MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

FILED
Feb 05 2025, 8:50 am
CLERK
Indiana Supreme Court
Court of Appeals
and Tax Court

IN THE
Court of Appeals of Indiana

Abigail E. Reith,
Appellant-Respondent

v.

Matthew Chaffee,
Appellee-Petitioner

February 5, 2025

Court of Appeals Case No.
24A-JP-161

Appeal from the St. Joseph Probate Court

The Honorable Jason A. Cichowicz, Judge
The Honorable Leone C. Zappia, Referee

Trial Court Cause No.
71J01-2108-JP-000359

Memorandum Decision by Judge DeBoer.
Judge May concurs.
Judge Tavitas concurs in part and dissents in part with opinion.

DeBoer, Judge.

Case Summary

[1] A two-month romantic relationship between Abigail Reith ("Mother") and Matthew Chaffee ("Father") led to the birth of L.C. ("Child") on November 16, 2021. Before Child was born, Father filed a Petition to Establish Paternity, Custody, Parenting Time and Child Support ("Petition"). Following eight highly contested hearings over as many months, the trial court entered its Order on December 19, 2023 ("Order"), granting Mother sole physical and legal custody and establishing Father's parenting time and child support obligation. Both parents appeal. We affirm in part, reverse in part, and remand with instructions.

Issues

[2] The parties raise numerous issues on appeal and on cross-appeal, which we reorder and restate as follows:

(1) Whether Father may legally challenge the Supreme Court's Order remanding the case to the same trial judge following Father's Trial Rule 53.2 praecipe ("Lazy Judge Motion")[1],

(2) Whether the trial court correctly calculated Father's weekly gross income and appropriately omitted Father's gambling winnings from his gross income,

(3) Whether the trial court erred in its determination of Father's payments for childcare, health insurance, and uninsured health care expenses, and

(4) Whether the trial court erred in reducing Father's holiday parenting time.

Facts and Procedural History

[3] Mother and Father had a short-lived romantic relationship during which Child was conceived. Almost immediately after Mother learned she was pregnant, the parties' ability to get along completely broke down. On August 30, 2021, Father petitioned the trial court to establish paternity, custody, parenting time, and child support. On October 21, 2021, the trial court entered an order acknowledging Father to be the biological parent of the yet-unborn Child "based upon the genetic tests" but deferring issues of child custody pending a report and recommendation by the Guardian Ad Litem ("GAL") as well as

[1] Indiana Trial Rule 53.2, colloquially known as the Lazy Judge Rule, establishes that when a cause has been tried to the court and taken under advisement, and no ruling is issued within ninety days, the cause may be withdrawn from the trial judge and transferred to the Supreme Court for the appointment of a special judge.

other child-related matters. *Appellant's App. Vol. 3* at 4.[2] Child was born on November 16, 2021. On March 24, 2022, the trial court approved the Parents' Temporary Stipulation on Custody, Visitation, and Child Support to share legal custody of Child, with Father beginning overnight parenting time on alternating weekends one month later.

[4] On October 26, 2022, the trial court commenced the first of eight evidentiary hearings regarding Child's custody, parenting time, and child support raised in Father's Petition. These hearings were held on October 26, 2022; February 28, 2023; March 24, 2023; March 29, 2023; May 8, 2023; May 9, 2023; June 9, 2023; and June 23, 2023.

[5] At the October 26, 2022 hearing, the GAL testified Father had been exercising "weekend parenting time," which was "significantly more" than what was "recommended for, appropriate for the [C]hild at this age, under the guidelines." *Id.* at 117. During the course of these proceedings, the trial court increased Father's parenting time two additional times. First, by written order of December 20, 2022, the trial court granted Father four overnights during the holiday season. Second, at the close of the March 29, 2023 evidentiary hearing,

---

[2] Both parties submitted several volumes of Appendices and Transcripts. Mother submitted four Appendix volumes, which we define as "*Appellant's App. Vol.*" Father submitted his own two-volume Appellee-Cross-Appellant Appendix, which we refer to as "*Appellee's App. Vol.*" Each party also submitted its own set of transcripts. The initial volumes, ordered by Mother, comprise of four volumes and are referenced as "*Tr. Vol.*" Father ordered supplemental transcripts, which consist of five volumes and which we cite as "*Tr. Suppl. Vol.*"

the trial court increased Father's parenting time to include midweek overnight visits from Wednesdays at 5:00 p.m. to Thursdays at 7:00 a.m.

[6] At the March 29 and May 8, 2023 hearings, the trial court received testimonial evidence of Father's income, childcare payments, and health insurance payments. Father testified that he worked as a regional sales manager at Jayco, Inc., where until March of 2022 his "salary" had been "$60,000." *Tr. Vol. 3* at 63. In March 2022, Father's salary was reduced to "$31,500," but he also received "a commission rate of .55%" and was reimbursed for his cell phone and "travel expenses." *Tr. Vol. 3* at 51, 65. "Jayco's 2022 Pay Summary" that was admitted into evidence established that Father's income was $216,927 and that he had been reimbursed $42,832.35 for his expenses in 2022.[3] *Appellee's App. Vol. 2* at 36-41. At the May 8, 2023 hearing, Father explained that his commission and bonuses are not always guaranteed and are subject to "extreme[]""fluctuat[ion]." *Tr. Suppl. Vol. 4* at 49. Given Father's inconsistent income, the trial court acknowledged that it would have "no problem with [a] true-up."[4] *Tr. Vol. 3* at 183. Starting in 2023, Father also began receiving a

[3] In his brief, Father claims that his 2022 Jayco earnings total $174,094.65 (2022 income minus expense reimbursement). *Appellee's Br. p. 13*.

