mother has engaged in behavior that has mentally and emotionally harmed the [C]hildren in the context of being unable to co-parent, as previously noted in the court's prior [P]artial [F]indings.
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> * * *
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> Father was appropriately involved in the [C]hildren's lives as a parent when the marriage was intact and was the primary caregiver for extended periods of time. Father is a capable parent and the [C]hildren had a positive relationship with [him] until the divorce and Mother's interference and purposeful destruction of the Father-[C]hild relationships began. . . .
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> While orders have been in place in this case to provide for Father to see the [C]hildren, Mother has effectively thwarted this by her own actions when opportunity has arisen. Mother has likewise used the protective order process, various medical providers, the police and prosecutors [sic] office as pawns in her campaign

> against . . . Father. This has resulted in Father being kept out of the [C]hildren's lives for an unreasonable and relationship damaging period of time. The court concludes it was and is Mother's goal for this to occur.
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> * * *
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> The court finds that . . . Father has committed one act of physical discipline that could be seen as violence against the son. It is not a pattern. Mother has demonstrated a pattern of coercive and controlling behavior. She has sought to punish . . . Father for, in her view, ruining the marriage and in doing so has been mentally abusing the [C]hildren as a tool in this campaign against . . . Father.
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> This [evidence] is likewise clear and convincing that the Mother should not be a custodian to the [C]hildren.

Appellant's App., Vol. 3 at 11-13. The trial court awarded Father sole physical and legal custody of the Children; suspended Mother's parenting time pending therapeutic review of "what contact, if any, is in the [C]hildren's best interests"; and directed Mother to pay $194.00 per week in child support. *Id.* at 14. The court directed Father to "[i]mmediately designate a conditional guardian and alternative custodian to act until he [could] resolve the No Contact Order in place as a result" of the battery charges that had been filed against him following the incident that occurred between Father and B.F. *Id.*

[15] On December 30, 2020, Father sent a letter to the trial court, asking, among other things, that the court increase Mother's child support obligation. On January 7, 2021, the trial court issued a nunc pro tunc order that incorporated

the Partial Findings and the Custody Order, awarded temporary custody of the Children to foster care until Father could resolve the no contact order, and provided that Father's request for modification of Mother's child support obligation would be addressed at a future hearing. *See* Appellant's App., Vol. 2 at 13 and Vol. 3 at 25. That same day, the State dismissed the battery charges it had filed against Father as well as the no contact order.

[16] On February 24, 2021, the trial court held a review hearing. On April 1, the trial court issued an order that addressed how the parties should communicate with each other and where B.F. would attend high school. The trial court also ordered Father to provide monthly reports to the court regarding the Children's attendance in and progress with therapy, and the court continued the remaining child support and property division matters to a future hearing.

[17] The last hearing for Parent's dissolution action was held on December 10, 2021. On December 16, the trial court issued its Divorce Decree ("Decree"), which incorporated both the trial court's Partial Findings and Custody Order. The Decree dissolved Parents' marriage and informed them that the trial court would issue a subsequent order addressing unresolved issues.

[18] On April 6, 2022, the trial court issued its Order on Final Hearing and All Other Pending Petitions and Judgments ("Final Order"), incorporating the Final Order into the Decree. The trial court, in relevant part, modified Mother's child support obligation and ordered her to pay Father child support in the amount of $325.00 and a child support arrearage of $13,715.00, ordered

Mother to pay Father $20,000.00 for his attorney fees, ordered Mother to be responsible for the total amount of Dr. DeTrana's fee of $31,527.00 for the court-ordered psychological evaluation, and ordered Parents to sell the marital residence. Mother now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[19] At the outset, we note that Father 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.* (internal quotation marks and citation omitted).

[20] Where, as here, the trial court enters findings of fact and conclusions thereon without an Indiana Trial Rule 52 written request from a party, the entry of findings and conclusions is considered to be *sua sponte*. *Dana Cos., LLC v. Chaffee Rentals*, 1 N.E.3d 738, 747 (Ind. Ct. App. 2013), *trans. denied*. When the trial court enters specific findings *sua sponte*, the "findings control our review and the judgment only as to the issues those specific findings cover. Where there are no specific findings, a general judgment standard applies, and we may affirm on any legal theory supported by the evidence adduced at trial." *Argonaut Ins. Co.*

v. Jones, 953 N.E.2d 608, 614 (Ind. Ct. App. 2011) (citation omitted), *trans. denied*.

