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IN THE INDIANA COURT OF APPEALS
CAUSE NO. 19A-DC-02728

JOSHUA ANSELM,	)	
Appellant,	)	**Appeal from the Jasper Superior Court**
	)	
vs.	)	**Trial Ct Cause No. 37D01-1803-DC-205**
	)	
ASHLEY ANSELM,	)	**Hon. Russell D. Bailey, Judge**
Appellee.	)	

APPELLANT'S BRIEF

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STATEMENT OF THE CASE

I. Nature of the Case.

The nature of this case relates to the appeal of the trial court's Findings of Facts and Conclusions of Law for Order of Final Hearing as to Custody, Support, and Property Settlement (hereafter, "Findings") entered on or about November 5, 2019. Appellant's App. Vol. II, pp. 11. The Appellant, Joshua Anselm, (hereafter, "Father" or "Josh") submits these Findings are clearly erroneous.

II. Course of Proceedings Relevant to the Issues Presented for Review.

Appellee, Ashley Anselm (hereafter, "Mother" or "Ashley")[1], filed a Petition for Legal Separation on or about March 20, 2018. Appellant's App. Vol. II, pp. 18. Mother also filed her Verified Petition for Temporary Possession of Marital Residence and Remaining Provisional Order Issues ("Petition for Provisional Order") on March 20, 2018. Appellant's App. Vol. II, pp. 20. Additionally, Mother also filed her Petition for Temporary Restraining Order to Assets on March 20, 2018. Appellant's App. Vol. II, pp. 22.

Shortly after, the trial court, on March 21, 2018, entered its Mutual Restraining Order to Assets, and set a hearing on Mother's Petition for Provisional Order. Appellant's App. Vol. II, pp. 24. Mother subsequently filed a Motion to Continue the hearing on the Petition for Provisional Order on or about April 17, 2018. Appellant's App. Vol. II, pp. 35. The Court granted Mother's Motion to Continue, and set a hearing on Mother's Petition for Provisional Order for May 17, 2018. Appellant's App. Vol. II, pp. 36.

[1] Appellant and Appellee are collectively referred to herein as the "Parties."

A hearing was held on May 17, 2018 on Mother's Petition for Provisional Order. Appellant's App. Vol. II, pp. 5. At said hearing, both Josh and Ashley signed and entered a provisional Child Support Worksheet. Appellant's App. Vol. II, pp. 38. Following said hearing, an Agreed Provisional Orders was entered into and approved by the trial court on May 21, 2018. Appellant's App. Vol. II, pp. 40-42. Pursuant to the Agreed Provisional Orders, Mother was awarded "temporary custody of the parties' minor children, with liberal visitation to Father as agreed upon by the parties, with the Indiana Parenting-Time Guidelines as a minimum." Appellant's App. Vol. II, pp. 40. Furthermore, the Agreed Provisional Orders directed Father pay temporary child support in the amount of two hundred eighteen dollars ($218.00) per week to Mother. Appellant's App. Vol. II, pp. 40.

Subsequently, Mother filed her Verified Motion to Convert Legal Separation to Dissolution of Marriage on August 17, 2018. Appellant's App. Vol. II, pp. 43. Simultaneous to this filing, Mother also filed her Petition for Dissolution of Marriage on August 17, 2018. Appellant's App. Vol. II, pp. 45. The trial court granted Mother's request to convert the legal separation into a dissolution of marriage on or about August 20, 2018. Appellant's App. Vol. II, pp. 47.

On August 21, 2018, Father filed his Motion to Appoint Guardian Ad Litem. Appellant's App. Vol. II, pp. 48. On August 29, 2018, Mother and Father entered into an Agreed Modification of Provisional Orders, which allowed Mother to obtain certain personal property from the marital home. Appellant's App. Vol. II, pp. 49-50. On September 13, 2018, the trial court entered its Order of September 11, 2018, appointing Lori James (hereafter, "GAL") as Guardian Ad Litem in the case. Appellant's App. Vol. II, pp. 51-52.

There were several Motions to Continue in the intervening months leading up to the final dissolution. Appellant's App. Vol. II, pp. 4-10. The final hearing on dissolution was held on June

27, 2019. Appellant's App. Vol. II, pp. 9. The trial court issued an Order on July 1, 2018, dissolving the Parties' marriage, but taking the issues of child custody, child support, visitation, and division and value of real and personal property under advisement. Appellant's App. Vol. II, pp. 54-55. Additionally, the trial court's Order of July 1, 2018 provided the Parties with twenty-one (21) days to submit proposed findings of fact and conclusions of law as to the issues taken under advisement. Appellant's App. Vol. II, pp. 55.