[4] The record indicates the trial court intended to calculate Father's child support obligation based on his base salary, commission, and bonuses. Then, "if there is an overpayment" at the end of the year, "due to a true-up," the court would apply the overpayment to Father's accumulated arrearage. *Tr. Vol. 3* at 184.

yearly stipend of $2,000 for his position on the Penn Harris Madison School Corporation Board ("School Board").

[7] Also at the May 8, 2023 hearing, Mother introduced an exhibit showing deposits into Father's bank account totaling $124,166.28. Mother claimed these deposits from DraftKings, PayPal, Venmo, and BetMGM were additional income Father received from gambling. Father explained that many of the deposits in Mother's exhibit were not related to gambling but were reimbursements for work-related expenses he had incurred or Venmo deposits from friends repaying him for money Father expended for his "best friend's bachelor party." *Tr. Suppl. Vol. 4* at 149. During the proceedings, Father did not submit tax documentation, returns or W-2s, which might show the income Father earned from gambling. Father admitted that DraftKings, BetMGM, and some of the PayPal and Venmo deposits were related to "money" he won "gambling;" however, Father insisted that these were neither "consistent" nor anything that he could "rely upon." *Id.* at 147, 150.

[8] Child was first placed in daycare by Mother in July 2022, at a weekly rate of $200. Because Father had been ordered[5] to pay the weekly childcare costs directly to the provider in exchange for "a future credit" for the payments,

---

[5] On December 20, 2022, the trial court ordered "[o]n a Temporary Basis, Father shall continue to pay the current child support obligation as previously Ordered, and additionally he shall pay $200.00 weekly for childcare, with payments to be made directly to the child care [sic] provider." *Appellee's App. Vol. 2* at 33 (capitalization in original).

Father testified he sent provider six checks of $200 each until the end of January 2023, when Mother switched daycare providers. *Appellee's App. Vol. 2* at 33. Father did not introduce these checks or any other documentation related to his payments into evidence.

[9] Father testified he carried Child's health care insurance. "Jayco's 2022 Pay Summary" indicates that in 2022, Father paid approximately $195 bi-weekly through his employer for both his and Child's health care premiums. *Id*. at 39. Father clarified that his own portion of the health insurance premiums was "$97.00-ish dollars," which increased to $195 bi-weekly when he added Child. *Tr. Suppl. Vol. 4* at 52. In 2023, after his appointment to the School Board, Father switched his and Child's health insurance to one which had a total cost of only $800 annually. Mother corroborated this aspect of Father's testimony.

[10] The evidentiary hearings concluded on June 23, 2023. At the close of the final hearing, the parties agreed to submit their proposed findings of fact and conclusions of law to the court by September 1, 2023.

[11] On December 14, 2023, with Father's Petition still under advisement, the trial court conducted a hearing to resolve pending contempt petitions each party had filed against the other for alleged parenting time violations. At the end of the contempt hearing, Father notified the trial court that he would be filing a Lazy Judge Motion pursuant to Trial Rule 53.2. Addressing the court directly, Father stated:

> I would like to give the Court notice, that I will be filing a [Lazy Judge Motion] today, per trial rule 53.2. Per trial rule 53.2, the Court has up to 90 days to issue a ruling in regards to facts and findings and conclusion of law. We are now 14 days past, uh, that deadline, and I'm, well, giving the Court notice here today, in regards to communications that have to take place, . . . once that [Motion] is filed, I will communicate, uh, what's necessary. Thank you, Your Honor.

Suppl. Tr. Vol. 5 at 119. The trial court merely responded, "Okay" and did not indicate a ruling on Father's Petition was forthcoming. *Id*. On December 18, 2023, Father filed his Lazy Judge Motion, which the clerk's office mailed to the Chief Administrative Officer with the Supreme Court ("CAO") that same day.

[12] On December 19, 2023, less than twenty-four hours after the clerk's office transferred Father's Lazy Judge Motion to the CAO, the trial court issued its Order on Father's Petition with findings of fact and conclusions of law. The Order granted Mother sole legal and physical custody of Child, and awarded Father parenting time as follows: Father would have alternating weekends from Fridays at 6 p.m. until Monday morning and overnights every Wednesday from 6 p.m. until Thursday morning. Beginning June 1, 2024, Father would receive alternating weeks with Child from Sunday at 5 p.m. until the next Sunday at 5 p.m. On off weeks, parents would have overnights on Wednesdays from 5 p.m. until Thursday morning. Each parent was awarded one week in the summer and special occasions and holidays were pursuant to the Indiana Parenting Time Guidelines.

[13] As for child support, the trial court concluded, in pertinent part:

> Father shall pay child support in the sum of $408.00 per week retroactive to November 16, 2021. Father shall receive a credit toward any arrearage for payment previously made as of November 16, 2021. The 6% percent rule shall apply thereafter[,] uncovered medial [sic] expenses shall be share [sic] proportionate [sic] to the parties' incomes as shown on the child support worksheet []. Father shall continue to carry health insurance on the parties' minor child so long as it's available from his employment and the cost is reasonable. Any child support arrearage shall be preserved.

Id. at 17.

[14] On January 11, 2024, the CAO determined that "withdrawal [of this case]. . . from the judge [wa]s warranted" and was "effective as of the time of the filing" of the Lazy Judge Motion because the trial court failed to rule on Father's Petition within ninety days after taking it under advisement. *Appellee's App. Vol. 2* at 54. On January 16, 2024, our Supreme Court issued an Order remanding jurisdiction back to the trial judge instructing him to "resume jurisdiction over this matter as if the Notice Withdrawing the Submission filed January 11, 2024 had not been issued." *Id.* at 56. On January 30, 2024, Father attempted to file a motion to vacate the Supreme Court's Order remanding jurisdiction to the

trial court and to reinstate the notice of the CAO's determination.[6] The Appellate Clerk's Office rejected the filing.