[21] We apply the following two-tier standard of review to *sua sponte* findings and conclusions: whether the evidence supports the findings, and whether the findings support the judgment. *Barkwill v. Cornelia H. Barkwill Revocable Tr.*, 902 N.E.2d 836, 839 (Ind. Ct. App. 2009), *trans. denied*. We will only set aside findings and conclusions if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. *Id.* "A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made." *Id.* In conducting our review, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. *Samples v. Wilson*, 12 N.E.3d 946, 950 (Ind. Ct. App. 2014). We will neither reweigh the evidence nor assess witness credibility. *Id.*

[22] In addition, there is a well-established preference in Indiana "'for granting latitude and deference to our trial judges in family law matters.'" *Swadner v. Swadner*, 897 N.E.2d 966, 971 (Ind. Ct. App. 2008) (quoting *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993)). Appellate courts "are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence[.]" *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (internal quotation marks and citation omitted). "On appeal it is not enough that the evidence might support some other conclusion, but it must positively

require the conclusion contended for by appellant before there is a basis for reversal." *Id.* (internal quotation marks and citation omitted).

II. Child Support

[23] Mother first contends that the trial court erred in ordering her to pay Father child support in the amount of $325.00 per week and a child support arrearage of $13,715.00. To support its determination regarding Mother's child support obligation, the trial court made the following findings:

> 13. As of December 22, 2020, Father owed a child support arrearage to Mother in the total of $[2,404.00].[4]
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> 14. On December 23, 2020, the Court issued its [Custody Order] which required Mother to pay to Father a sum of $194.00 per week in child support.
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> 15. On December 30, 2020, Father filed his motion to modify child support based upon his loss of employment with [HC]DCS. Father's loss of employment was not based on Father's actions but instead Mother's irrational and destructive vendetta against [F]ather. A substantial change in circumstances had occurred which made a modification of child support appropriate at the time.

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[4] In its Final Order, the trial court found that "[a]s of December 10, 2021, Mother's child support arrearage was $16,119.00[,]" but the trial court "set[] off Father's child support arrearage from Mother's current arrearage, leaving Mother with a child support arrearage of $13,715.00." Appealed Order at 3-4.

> 16. Beginning December 30, 2020, Mother's child support obligation is modified to $325.00 per week.
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> 22. Mother failed to pay her child support from December 23, 2020 through December 10, 2021. From December 23, 2020 through April of 2021, Mother was gainfully employed and had income from which to pay her child support. Thereafter, Mother received a substantial amount of income from [paid time off] and vacation pay. . . . Mother has previously acted in contempt of the court's orders. The court finds Mother in contempt for her willful failure to pay child support.
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> 23. Mother has also experienced a job loss, but is a nurse. The court finds this profession is and has been experiencing significant demand, such that medical facilities are paying a premium for nursing services. Mother's assertions that she has experienced significant trouble finding suitable employment are not credible. . . . The court finds [M]other's ability to earn and contribute support remains as prior to any job loss.

Appealed Order at 3-5.

[24] Mother argues that the trial court erred when it calculated her child support obligation because the trial court determined Father's weekly gross income available for child support purposes to be only $290 per week, based upon Father earning minimum wage. Mother contends that because "the evidence presented reveals that Father is voluntarily underemployed[,]" the trial court should have allocated *potential* income to Father when it calculated his weekly

gross income, and the trial court should not have calculated Father's income using a minimum wage standard. Appellant's Brief at 12.

[25] 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.* 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). 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).

[26] "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).

[27] 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 purpose, relevant to this appeal, behind determining potential income is to "discourage a parent from taking a lower paying job to avoid the payment of significant support." 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).

[28] Here, we find that the trial court erred by ordering Mother to pay Father $325.00 per week in child support. At the December 10, 2021, hearing, Father testified to his ability to obtain new employment after losing his job with HCDCS, telling the trial court that he had obtained temporary, full-time employment with United Parcel Service ("UPS") two weeks prior to the hearing; that he earned $21.00 per hour; but that the temporary position with UPS was scheduled to end around "a week or so after Christmas[.]" Tr., Vol. 4 at 146. He told the trial court that he had submitted approximately ten other applications for jobs with several employers and had received offers to interview for some of the positions. *See id.* at 145-46. Father testified that he did not know what his future salary would be if he was offered a position by one of the employers. *See id.* at 147.