III. Disposition of the Issues by the Trial Court.

On November 5, 2019, the trial court entered its Findings. Appellant's App. Vol. II, pp. 11. The trial court's Findings awarded Mother primary physical custody of the minor children.[2] Appellant's App. Vol. II, pp. 11-12. Additionally, the trial court found that Mother was entitled to half of the equity in the marital home in the amount of $16,500.00. Appellant's App. Vol. II, pp. 14. Finally, the trial court ordered Father to pay one-hundred seventy-three dollars ($173.00) per week to Mother in child support. Appellant's App. Vol. II, pp. 13.

Father now appeals.

[2] The trial court awarded the Parties joint legal custody of the Minor Children, but Father is not challenging this issue on appeal. Appellant's App. Vol. II, pp. 11-12.

STATEMENT OF THE FACTS

Josh and Ashley were married in May of 2014. Appellant's App. Vol. II, pp. 11. Before marriage, Josh bought a home located at 224 North New York Street, Remington, Indiana. Tr. Vol. II, p. 27; 73. Once married, Ashley moved into Josh's home, thereby making said home the marital home. Tr. Vol. II, p. 73. The Parties subsequently had two (2) children, namely, V.A., presently four (4) years old, and G.A., presently three (3) years old (collectively, "Minor Children"). Tr. Vol. II, p. 28; Appellant's App. Vol. II, pp. 11.

The Parties separated on the 16th day of March 2018. Appellant's App. Vol. II, pp. 11. On March 20, 2018, Mother filed her Petition for Legal Separation. Appellant's App. Vol. II, pp. 18.

Three (3) days later, on or about March 23, 2018, Father filed, in the Jasper Circuit Court, a Petition for Dissolution of Marriage as a new action, under cause number 37C01-1803-DC-000220. Appellant's App. Vol. II, pp. 26. Father, on or about March 24, 2018, filed a Motion for Provisional Order and for Restraining Order. Appellant's App. Vol. II, pp. 28. Father also submitted an Affidavit in Support of Motion for Provisional Hearing and for Restraining Order, detailing, in part, physical assault committed against Father by Mother. Appellant's App. Vol. II, pp. 29-30. The trial court judge in the circuit court entered its Order Granting Temporary Restraining and Setting Hearing on Motions for Restraining Order and Provisional Order on March 27, 2018, granting Father's request for a temporary restraining order. Appellant's App. Vol. II, pp. 31.

On or about April 13, 2018, Mother filed her Motion to Dismiss Dissolution under cause number 37C01-1803-DC-000220. Appellant's App. Vol. II, pp. 32. Father subsequently filed a Motion to Combine the matters on April 13, 2018. Appellant's App. Vol. II, pp. 34. On April 18, 2018, Honorable John D. Potter, of Jasper Circuit Court, entered an Order transferring the case to

the Jasper Superior Court to be consolidated with this current matter. Appellant's App. Vol. II, pp. 37.

Once the matters were consolidated, several filings were made by both Parties as detailed in the Statement of the Case. Appellant's App. Vol. II, pp. 4-10. After a hearing was held on September 11, 2018, the trial court issued its Order of September 11, 2018 Hearing, in which the trial court set the dissolution matter for a final hearing on December 4, 2018. Appellant's App. Vol. II, pp. 52. The final hearing date was continued four (4) different times, with the trial court eventually setting a final hearing in this matter for June 27, 2019. Appellant's App. Vol. II, pp. 8-9; 53.

The final hearing took place on June 27, 2019, and both Parties presented evidence and offered exhibits on the record. Appellant's App. Vol. II, pp. 9; 54. The trial court, after taking several issues under advisement, entered its Findings on or about November 5, 2019. Appellant's App. Vol. II, pp. 11-17.

Additional facts are provided in briefing as necessary.

SUMMARY OF THE ARGUMENT

In this present matter, the trial court's Findings are clearly erroneous as to three separate issues. First, the trial court's award of primary physical custody to Mother is clearly erroneous because the trial court's Findings are wholly insufficient to support same. The trial court made two (2) generalized findings relating to custody of the Minor Children. Without any analysis or consideration of the factors contained in Indiana Code section 31-17-2-8, or any other relevant factors the court could consider, the trial court simply concluded that awarding Mother the primary physical custody was in the Minor Children's best interest.

In initial custody determinations, both parents are presumed equally entitled to custody. Further, in initial custody determinations, the trial court is to make such determination in the best interest of the Minor Children by considering all relevant factors, including specifically those factors contained in Indiana Code section 31-17-2-8. However, the trial court failed to make any Findings to support its conclusion an judgment.

As precedent dictates, the purpose of Trial Rule 52(A) is to provide the parties and the reviewing court with the theory upon which the trial court decided an issue. In this matter, the trial court failed to provide any theory or rationale to support its award of primary physical custody to Mother. As such, the trial court's award of primary physical custody to Mother is clearly erroneous.