Discussion and Decision

1. Lazy Judge Motion

[15] Because Father's Lazy Judge Motion presents a threshold procedural question on the trial court's power to act, we address it first.

[16] The trial court concluded its evidentiary hearings on Father's Petition on June 23, 2023. On December 18, 2023, one hundred seventy-eight days later, Father filed a Lazy Judge Motion pursuant to Trial Rule 53.2 (A), which provides:

> Whenever a cause . . . has been tried to the court and taken under advisement by the judge, and the judge fails to determine any issue of law or fact within ninety (90) days, the submission of all the pending issues and the cause may be withdrawn from the trial judge and transferred to the Supreme Court for the appointment of a special judge.

The overall purpose of Trial Rule 53.2 is to expedite litigation. *State ex. rel. Koppe v. Cass Circuit Court*, 723 N.E.2d 866, 868 (Ind. 2000). Even though "withdrawal of a cause from a judge who has already heard the evidence is inefficient and thus may defeat the purpose of the rule[]," our Supreme Court

[6] Father filed this motion pursuant to Trial Rule 53.1(E), which sets forth the procedure for withdrawing the cause from the trial court after a party files a Lazy Judge Motion.

acknowledged that "the goal of expediting litigation is statewide in scope, and that larger objective can best be achieved when trial judges are cognizant of the requirements of Trial Rule[] . . . 53.2 and understand that those dictates are enforceable." *Id. at* 868-69. The rule permits two exceptions to this ninety-day period within which a matter may be held under advisement. The first is when the "parties who have appeared or their counsel stipulate or agree on record that the time limitation for decision set forth in this rule shall not apply." T.R. 53.2(B)(1). The second exception is where the "time limitation for decision has been extended by the Supreme Court pursuant to Trial Rule 53.1(D)." T.R. 53.2(B)(2). It is undisputed that neither exception applies.

[17] Trial Rule 53.2's requirement to issue a decision within ninety days after the conclusion of a trial "operates irrespective of whether proposed findings and conclusions are contemplated." *State ex rel. Hoffman v. Allen Cir. Ct.*, 868 N.E.2d 470, 473 (Ind. 2007) (receiving proposed findings of fact and conclusions of law from the respective parties may be a judicial convenience but is not necessary to the court's decision making.)

[18] Father filed his Lazy Judge Motion on December 18, 2023 and the trial court clerk mailed it to the CAO that same day. On January 11, 2024, the CAO "found that withdrawal of the submission [of this Cause] from the judge is warranted . . . effective as of the time of the filing of the initial Praecipe" and submitted the matter "to the Indiana Supreme Court for appointment of a special judge, or such other action deemed appropriate by the Court." *Appellee's*

App. Vol. 2 at 54; *see also* T.R. 53.1(E)(2) ("If the CAO determines that a ruling or decision has been delayed beyond the time limitation set forth under Trial Rule . . . 53.2, the CAO shall give written notice of the determination to the judge . . . that the submission of the case has been withdrawn from the judge . . . effective as of the time of the filing of the praecipe"). Five days later, our Supreme Court ordered the trial court to "resume jurisdiction over this matter as if the Notice Withdrawing the Submission filed January 11, 2024 had not been issued" and effectively reinstated the trial court's Order. *Appellee's App. Vol. 2* at 56.

[19] Father now argues that remanding the cause to the same judge without appointing a special judge and allowing the trial court's Order to stand undermines the purpose of Trial Rule 53.2 and places Father at the mercy of the judge's "retaliation or wrath" because he was "brave enough to file a lazy judge action."[7] *Father's Reply Br.* at 9. Regardless of his characterization of the issue, Father asks this court to review our Supreme Court's decision in light of the confines of Trial Rule 53.2. We remind Father that "[i]t is a fundamental principle of appellate procedure that this Court has no jurisdiction to review action of our Supreme Court." *Justak v. Bochnowski*, 391 N.E.2d 872, 878 (Ind. Ct. App. 1979), *cert. denied*, 449 U.S. 828, 101 S.Ct. 92, 66 L.Ed.2d 31

[7] By order of August 22, 2024, amended on September 12, 2024, the trial judge recused from the case and the parties were ordered to agree on a special judge pursuant to Trial Rule 79.

(Appellant claimed that the Supreme Court had erred in failing to withdraw the cause from the trial judge pursuant to Trial Rule 53.1); Appellate Rule 5(A) (Court of Appeals has jurisdiction in all appeals from final judgments of circuit, superior, probate, and county courts.). Accordingly, we cannot and will not accept Father's invitation to vacate our Supreme Court's ruling.

2. Child Support Obligation

[20] In their respective appeals, both parties allege the trial court erred in its calculation of Father's child support obligation.

[21] Our Supreme Court has long placed a "strong emphasis on trial court discretion in determining child support obligations." *Wilson v. Wilson*, 222 N.E.3d 1031, 1034 (Ind. Ct. App. 2023). Accordingly, a trial court's calculation of child support is presumptively valid, and we will reverse only if it is clearly erroneous or contrary to law. *In re Paternity of K.C.*, 171 N.E.3d 659, 679 (Ind. Ct. App. 2021). "A decision is clearly erroneous if the record facts do not support the findings or if it applies the wrong legal standard to properly found facts." *Matter of Eq.W.*, 124 N.E.3d 1201, 1208 (Ind. 2019). On review, "we will not reweigh the evidence and will consider only the evidence most favorable to the judgment." *In re Paternity of K.C.*, 171 N.E.3d at 679.

[22] When, like here, a trial court enters formal findings, we observe the following:

> [C]ourts reviewing support orders contained in judgments entered under T.R. 52 are not at liberty simply to determine

> whether the facts and circumstances contained in the record support the judgment. Rather the evidence must support the specific findings made by the court which in turn must support the judgment. . . . [I]f the findings and conclusions entered by the court, even when construed most favorably toward the judgment, are clearly inconsistent with it, the decision must be set aside regardless of whether there was evidence adduced at trial which would have been sufficient to sustain the decision.