[29] Father then introduced into evidence his proposed child support worksheet, allocating to himself weekly gross income of $290.00, based upon a minimum wage standard. Although Mother was no longer employed,[5] Father allocated weekly gross income to Mother in the amount of $1,596.00, based upon the salary she had earned while employed by the local hospital. He asked the trial court to order Mother to pay child support in the amount of $325.00 per week, based upon his proposed child support worksheet. Parents stipulated to the submission into evidence of Mother's proposed child support worksheet, which listed Father's weekly gross income as $968.47 and Mother's as $290.00 – based upon a minimum wage standard. Mother's proposed worksheet calculated her weekly child support obligation as $29.00.

[30] In its Final Order, the trial court found that although Mother had lost her job, her ability to earn income and pay child support had not changed because the nursing profession "has been experiencing significant demand, such that medical facilities are paying a premium for nursing services." Appealed Order at 5. The trial court also found Mother's testimony that she was having difficulty securing a new job "not credible." *Id.* However, in reaching its determination, the trial court did not present findings on Father's ability to secure a new job – beyond its finding that Mother's actions caused Father to lose his job with HCDCS – or on Father's income-earning potential. And,

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[5] Mother was terminated from her employment with the local hospital on April 15, 2021. *See* Tr., Vol. 4 at 121.

although the trial court ultimately determined Mother's child support obligation to be $325.00 per week, it did not explain how it calculated the amount. Also, the trial court did not provide its reasons for determining that Father's weekly gross income should be based on a minimum wage standard, especially in light of the evidence presented that Father was earning considerably more at UPS and had several other prospects for employment. Therefore, we reverse the trial court's determination regarding Mother's child support obligation and remand this issue for further proceedings. On remand, the trial court is to redetermine Parents' respective child support obligations in accordance with the Indiana Child Support Guidelines – as well as Mother's child support arrearage – and provide its reasoning for any deviation therefrom that is consistent with the evidentiary record and this opinion.

[31] Mother also maintains that the trial court's finding that "Father's loss of employment was not based on Father's actions" but, instead, on Mother's actions is "clearly erroneous" and not supported by the evidence. Appellant's Br. at 14 (quotation marks omitted). According to Mother, "Father's loss of employment [was] due to [the] substantiated report of child abuse [that was] based upon the actions of Father, not Mother." *Id.* at 15. The trial court specifically found that "Father's loss of employment was not based on Father's actions but instead Mother's irrational and destructive vendetta against [F]ather." Appealed Order at 3. We find, however, that there is insufficient evidentiary support for the trial court's finding.

[32] Father testified at the December 10, 2021, hearing that he had been previously employed by the HCDCS but was terminated from his employment in January 2020, due to the substantiation of child abuse allegations. *See* Tr., Vol. 4 at 143-44. Father told the trial court that he did not believe that he lost his job because of his own actions but, instead, because of Mother's actions following the incident that occurred between Father and B.F. *See id.* Father testified that the battery charge against him had been dismissed and that he had appealed the child abuse substantiation and received a decision in his favor. *See id.* at 144-45.

[33] However, Father also testified that he "smacked" B.F. *Id.* at 75. And the evidence of record shows that Mother was not present when the incident occurred and did not witness the incident but, instead, learned from M.F. that the incident had occurred. While Mother's actions on the day of and in the days following the incident certainly contributed to the resulting battery charge against Father and the allegation of child abuse – actions that included Mother calling 911, taking B.F. to a hospital emergency room, to B.F.'s pediatrician, and to a neurologist for evaluation, and Mother possibly embellishing and exaggerating the severity of B.F.'s injury (*see id.* at 7-16) – Mother was obliged to report the incident, and Father bears responsibility for his actions. And while the trial court ultimately found that Mother's actions caused Father to lose his job, the trial court did not include in its findings any evidence establishing that Mother's actions, that is, her "irrational and destructive vendetta against [F]ather" was the sole cause of Father losing his job. Appealed Order at 3. Simply put, the trial court did not include in its findings evidence

that but for Mother's conduct, the outcome of the incident that occurred between Father and B.F. would not have escalated to the point of Father losing his job.

