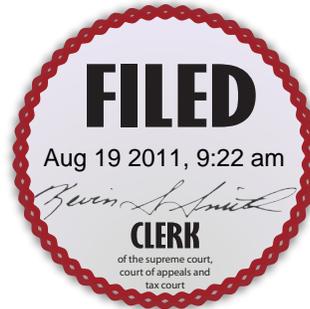


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

S.W.,)
)
Appellant-Petitioner,)
)
vs.) No. 49A02-1104-DR-367
)
E.W.,)
)
Appellee-Respondent.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Thomas J. Carroll, Judge
The Honorable Christopher Haile, Magistrate
Cause No. 49D06-9902-DR-276

August 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

S.W. (“Mother”) appeals from the dissolution court’s order modifying E.W.’s (“Father’s”) child support obligation following a hearing. Mother presents two issues for our review:

1. Whether the trial court abused its discretion when it concluded that Father is entitled to claim the parties’ child Z.W. as a dependent for tax purposes in alternating years.
2. Whether the trial court abused its discretion when it calculated Father’s child support obligation.

We affirm in part, reverse in part, and remand with instructions.

FACTS AND PROCEDURAL HISTORY

Mother and Father married in 1997 and have two children, D.W. and Z.W. The parties divorced in 2000. The dissolution decree awarded custody of both children to Mother, and Father was awarded parenting time pursuant to the Parenting Time Guidelines. The decree provided that Father was to pay \$192 per week in child support.

In 2003, following a contempt hearing, the dissolution court modified Father’s parenting time to eliminate overnight visitation until Father completed a drug treatment program. Mother subsequently filed a petition to modify child support, and, on October 20, 2003, the dissolution court ordered Father to pay \$231 per week in child support.

In 2009, Father filed a Verified Petition to Determine Emancipation and Modify Child Support, alleging that D.W. was twenty-one years old and emancipated. The parties submitted an agreed order whereby D.W. was declared emancipated and Father’s child support obligation was reduced to \$168.12. The agreed order also indicated that the reduced child support obligation was “temporary only.” Appellant’s App. at 39.

On September 27, 2010, Father filed a Motion for Rule to Show Cause and to Enforce Parenting Time, alleging that Mother was in contempt for denying Father parenting time with Z.W. and seeking to modify his child support obligation. Following a hearing on Father's motion, the dissolution court denied Father's request for additional parenting time, found Mother not in contempt, and denied Mother's request that Father's child support obligation be increased.¹ This appeal ensued.

DISCUSSION AND DECISION

Initially, we note Father did not file an appellee's brief. When the appellee fails to file a brief, we need not undertake the burden of developing an argument for the appellee. Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court's judgment if the appellant presents a case of prima facie error. Id. "Prima facie error in this context is defined as, at first sight, on first appearance, or on the face of it." Id. (quotation omitted). Where an appellant does not meet this burden, we will affirm. Id.

Issue One: Tax Exemption

Mother first contends that the dissolution court abused its discretion when it ordered that Father could claim Z.W. as a dependent on his tax returns every other year. In particular, Mother maintains that Father did not satisfy his burden to demonstrate the tax consequences to each parent of transferring the exemption and how such a transfer would benefit the child. We must agree.

¹ The record does not reveal the manner of Mother's request that Father's child support obligation be increased. It does not appear that she filed a written motion with the trial court.

In Harris v. Harris, 800 N.E.2d 930, 940-41 (Ind. Ct. App. 2003), trans. denied,

this court addressed this issue as follows:

We note at the outset that 26 U.S.C. § 152(e) (2000) automatically grants a dependency exemption to a custodial parent of a minor child but permits an exception where the custodial parent executes a written waiver of the exemption for a particular tax year. Moreover, we have previously held that a trial court under certain circumstances may order the custodial parent to sign a waiver of the dependency exemption. See Ritchey v. Ritchey, 556 N.E.2d 1376, 1379 (Ind. Ct. App. 1990). Furthermore, the Commentary to the Indiana Child Support Guidelines states that the Guidelines were developed without taking into consideration the award of the dependency exemption. See Ind. Child Support Guideline 6, cmt. Instead, courts are instructed to review each case on an individual basis. See id.