Young v. Young, 891 N.E.2d 1045, 1047 (Ind. 2008).

A. Father's Gross Income

[23] Father contends that the trial court applied an inaccurate weekly gross salary to him. The trial court found that Father "earns approximately $216,000 per year" as a sales representative for Jayco, Inc. and receives "$2,000 per year from" the School Board. *Appellant's App. Vol. 3* at 14. Based on these numbers, the trial court, in the Child Support Worksheet, concluded that Father's "weekly gross income" was "$4,192"—which translates to yearly earnings of $217,984—and calculated Father's child-support obligation as "$408.00 per week." *Id.* at 18. Father was ordered to pay his child support obligation "retroactive to November 16, 2021." *Id.* at 14.

[24] When fashioning a child support order, the trial court's first task is to determine the weekly gross income of each parent. *Scott v. Scott*, 668 N.E.2d 691, 695-96 (Ind. Ct. App. 1996). "Weekly gross income" is broadly defined to include not only actual income from employment but also potential income and imputed income from "in-kind" benefits. *Glover v. Torrence*, 723 N.E.2d 924, 936 (Ind.

Ct. App. 2000). "The Indiana Child Support Guidelines aid in the determination of the amount of child support that should be awarded and provide a measure for calculating each parent's share of the child support." *In re Paternity of G.R.G.*, 829 N.E.2d 114, 118 (Ind. Ct. App. 2005). Indiana Child Support Guideline 3(A) provides, in pertinent part:

> Weekly gross income of each parent includes income from any source, . . . and includes, but is not limited to, income from salaries, wages, commissions, bonuses, overtime, . . . [or] prizes[.]

While the Guidelines advocate a total income approach to calculate weekly gross income, they also "recognize determining income is fact-sensitive when irregular income, such as bonuses, overtime, and commissions, is involved." *In re Paternity of G.R.G.*, 829 N.E.2d at 118.

> There are numerous forms of income that are irregular or nonguaranteed, which cause difficulty in accurately determining the gross income of a party. Overtime, commissions, bonuses, periodic partnership distributions, . . . are all illustrations, but far from an all-inclusive list, of such items. Each is includable in the total income approach taken by the Guidelines, but each is also very fact sensitive.

Child Supp. G. 3(A), cmt. (2)(b). The Guidelines provide for a child support obligation worksheet to "be completed and filed with the court, when the court is asked to order support. . . . Income statements of the parents shall be verified with documentation of both current and past income." Child Supp. G. 3(B).

"There is a rebuttable presumption that the amount of the award which would result from the application of the Indiana Child Support Guidelines is the correct amount of child support to be awarded." *In re Paternity of G.R.G.*, 829 N.E.2d at 118.

[25] We begin by noting that Father never submitted a Child Support Obligation Worksheet to the court. Father contends that because of the fluctuating and fact-sensitive nature of his income—comprised of a base salary supplemented by commissions—the trial court should have calculated child support based on the three different incomes he earned during those corresponding time periods rather than using his 2022 income for all three periods. Father claims the first child support obligation should have covered November 16, 2021 until December 31, 2021, when he earned "a salary of $60,000." *Tr. Vol. 3* at 63. He then contends a second child support obligation should have been determined for 2022 and claims the trial court applied the incorrect weekly gross income for that year by using the figure Mother included in the Child Support Obligation Worksheet she provided to the court. Father finally claims that a third child support obligation should have been calculated for his fluctuating, commission-based income and School Board stipend in 2023. *See Tr. Suppl. Vol. 4* at 49; *Tr. Vol. 3* at 51.

[26] We agree with Father that "[o]ne pay stub standing alone can be very misleading" in the case of "salesmen, professionals and others who receive commissions or bonuses, . . . thereby distorting the true picture of their income

in the short term." *Lloyd v. Lloyd*, 755 N.E.2d 1165, 1169-70 (Ind. Ct. App. 2001) (citing Child Supp. G. 3 cmt.). To combat this distortion, our Child Support Guidelines suggest reviewing income tax returns for the last two to three years. *Id.* at 1170. Despite this guidance provided by our Guidelines, Father's two family law attorneys, and several evidentiary hearings providing Father with the opportunity to submit evidence, Father neither submitted a Child Support Obligation Worksheet nor did he submit any evidence documenting his income in 2021 or 2023. *See In re Paternity of G.R.G.*, 829 N.E.2d at 119 ("Each party bears the burden of justifying the incomes used" for purposes of child support.).

[27] Father adequately substantiated his income for 2022 with employer-provided salary information. Pursuant to the written records provided by Jayco, Inc., Father's gross earnings in 2022 were $216,927.14. Father was appointed to his position on the School Board in 2023 and thus did not receive a $2,000 stipend in 2022. However, Father suggests that his 2022 gross earnings must be reduced by $42,832.35 for his documented reimbursed expenses which Father incurred for "Sales Travel" in 2022, for a total gross income of $174,094.65. *Appellee's App. Vol. 2* at 41. We disagree.

[28] We recently addressed an argument similar to Father's in *DeGrado v. DeGrado*, 243 N.E.3d 381, 387-88 (Ind. Ct. App. 2024). There, DeGrado received reimbursements from his employer for out-of-pocket expenses he paid during the course of his employment. *Id*. at 387. On appeal, DeGrado argued that

these reimbursements should be excluded from his weekly gross income for calculating child support because they were excluded from his taxable income. *Id*. We held that even if reimbursements were excluded from taxable income, "this does not mean that such reimbursements cannot be included in the determination of [f]ather's income when calculating his child support obligation." *Id.* at 388 (pointing to Child Supp. G. 3(A) cmt. 2, "In calculating Weekly Gross Income, it is helpful to begin with total income from all sources. This figure may not be the same as gross income for tax purposes.").