Second, the trial court's division of marital property is clearly erroneous because the trial court's Findings fail to support its judgment. Specifically, the trial court made findings that the marital home had an approximate value of $64,000.00. Further, the trial court found that the total indebtedness on the marital home equaled $53,632.00. Despite these findings, the trial court concluded there was $33,000.00 worth of equity in the marital home, and thereby awarded Mother $16,500.00 as half of the purported equity. This award of $16,500.00 to Mother is clearly erroneous

because the trial court's findings do not support the conclusion and judgment that there is $33,000.00 in equity on the marital home.

Third, the trial court's child support calculation is clearly erroneous for two reasons. First, the trial court did not create its own child support worksheet detailing the amount awarded or enter findings explaining, in detail, how the trial court arrived at such an amount. Furthermore, neither Mother nor Father submitted a signed, verified child support worksheet. While Mother submitted two (2) different child support worksheets at the final hearing, neither were signed or verified.

Precedent dictates that basing a child support order on unverified and unsigned worksheet is error because use of such a worksheet has no sanction under either the child support guidelines or the rules of evidence and trial procedure. As such, the trial court erred in ordering Father to pay an amount of one hundred seventy-three ($173.00) dollars per week because there is no basis explaining such award.

Furthermore, the trial court's child support award is clearly erroneous because it is unclear whether Father was properly credited for his healthcare expenses, nor is there any explanation for a deviation from the Guidelines. Specifically, the trial court ordered Father responsible for maintaining healthcare insurance on the Minor Children, but it is unstated whether Father received a credit for same.

Father was also ordered to pay all uninsured medical expenses for the Minor Children because Father has a Health Saving Account. However, the trial court failed to account for the fact that Father pays two-hundred dollars ($200.00) a month for same, which should be credited towards Father's child support amount. In addition, requiring Father to pay all uninsured medical expenses without properly crediting Father for same is in contravention to the six-percent (6%) rule, and as such acts as a deviation from the Guidelines, which requires an explanation from the

trial court. In summary, the trial court's child support award is clearly erroneous because there is no basis supporting same.

ARGUMENT

I. Standard of Review

In this matter, the trial court entered its Findings *sua sponte*. As this Court has made clear, "[i]n such cases, the trial court's specific findings control only with respect to the issues they cover, and a general judgment standard applies to issues outside the court's findings." *Collyear-Bell v. Bell*, 105 N.E.3d 176, 183-84 (Ind. Ct. App. 2018) (citing, *In re Marriage of Sutton*, 16 N.E.3d 481, 484-85 (Ind. Ct. App. 2014)). When "a trial court enters findings *sua sponte*, the appellate court reviews issues covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment." *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016) (citing, *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014)).

This court will "not set aside the findings or judgment unless clearly erroneous." *G.G.B.W. v. S.W.*, 80 N.E.3d 264, 268 (Ind. Ct. App. 2017) (citing, Ind. Trial Rule 52(A)). "Findings of fact are clearly erroneous when there is no support for them in the record, either directly or by inference." *G.G.B.W. v. S.W.*, 80 N.E.3d 264, 268 (Ind. Ct. App. 2017) (citing, *Steele-Giri v. Steele*, 51 N.E.3d 119, 125 (Ind. 2016)). Furthermore, "[a] judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment." *G.G.B.W. v. S.W.*, 80 N.E.3d 264, 268 (Ind. Ct. App. 2017) (citing, *In re Adoption of O.R.*, 16 N.E.3d 965, 973 (Ind. 2014)). While this Court affords deference to the trial court, "that deference is not absolute." *Montgomery v. Montgomery*, 59 N.E.3d 343, 350 (Ind. Ct. App. 2016).

II. The Trial Court's Award of Primary Physical Custody to Mother was Clearly Erroneous because the Trial Court Failed to Make Any Findings to Support the Judgment

While it is true that a trial court is not required to enter Findings without a request made by one of the parties, it is also true that "once a trial court walks down the path of making findings,

it is bound under Indiana Trial Rule 52(A) to make findings that support the judgment." *In re C.M.*, 963 N.E.2d 528, 529 (Ind. Ct. App. 2012) (citing, *Parks v. Delaware County Dep't of Child Servs.*, 862 N.E.2d 1275, 1281 (Ind. Ct. App. 2007)). In this present matter, the trial court's award of primary physical to Mother is clearly erroneous because the findings are wholly insufficient to support the judgment.