Nonetheless, the Guidelines recommend that, at a minimum, the following five factors be considered in determining when to order a release of the exemptions:

- “(1) the value of the exemption at the marginal tax rate of each parent;
- (2) the income of each parent;
- (3) the age of the child(ren) and how long the exemption will be available;
- (4) the percentage of the cost of supporting the child(ren) borne by each parent; and
- (5) the financial burden assumed by each parent under the property settlement in the case.” Id.

Taking into account those factors, a “trial court’s equitable discretion should be guided primarily by the goal of making the maximum amount of support available for the child.” Lamon v. Lamon, 611 N.E.2d 154, 159 (Ind. Ct. App. 1993). In particular, the noncustodial parent bears the burden of demonstrating the tax consequences to each parent of transferring the exemption and how such a transfer would benefit the child. Id.

Here, the evidence shows that the parties’ incomes are relatively comparable.

Mother is the custodial parent, and Father has minimal parenting time with Z.W. Father did not present any evidence or make any argument regarding the tax consequences to

each parent of transferring the exemption or how the transfer would benefit Z.W. Moreover, the dissolution court did not make any findings on either of those questions. Without any such evidence, argument or findings, the dependency exemption must remain with the custodial parent. Thus, we agree with Mother that the dissolution court abused its discretion when it transferred the tax exemption for Z.W. to Father. We reverse and remand to the dissolution court with instructions to enter an order providing that Mother retains the annual tax exemption for Z.W.

Issue Two: Child Support

Mother next contends that the dissolution court abused its discretion when it ordered that Father's child support obligation should not be modified. In reviewing a determination of whether child support should be modified, we will reverse the decision only for an abuse of discretion. In re Marriage of Kraft, 868 N.E.2d 1181, 1185 (Ind. Ct. App. 2007). We review the evidence most favorable to the judgment without reweighing the evidence or reassessing the credibility of the witnesses. Id. An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court, including any reasonable inferences therefrom. Id.

Mother maintains that both parties submitted Child Support Obligation Worksheets ("worksheets") containing the following "inaccuracies": listing Father's income as \$1143 per week; awarding Father a credit for a "subsequent child he pays support for as the child does not reside in his home"; and awarding Father a credit for overnight parenting time when the dissolution court ordered no overnight parenting time on January 10, 2003. Brief of Appellant at 21. Mother asserts that, disregarding the

inaccurate worksheets, the evidence shows that modification of Father's child support is warranted under Indiana Code Section 31-16-8-1, which provides:

Except as provided in section 2 of this chapter, modification may be made only:

(1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or

(2) upon a showing that:

(A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and

(B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

Mother maintains that the evidence supports modification of Father's child support because "by applying the Guidelines, . . . the result is a child support obligation of . . . \$224.53," which is more than a 20% difference from the previous order of \$168.12. Brief of Appellant at 24.

But, again, we review the evidence most favorable to the dissolution court's order, and, as Mother concedes on appeal, she submitted worksheets reflecting no significant change in Father's income and including credits for Father's subsequent child and overnight visitation. And those worksheets support the dissolution court's conclusion that "there is not a substantial change of circumstances [or] a greater than twenty percent deviation under the guidelines." Appellant's App. at 60. If the worksheets Mother presented were inaccurate, she cannot now rely on a claim that they were inaccurate as grounds for appeal. A party may not take advantage of an error that he commits, invites,

or which is the natural consequence of his own neglect or misconduct. Evans v. Evans, 766 N.E.2d 1240, 1244 (Ind. Ct. App. 2002). Invited error is not subject to review by this court. Id. Thus, as the error complained of was invited by Mother, her claim is not subject to our review.

Affirmed in part, reversed in part, and remanded with instructions.

RILEY, J., and MAY, J., concur.