[29] Father also points to the trial court's acknowledgment during the May 9, 2023 evidentiary hearing that "a true-up" might have been appropriate "when it comes to commission and bonuses" to calculate Father's income for 2023. *Tr. Vol. 3* at 182. Despite the trial court's numerous reminders to the parties that there were gaps in the evidence regarding Father's income and gambling winnings, Father did not provide evidence to support his claim of substantial income fluctuations. In the absence of documentary evidence substantiating Father's income for the 2021 and 2023 time periods, the trial court is not required to calculate a different child support obligation for these time periods. *See In re Paternity of G.R.G.*, 829 N.E.2d at 119 ("Each party bears the burden of justifying the incomes used" for purposes of child support.). Instead, the trial court can institute a uniform calculation to encompass Father's entire child support obligation from the date of Child's birth.

[30] In its Order, the trial court calculated Father's weekly income based on gross earnings of $217,984, while the documentary evidence showed Father's gross earnings to be $216,927.14. This is a difference of $1,056.86 in annual gross earnings. We remand to the trial court for clarification of its factual findings to support the calculation of Father's gross earnings.

B. Gambling Income

[31] In her sole issue on appeal, Mother claims the trial court abused its discretion by not adding Father's alleged gambling winnings to his total gross income when calculating his child support obligation. Although Mother created and submitted a demonstrative table showing deposits from DraftKings, PayPal, Venmo, and BetMGM totaling $124,166.82 into Father's bank account, the trial court found that "no evidence was presented as to losses [to] offset or monies owed to other related to [sic] on-line gambling." *Appellant's App. Vol. 3* at 14.

[32] A trial court determines a child support obligation by looking at each parent's weekly gross income, which is the actual weekly gross income of a parent employed to his or her full capacity, the potential income of a voluntarily unemployed or underemployed parent, and any imputed income based on in-kind benefits. *Meredith v. Meredith*, 854 N.E.2d 942, 947 (Ind. Ct. App. 2006). In *In the Matter of Paternity of T.M.-B.*, 131 N.E.3d 614, 619 (Ind. Ct. App. 2019), *trans. denied,* father was a "self-employed professional gambler" and "[g]ambling [wa]s not a mere hobby for [him]" but rather "his occupation."

This court concluded that the trial court did not abuse its discretion "in determining [f]ather's gross weekly income by averaging his gambling earnings and adding that amount to his annuity income." *Id.* at 620.

[33] Here, Father did not dispute that some of his income was derived from gambling; however, he objected to the amount and frequency of the income portrayed by Mother's summarized table of deposits. Father testified that at least some of the transactions listed on Mother's self-made summary were not related to gambling but were work-related reimbursements, as well as reimbursements for expenses he had advanced for "friends . . . [and] for organizing events," such as his "friend's bachelor party." *Tr. Suppl. Vol. 4* at 47, 149. Although Father earned some income from gambling, unlike *T.M.-B.*, it was neither "consistent" nor anything that he could "rely upon." *Id.* at 150.

[34] The trial court's exclusion of gambling winnings is not clearly erroneous considering the lack of evidence of net gambling proceeds and the fact-sensitive nature of the income. *See* Ind. Child Supp. G. 3(A), cmt. 2(b) ("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.").

C. Childcare Costs

[35] In calculating Father's child support obligation, the trial court included Mother's weekly childcare cost of $160 retroactive to November 21, 2021, and

added this cost to Father's child support payment. *See* Child Supp. G. 3(E)(1) ("Childcare costs incurred due to employment or job search of both parent(s) should be added to the basic obligation"). Father asserts two errors in the trial court's calculation of childcare costs.

[36] First, with respect to the trial court's retroactive calculation to November 21, 2021, Father points to each party's testimony that no childcare costs were incurred before July 2022. Specifically, Mother agreed that "the first paid sitter" was in "July of 2022," while Father noted that Child was first enrolled in childcare "[e]arly July of 2022." *Tr. Vol. 3* at 163; *Tr. Suppl. Vol. 5* at 63. In view of parents' concurring testimony, the trial court erred in retroactively calculating the childcare costs to November 21, 2021, instead of July 2022.

[37] Second, Father contends that the trial court failed to give him credit for each of the six $200 checks he allegedly paid directly to the childcare provider between December 20, 2022 and the end of January 2023, pursuant to the trial court's order of December 20, 2022. The childcare provider testified that Father paid for Child's childcare by check and that the expense was $200 per week, but the provider did not state how many checks she received from Father. Despite the parties revisiting this issue numerous times throughout these extensive proceedings, Father could have submitted documentary evidence to support his testimony about the amount he paid the daycare provider, but he did not. Because it is Father's burden to provide evidence supporting his claim that he is owed a credit, it was within the trial court's discretion to decline to grant Father

the credit he seeks. *See In re Paternity of G.R.G.*, 829 N.E.2d at 119 ("Each party bears the burden of justifying the incomes used" for purposes of child support.)

D. Health Insurance

[38] In the trial court's calculation of Father's child support obligation, the court did not give Father any credit for his payment of health insurance premiums for Child. During the evidentiary hearing of May 8, 2023, Father explained he and Child were initially insured through his employer at a bi-weekly cost of $195, but in 2023, Father changed their health insurance coverage to the School Board's plan for $800 per year. Mother does not dispute Father's payments of Child's health insurance premiums.

[39] "[G]enerally, a parent should receive a health insurance credit in an amount equal to the premium cost the parent actually pays for a child's health insurance." *Ashworth v. Ehrgott*, 934 N.E. 2d 152, 162 (Ind. Ct. App. 2010); *see also* Child Supp. G. 3(E)(2). Accordingly, the trial court erred when it concluded that Father's employer provides health insurance for both Father and Child "at no cost." *Appellant's App. Vol. 3* at 14.