[34] Therefore, we conclude that there is insufficient evidentiary support for the trial court's finding that Father's loss of his employment was not, even in part, based on his own actions but, instead, solely on Mother's irrational and destructive vendetta against Father. The finding is clearly erroneous given Mother's obligation once M.F. reported it to her. On remand, we direct the trial court to reexamine and consider, given the action of Father relative to B.F., whether "but for" Mother's conduct, Father would not have lost his job or whether there are any additional factors that are supported by the record that may have contributed to Father's loss of his job.

III. Attorney Fees

[35] Mother next claims the trial court abused its discretion in ordering her to pay Father $20,000.00 for his attorney fees. Under Indiana Code section 31-15-10-1, a trial court may order a party in a dissolution proceeding to pay a reasonable amount of the other party's attorney fees after considering the parties' resources, their economic condition, their ability to engage in gainful employment and earn income, and other factors bearing on the reasonableness of the award. *Eads v. Eads*, 114 N.E.3d 868, 879 (Ind. Ct. App. 2018). A party's misconduct that directly results in additional litigation expenses may also be considered. *Id.* Consideration of these factors promotes the legislative

purpose behind the award of attorney fees, which is to ensure that a party who would not otherwise be able to afford an attorney is able to retain representation. *Id.* When one party is in a superior position to pay fees over the other party, an award is proper. *Id.* The trial court need not give reasons for its determination. *Goodman v. Goodman*, 94 N.E.3d 733, 751 (Ind. Ct. App. 2018), *trans. denied*.

[36] We review a trial court's decision to award or deny a request for attorney fees in connection with a decree of dissolution under an abuse of discretion standard. *Ahls v. Ahls*, 52 N.E.3d 797, 802-03 (Ind. Ct. App. 2016). The trial court has broad discretion in determining whether to award attorney fees, and our Court will reverse only if the trial court's decision "is clearly against the logic and effect of the facts and circumstances before it or if it misapplies the law." *Id.* at 803.

[37] Mother argues that the trial court abused its discretion in awarding Father attorney fees because, according to Mother, 1) the trial court failed to consider Parents' economic condition and their ability to engage in gainful employment and earn income; and 2) the evidence of record was insufficient to support the award. To support its award of attorney fees to Father, the trial court made the following findings:

> 18. At the November 2, 2018 hearing, Father introduced as Exhibit 3 his request for attorney fees in the sum of $3,787.50.

> 19. The Court now concludes that the attorney fee request is reasonable and orders that Mother shall pay attorney fees to Father for her contempt in the sum of $3,787.50.
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> 20. At the December 10, 2021 hearing, Father testified that he had outstanding attorney fees with his prior counsel, [Michael] Ksenak in the amount of $10,000.00 and had previously paid Mr. Ksenak approximately $10,000.00 to $15,000.00 in attorney fees. In addition, Father has attorney fees with his current attorney[, Rebecca Eimerman,] in the amount of $7,000.00.
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> 21. The majority of Father's attorney fees were incurred as it related to the custody and parenting time dispute between he and Mother. In addition, Father expended additional attorney fees in an effort to obtain Mother's compliance with the court's child support order.
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> * * *
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> 24. The court finds that the attorney fees that Father has requested are reasonable and due to Mother's malfeasance, as such, the court finds that Mother shall be responsible for attorney fees for Father in the amount of $20,000.00.

Appealed Order at 4-5.

[38] Here, we conclude that the trial court did not abuse its discretion in ordering Mother to pay Father's attorney fees. And there was sufficient evidentiary support – in the form of documentation of the attorneys' hourly rates – for the

$3,787.50[6] in attorney fees Father incurred in pursuing his contempt motions, as well as the $7,000.00[7] in attorney fees he owed to Attorney Eimerman, who represented Father at the December 10, 2021, hearing. However, we find that there was *insufficient* evidentiary support for the *additional* attorney fees that Father claims he owes Attorney Michael Ksenak. The only evidence of those fees was Father's testimony that he owed the attorney "$15,000." Tr., Vol. 4 at 153. And Father presented no evidence to support that amount, such as an attorney fee affidavit and documentation of hours billed.

[39] Therefore, we reverse the trial court's order that Mother pay Father $20,000.00 for the attorney fees Father incurred. On remand, we direct the trial court to reconsider Father's claim for the attorney fees he incurred, in light of the factors set forth under Indiana Code section 31-15-10-1, and redetermine the amount of reasonable attorney fees Father has incurred and reexamine the amount of the award of attorney fees to Father.