[40] While in some circumstances the trial court may attribute half of the total health insurance premium to the child's coverage, it remains Father's burden to provide evidence supporting his claim. *See, e.g., In the Matter of Paternity of T.M.-B.*, 131 N.E.3d at 620 (trial court did not abuse its discretion in its award of credit for half of the total healthcare premiums when evidence in the record

indicated that the insurance premium could not be broken down to determine the portions attributed between the respective members). Father testified that his cost for 2022 was "$97.00-ish dollars[]" that increased to $195 bi-weekly when Child was added to it. *Tr. Suppl. Vol. 4* at 52. Therefore, the cost of Child's health insurance was approximately $100. When Father switched health insurance programs through the School Board, the combined cost of insurance for him and Child was $800 annually. Father did not break down costs for him and Child to assist the trial court in computing this credit on the Child Support Obligation Worksheet. We remand with instructions for the trial court to correct its Order reflecting the evidence that Father paid $800 annually in health insurance expenses and to credit Father for Child's actual health insurance premiums based on his evidence establishing the breakdown, if any, of Child's separate health insurance expense.

E. Uninsured Health Care Expenses (The 6% Rule)

[41] Through December 31, 2023, the custodial parent was responsible for uninsured health care expenses of up to 6% of the child support obligation. *See* Child Supp. G. 7 cmt. Because the noncustodial parent is, "in effect, prepaying health care expenses every time a support payment is made[,]" the rule was "designed to ensure that the non-custodial parent does not pay twice for the same medical expenses." *Tigner v. Tigner*, 878 N.E.2d 324, 328 (Ind. Ct. App. 2007). Finding this 6% model "out-of-date and [] no longer utilized in the development of the current Guideline support schedule[,]" our Supreme Court

amended the Child Support Rules and Guidelines by Order of October 17, 2023, and eliminated the 6% rule, effective January 1, 2024. *See* Child Supp. G. 7 cmt. The Order made the uninsured health care expenses part of the basic child support obligation and the parenting time credit. In other words, when a claim is submitted to the health insurance carrier, the parties should contribute to the uninsured portion of the claim in proportion to their incomes as shown on the Child Support Obligation Worksheet.

[42] Here, the trial court's December 19, 2023 Order employed the 6% rule in apportioning health care costs to Father while the rule was still in effect. Therefore, although the 6% rule was ultimately abolished on January 1, 2024, the trial court did not err by incorporating it into its child support order when it did.

3. Father's Holiday Parenting Time

[43] Father has been exercising overnight parenting time since Child was four months old by way of a temporary agreement between the parties. On March 7, 2022, Parents agreed to a Temporary Stipulation on Custody, Visitation, and Child Support to share legal custody of Child, then three months old, with Father beginning overnight parenting time on alternating weekends one month later. The trial court twice increased Father's parenting time. First, allowing Father holiday parenting time for four overnights during the holiday season, and later, providing Father with midweek overnight parenting time.

[44] Despite the trial court's increases in Father's parenting time during the course of the proceedings, the trial court's final Order eliminated Father's overnight holiday parenting time and instead awarded him holiday parenting time pursuant to the Indiana Parenting Time Guidelines, which do not provide for overnight visits on holidays for a child under the age of three.[8] *See* Ind. Parenting Time G. § II(F)(2). Treating the Parties' Temporary Stipulation and the two subsequent amendments as the trial court's initial determination of his parenting time, Father claims that the trial court abused its discretion by entering a parenting time modification that reduced his parenting time downward without explanation in its Order—even if the trial court's recommendation is in line with the Indiana Parenting Time Guidelines. In response, Mother advises this court that the issue raised by Father is moot because Child turned three years old on November 16, 2024 and, pursuant to the Parenting Time Guidelines, Father now receives the same holiday parenting time the trial court eliminated in its Order.

[45] In reviewing a trial court's determination of parenting time in a paternity action, we look to two statutes—Indiana Code section 31-14-14-1 and Indiana Code section 31-14-14-2—as well as the Indiana Parenting Time Guidelines.

[8] The trial court's Order did not change Father's midweek and overnight parenting time on alternating weekends.

[46] Indiana Code section 31-14-14-1 governs parenting time in paternity actions and provides in relevant part:

> (a) A noncustodial parent is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time might:
>
> (1) endanger the child's physical health and well-being; or
>
> (2) significantly impair the child's emotional development.

[47] The second applicable statute, Indiana Code Section 31-14-14-2, provides: "The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child." Thus, "[i]n all parenting time controversies, courts must give foremost consideration to the best interests of the child." *Matter of Paternity of J.K.*, 184 N.E.3d 658, 663-64 (Ind. Ct. App. 2022) quoting *Hazelett v. Hazelett*, 119 N.E.3d 153, 161 (Ind. Ct. App. 2019)).

[48] Based on the unambiguous language of Indiana Code section 31-14-14-1, a trial court is required to conduct a "hearing" before a parenting time determination can be made to ensure it has considered of all the relevant factors to fashion a parenting plan based upon the specific circumstances of each case. Here, the evidentiary hearings in the matter did not conclude until June 23, 2023. Therefore, despite Father's assertion to the contrary, we find the parties' *Temporary* Stipulation (entered on March 24, 2022) and subsequent amendments (entered on December 20, 2022 and March 29, 2023) related to

Father's parenting time were just that, temporary and in the nature of provisional orders.[9] (emphasis added). It is entirely reasonable for the trial court, based upon the evidence presented during eight hearings over eight months and after witnessing the demeanor of the parties in court, to enter a parenting time Order that is in step with our Indiana Parenting Time Guidelines even if doing so results in a reduction to Father.