IV. Psychological Evaluation Fees

[40] Mother next contends that the trial court abused its discretion by ordering her to be solely responsible for the $31,527.00 fee for the psychological evaluation that was performed by Dr. DeTrana at the trial court's behest. Mother acknowledges that under Indiana Code section 31-15-10-1, a trial court can

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[6] *See* List of Exhibits, Volume 1 at 17 – Respondent's Exhibit 3.

[7] *See* List of Exhibits, Volume 4 at 147-49 – Respondent's Exhibit H.

order one spouse to pay a reasonable amount for the cost the other spouse incurs maintaining or defending proceedings related to dissolution. And "[w]hile this includes fees for attorneys and mediation services, the trial court has broad discretion to award other types of fees associated with maintaining or defending the action." *Pitcavage v. Pitcavage*, 11 N.E.3d 547, 567 (Ind. Ct. App. 2014) (citing *In re Marriage of Boren*, 475 N.E.2d 690, 696 (Ind. 1985) (discussing nearly identical statute in dissolution article and finding fees of property appraiser "constituted an expense of litigation necessary to 'maintaining or defending' the dissolution proceeding")).

[41] We apply the abuse of discretion standard in reviewing such an award. *Mitchell v. Mitchell*, 875 N.E.2d 320, 325 (Ind. Ct. App. 2007), *trans. denied*. "When awarding attorney fees [or costs], the trial court must consider the resources of the parties, their economic conditions, the ability of the parties to engage in gainful employment [and earn] adequate income, and other factors that are pertinent to the reasonableness of the award." *Kondamuri v. Kondamuri*, 852 N.E.2d 939, 953 (Ind. Ct. App. 2006) (internal quotation marks omitted). A trial court "enjoys broad discretion in assessing attorney fees [and costs] in dissolution cases." *Goodman v. Goodman*, 754 N.E.2d 595, 602 (Ind. Ct. App. 2001).

[42] Mother's argument here is nearly identical to her argument regarding the trial court's award of attorney fees to Father. Specifically, Mother contends that when the trial court ordered her to be solely responsible for the costs incurred by Dr. DeTrana, the court "failed to consider the economic circumstances of

[Parents], and failed to consider [Parents'] ability to engage in gainful employment and earn adequate income." Appellant's Br. at 22. Mother maintains that "the evidence of [her] poor economic condition at the time of the December 10, 2021[,] hearing, coupled with Father's ability to engage in gainful employment and earn adequate [income], make such an award clearly against the logic and effect of the facts and circumstances before the court." *Id.*

[43] We find that the trial court did not abuse its discretion in ordering Mother to pay the cost of the psychological evaluation, as it is clearly a cost associated with maintaining or defending this dissolution action. Nevertheless, because we reversed the trial court's award of attorney fees to Father and directed the trial court to reexamine its decision regarding the amount of the award in light of the factors listed in Indiana Code section 31-15-10-1, we find that the trial court must also reexamine its determination regarding Mother's responsibility for the entire cost of the psychological evaluation accordingly, considering the factors listed in Indiana Code section 31-15-10-1.

V. Marital Residence

[44] Finally, Mother challenges the trial court's determination that the marital residence should be sold. The trial court made the following findings in its Final Order regarding the marital residence and the court's determination that the residence should be sold immediately:

> 37. The evidence is that the fair market value of the marital residence was $243,500.00 as of the date of the filing of Mother's [C]hapter 13 bankruptcy plan on October 31, 2019. Given the

current real estate market, the court concludes that the current value of the home is far in excess of that amount at this time. Typically this would inure to the benefit of Mother, but in light of the financial costs imposed, the court finds it fair and equitable to utilize this equity to address the obligations herein.

38. The preliminary order required Mother to be responsible for the mortgage debt. The only evidence in the record shows that as of October 1, 2018[,] the date that Mother last paid the mortgage, there was an outstanding mortgage balance between the first mortgage holder and [the Department of Housing and Urban Development] in the total sum of $158,107.85.

39. The Court determines the equity in the marital residence to be in the sum of $54,392.00 and that Father is entitled to 50% of said equity or $27,195.00.