[49] As "parenting time awards consistent with the Parenting Time Guidelines meet the reasonableness requirement set forth in Indiana Code section 31-14-14-1," we affirm the trial court's determination of Father's parenting time. *Matter of Paternity of J.K.*, 184 N.E.3d at 665.

Conclusion

[50] Because we have no jurisdiction to review an Order issued by our Supreme Court, we decline Father's invitation to vacate the Supreme Court's remand to the trial court following Father's Trial Rule 53.2 Lazy Judge Motion. Based on the evidence before us, we reverse in part the trial court's Order regarding

---

[9] "Provisional orders are temporary in nature and designed to maintain the status quo while issues are more fully developed." *In re Paternity of M.R.A.*, 41 N.E.3d 287, 293 (Ind. Ct. App. 2015). There is no authority in the paternity statutes for a provisional order, such as there is in the dissolution statutes. *See* I.C. § 31-15-4-8. "Nonetheless, as the underlying principle behind both the paternity and the dissolution statutes is the best interests of the child, as there is no *prohibition* on provisional orders in the paternity statutes, and in recognition of the realities of litigation, we see no particular reason why a trial court could not make an appropriate provisional order in a paternity case." *In re Paternity of M.R.A.*, 41 N.E.3d at 293 (internal citation omitted; emphasis in original).

Father's child support obligation and remand with instructions to clarify the apparent discrepancy between the trial court's calculation of Father's gross income and the documentary evidence. We also remand with instructions to (1) retroactively calculate the childcare costs to July 2022; (2) correct the Order to include Father's annual $800 health insurance cost; and (3) to credit Father for Child's actual health insurance premiums. Lastly, we affirm the trial court's award of parenting time.

[51] We affirm in part, reverse in part, and remand with instructions.

May, J., concurs. Tavitas, J. concurs in part and dissents in part with opinion.

ATTORNEY FOR APPELLANT

Gregory Karyl Blanford
Blanford Law Office
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Bryan H. Babb
Bose McKinney & Evans LLP
Indianapolis, Indiana

Seema Ramesh Shah
Bose McKinney & Evans LLP
Indianapolis, Indiana

Tavitas, Judge, concurring in part and dissenting in part.

[52] In this appeal, Mother argues that the trial court erred by failing to account for Father's gambling income in determining Father's gross income. Father argues, regarding the child support order, that the trial court abused its discretion: (1) in calculating his gross income for 2021, 2022, and 2023; (2) in determining Mother's childcare costs; (3) by declining to award Father credit for Father's health insurance premiums; and (4) in employing the 6% rule in apportioning uninsured health care expenses.

[53] I concur in part and dissent in part. I dissent with regard to the majority's decision that: (1) the trial court abused its discretion in calculating Father's gross income for 2022; (2) the trial court abused its discretion in declining to award Father credit for health insurance premiums paid for the Child; and (3) remanding the issue of child support to the trial court. I would conclude that the trial court's child support determinations are within the evidence presented—and not presented—by the parties and that the trial court, thus, neither clearly erred nor abused its discretion.

I. Child Support

[54] I agree with the majority's standard of review of the child support issue. A trial court's calculation of child support is "presumptively valid," and we reverse only where the calculation is "clearly erroneous or contrary to law." *Supra* pp. 13-14 (citing *In re Paternity of K.C.*, 171 N.E.3d 659, 679 (Ind. Ct. App. 2021)).

We do not "reweigh the evidence"; we simply determine whether the record facts support the trial court's findings and whether the trial court applied the wrong legal standard. *Id*. at 14 (citing *In re Paternity of K.C.*, 171 N.E.3d at 679; *Matter of Eq.W.*, 124 N.E.3d 1201, 1208 (Ind. 2019)).

[55] I part ways with the majority in the application of this standard of review. I would conclude that the record facts are sufficient to support the trial court's calculation of Father's gross income and the trial court's child support order.

[56] Here, Father testified that, in March 2022, he was a sales trainee employed by Jayco and earned a salary of $60,000.00. He was not earning commission at that time. At some point "roughly after" March 2022, Father's compensation scheme changed to reflect a salary of $31,500.00 with 0.55% commission. Tr. Vol. III p. 65. Father introduced documentation from Jayco indicating that he earned a total income of $216,927.14 in 2022.[10]

[57] Mother introduced evidence that, in 2022, Father also deposited $124,166.82 into his bank account from sources including Venmo, Paypal, "Cash or Mobile Deposit," "Rebate – Cash Out," Draftkings, and BetMGM. Ex. Vol. I pp. 95-96. The DraftKings and BetMGM deposits reflected gambling income. The reason for each of the Venmo, Paypal, "Cash or Mobile Deposit," and "Rebate

[10] I agree with the majority that the trial court was not required to reduce Father's gross income by reimbursed expenses he received from Jayco.

– Cash Out" deposits is not clear, but Father claimed that some reflected reimbursements from his friends and from Jayco.

[58] Beginning in 2023, Father took a position with the Penn-Harris-Madison school board ("PHM") and began earning an annual stipend of $2,000.00. Father did not introduce evidence regarding his expected income from Jayco for 2023, although he testified that his income could change based on his commission. Father did not introduce documentary evidence regarding his income from 2021.

[59] Regarding Father's income, the trial court found:

> Father is gainfully employed as a salesman [at Jayco] and earns **approximately** $216,000.00 per year. Father also earns $2,000.00 per year from PHM schools. Father also received approximately $125,000.00 in on-line gambling proceeds. However, no evidence was presented as to losses offset or monies owed [] related to on-line gambling[.]

Appellant's App. Vol. III p. 14 (emphasis added).

[60] The trial court attached to its order the trial court's own Child Support Obligation Worksheet, which determined Father's gross weekly income as

$4,192.00.[11] Multiplied by fifty-two weeks, this puts Father's gross annual income at $217,984.00.

[61] I would affirm the trial court's ruling for several reasons. First, Father testified that his income changed around March 2022 when he received a promotion at Jayco and began earning a commission. Father testified that his commission and bonuses could "fluctuate . . . [e]xtremely" on an annual basis. Supp. Tr. Vol. IV p. 49.

[62] Second, given the evidence that Father earned thousands of dollars in gambling income, in addition to his salary and commission at Jayco, the trial court's determination that Father earned $217,984.00 in gross income in 2022 is well within the evidence. The trial court, in fact, could have found Father's gross income to be even higher than this amount but was not required to do so.

[63] Third, the trial court should not be faulted when Father failed to submit a Child Support Obligation Worksheet proposing his gross income, as required by Child Support Guideline 3B.1,[12] and supporting documentation for years other

---

[11] The $4,192.00 in gross weekly income that the trial court found is substantially less than the amount Mother proposed in her Child Support Obligation Worksheet, which was $5,009.00 in gross weekly income.

[12] Child Support Guideline 3B.1 provides: "In all cases, a copy of the worksheet which accompanies these Guidelines shall be completed and filed with the court when the court is asked to order support. This includes cases in which agreed orders are submitted. Worksheets shall be signed by both parties, not their counsel, under penalties for perjury."

than 2022, as required by Child Support Guideline 3B.2.[13] As the majority recognizes, "[d]espite th[e] guidance provided by our Guidelines, Father's two family law attorneys, and several evidentiary hearings providing Father with the opportunity to submit evidence, Father neither submitted a Child Support Obligation Worksheet nor did he submit any evidence documenting his income in 2021 or 2023." *Supra* p. 17.

[64] Lastly, the difference between the $217,984.00 figure the trial court found and the $216,927.14 figure Father proposes would make only a de minimis difference in Father's ultimate child support obligation. And the $408.00 child support obligation ordered by the trial court is far less than the $513.00 in child support Father agreed to pay under the temporary order.

[65] The majority concludes that the trial court should have determined that Father's gross income—for 2022 alone—was only $216,927.14, the income he received from his employment at Jayco.[14] This ignores the trial court's finding that Father also earned thousands of dollars in gambling income in 2022. Although the trial court recognized that the parties had not submitted evidence

---

[13] Child Support Guideline 3B.2 provides: "Income statements of the parents shall be verified with documentation of both current and past income. Suitable documentation of current earnings includes paystubs, employer statements, or receipts and expenses if self-employed. Documentation of income may be supplemented with copies of tax returns."

[14] The majority holds that, on remand, the trial court need not arrive at a number different than $217,984.00 for Father's gross income for 2021 and 2023. The majority is reviewing the trial court de novo, which we cannot do.

regarding gambling losses, nowhere in the trial court's order did the trial court indicate that the gambling income should be totally excluded from Father's gross income.

[66] I recognize that the trial court's reasoning for arriving at $217,984.00 as Father's gross income for 2021, 2022, and 2023, as opposed to some other figure, is less than clear. But the evidence regarding Father's income was also unclear. Here, the trial court received evidence not in compliance with the Child Support Guidelines; Father failed to submit a Child Support Obligation Worksheet and documentary evidence in support of his purported income for each of the given years. It is not our task to conduct a de novo review of Father's gross income, although I believe the majority does just that. On the contrary, our task is only to determine whether the trial court's calculation of Father's gross income is supported by the evidence presented, and I conclude that it is. The trial court's calculation of Father's gross income was neither clearly erroneous nor an abuse of discretion.

II. Health Insurance Costs

[67] I also disagree with the majority's decision to "remand with instructions for the trial court to credit Father for Child's actual health insurance premiums based on his evidence establishing the breakdown, **if any,** of Child's separate health insurance expense." *Supra* pp. 23-24 (emphasis added). Remand is inappropriate because it is clear that Father did not provide the necessary

evidence for the trial court to award him the credit he requests, and Father is not entitled to a second bite at the apple.

[68] Father testified that, in 2022, he received employer-provided health insurance through Jayco, and at some point, he added the Child to the health insurance plan. Father paid "$97.00-ish dollars prior" to adding the Child," and adding the Child "made it like $195.00 bi-weekly." Supp. Tr. Vol. IV p. 52. In 2023, Father switched his health insurance to one provided by PHM, and he paid "about $800" annually to cover himself and the Child. *Id*.

[69] The majority concludes that the trial court erred by failing to award Father credit for health insurance premiums paid for the Child, but Father did not provide the trial court with the necessary evidence to do so. Father did not testify regarding when he added the Child to his employer-provided health insurance plan through Jayco in 2022. And Father did not testify regarding the portion of the approximately $800.00 he pays annually for health insurance through PHM that is attributable to the Child's portion. *See* Commentary to Child Support Guideline 3 (noting that, "[i]f health insurance coverage is provided through an employer or purchased through the private market, only the child(ren)'s portion should be added" to the credit).

[70] The majority relies on *In re Paternity of T.M.-B.*, 131 N.E.3d 614, 620 (Ind. Ct. App. 2019), *trans. denied,* which held that the trial court did not abuse its discretion by awarding the mother credit for half of the health insurance

premiums she paid to cover her and the child, but that case is clearly distinguishable. The mother in that case testified that "her insurance premium cannot be broken down" to determine the amount paid to cover her and the amount paid to cover the child. *Id.*

[71] Here, Father did not provide evidence of the time period during which he provided health insurance through Jayco for the Child in 2022. Nor did he provide evidence of the portion of the health insurance premium paid through PHM for the Child in 2023. Father also did not testify that his health insurance in 2023 could not be apportioned between himself and the Child, as was the case in *T.M.-B.* Thus, given the lack of evidence here, I would conclude that the trial court did not err by declining to award Father credit for his health insurance premiums.

[72] I would affirm the trial court on all grounds.