* * *

41. Given the findings above, the gross marital estate shall consist of the equity in the marital residence in the sum of $54,392.00 and the $3,500.00 from Father's vested [Public Employees' Retirement Fund ("PERF") account] for a total of $57,892.00 and each party shall receive 50% of that sum or $28,946.00.

42. Father shall retain 100% of his PERF and shall receive the sum of $25,446.00 from the sale of the marital residence.

* * *

44. The marital residence shall be immediately sold and Father shall receive the sum $25,446.00 at the time of closing. Judgment is entered for that amount against Mother and in favor of Father.

> Any judgments also issued herein should also be satisfied out [of] the remaining proceeds due to Mother at closing of the sale of the home.

Appealed Order at 6-7.

[45] Mother contends that the trial court abused its discretion by ordering the immediate sale of the marital residence. Mother maintains that the "fact that [she] requested to keep the [m]arital [r]esidence, that Father did not care if Mother kept the [m]arital [r]esidence, and that Mother was willing to refinance demonstrate" that the trial court erred in ordering the marital residence sold. Appellant's Br. at 23. Her argument is, essentially, a challenge to the trial court's division of the marital property, as the trial court determined that the residence should be sold and the proceeds divided evenly between Parents.

[46] Indiana Code section 31-15-7-4 governs the division of property in dissolution actions and requires that the trial court "divide the property in a just and reasonable manner[.]" Ind. Code § 31-15-7-4(b). Indiana Code section 31-15-7-4(b)(3) provides that in a dissolution case, the trial court shall divide the property in a just and reasonable manner by, among other things, "ordering the sale of the property under such conditions as the court prescribes and dividing the proceeds of the sale[.]" The court shall presume that an equal division of marital property between the parties is just and reasonable, and may deviate from an equal division only when that presumption is rebutted. Ind. Code § 31-15-7-5. The trial court's division of marital property is "highly fact sensitive and is subject to an abuse of discretion standard." *Fobar v. Vonderahe*, 771

N.E.2d 57, 59 (Ind. 2002). Also, a trial court's discretion in dividing marital property is to be reviewed by considering the division as a whole, not item by item. *Id.* We "will not weigh evidence, but will consider the evidence in a light most favorable to the judgment." *Id.* "A party who challenges the trial court's division of marital property must overcome a strong presumption that the court considered and complied with the applicable statute." *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008).

[47] Mother does not dispute that the residence is marital property. And it is well settled that the trial court has no authority to exclude or set aside marital property but must divide all property. *Moore v. Moore*, 695 N.E.2d 1004, 1010 (Ind. Ct. App. 1998). Here, the trial court determined that the marital residence should be sold and the proceeds divided evenly between Parents (minus the credit to Father in the amount of his PERF retirement). The trial court did not abuse its discretion in this regard. And Mother's argument to the contrary amounts to a request that this Court reweigh the evidence, which we will not do. *See Fobar*, 771 N.E.2d at 59.

Conclusion

[48] Based on the foregoing, we conclude that the trial court did not err in ordering Mother to pay Father's attorney fees, ordering Mother to pay the cost of the psychological evaluation, and ordering the sale of the marital residence. We do conclude, however, that the trial court's finding that Father's loss of employment with HCDCS was not based on his actions but, instead, on

Mother's irrational and destructive vendetta against Father is not supported by the evidence and is clearly erroneous. We also conclude that the trial court erred in ordering Mother to pay Father $325.00 per week in child support; that there was insufficient evidentiary support for the trial court's award of attorney fees to Father for the additional fees he claims he owes to Attorney Michael Ksenak; and that the trial court must reexamine whether Mother should be responsible for the entire cost of the psychological evaluation. Therefore, we reverse the order that Mother pay Father $325.00 per week in child support, $13,715.00 in child support arrearages, and $20,000.00 for Father's attorney fees. We remand this matter for reexamination and consideration of whether Mother's conduct was the sole reason for Father's loss of employment and any additional factors that may have contributed to Father's loss of employment, redetermination of Parents' respective child support obligations, redetermination of the amount of reasonable attorney fees Father has incurred, reexamination of the amount of the award of attorney fees to Father, and reexamination of Mother's responsibility for the entire cost of the psychological evaluation that is consistent with the evidentiary record and this opinion.

[49] Affirmed in part, reversed in part, and remanded with instructions.

Mathias, J., and Foley, J., concur.