In this matter, the trial court made only two (2) findings that relate to the physical custody of the Minor Children. Appellant's App. Vol. II, pp. 11-12. Specifically, the trial court found:

> "2 Mother and Father shall have joint legal custody with Mother having primary physical custody, control and supervision of the parties' unemancipated minor children, namely; [V.A.], d/o/b: 3/12/2015 and [G.A.], d/o/b: 10/23/2016 ("minor children"), until said children are each, individually and respectively, deemed emancipated, graduate from college, or reach the age of nineteen (19) years or until further Order of this Court, whichever occurs first." Appellant's App. Vol. II, pp. 11.

Further, the trial court found:

> "3 The Father and Mother shall have joint legal custody of the minor children with Mother awarded physical custody of the minor children. The Court finds that it is in the best interest of the minor children that they remain in physical custody of the Mother as she is the primary caregiver of the minor children and it is important that the children have consistent routine."[3] Appellant's App. Vol. II, pp. 12.

This ends the trial court's Findings as it relates to the physical custody of the Minor Children.

Precedent dictates that "[i]n the initial custody determination, both parents are presumed equally entitled to custody." *Green v. Green*, 843 N.E.2d 23, 26-27 (Ind. Ct. App. 2006) (citing, *Leisure v. Wheeler*, 828 N.E.2d 409, 414 (Ind. Ct. App. 2005)). Furthermore, "an initial custody order is determined 'in accordance with the best interests of the child.'" *Baxendale v. Raich*, 878 N.E.2d 1252, 1254 (Ind. 2008) (citing, Ind. Code § 31-17-2-8). As this Court has explained, "[i]n

[3] For clarity, language notwithstanding, this is an initial custody determination, not a modification. Therefore, the trial court's statement of "remain in physical custody of the Mother" should not be interpreted as Mother previously being awarded custody of the Minor Children, as again, this is an initial custody determination.

determining the child's best interest, **the trial court must** consider all relevant factors, including specifically" those factors enumerated in Indiana Code section 31-17-2-8. *Purnell v. Purnell*, 131 N.E.3d 622, 626 (Ind. Ct. App. 2019) (emphasis added). The specific factors that must be considered are as follows:

> "(1) The age and sex of the child; (2) the wishes of the parents; (3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age; (4) the interaction and interrelationship of the child with: (A) the child's parents; (B) the child's siblings; and (C) any other person who may significantly affect the child's best interest; (5) the child's adjustment to the child's: (A) home; (B) school; and (C) community; (6)the mental and physical health of all individuals involved; (7) evidence of a pattern of domestic or family violence by either parent."

Ind. Code § 31-17-2-8[4] (hereafter, "Statutory Factors"). As this Court has made clear, "[i]nitial custody determinations are to be based on an analysis of the [Statutory Factors]." *Jarrell v. Jarrell*, 5 N.E.3d 1186, 1191 (Ind. Ct. App. 2014) (citing, *Baxendale v. Raich*, 878 N.E.2d 1252, 1254 (Ind. 2008)).

A review of the trial court's Findings in this present matter reveal that there was no consideration of the Statutory Factors or any other relevant factors, as required in an initial custody determination. Appellant's App. Vol. II, pp. 11-17. Clearly, the trial court failed to consider the Statutory Factors as evidenced by the fact the trial court does not even make one (1) reference to Indiana Code section 31-17-2-8. Furthermore, a review of the trial court's Findings reveals there is no enumeration of any other consideration the trial court made in deciding physical custody.[5]

As this Court has previously stated, "[t]he purpose of Rule 52(A) is 'to provide the parties and the reviewing court with the theory upon which the trial judge decided the case in order that

[4] Factor 8 and 9 are not listed as they are inapplicable to this current matter.
[5] While the trial court noted "Mother's concerns and the evidence presented regarding alcohol use by Father" this obviously did not impact the trial court's decision to award physical custody of the Minor Children to Mother because the trial court specifically followed this statement up with stating, "it does not impair his ability to care for the minor children or make him unfit as a parent in any way." Appellant's App. Vol. II, pp. 12.

the right of review for error may be effectively preserved.'" *In re Paternity of S.A.M.*, 85 N.E.3d 879, 885-886 (Ind. Ct. App. 2017) (citing, *Carmichael v. Siegel*, 670 N.E.2d 890, 981 (Ind. 1996)). In this matter, the purpose of Trial Rule 52(A) is not met because the trial court provides no theory upon which it made its physical custody determination.

This present matter is analogous to what this Court addressed in the decision of *Hazelett v. Hazelett*, 119 N.E.3d 153 (Ind. Ct. App. 2019). In *Hazelett*, the father appealed the trial court's award of sole legal and physical custody of the minor children to mother. *Id*. at 155. This Court went on to note that "[a]lthough not raised by Father, we are nevertheless compelled to 'review and comment on the propriety of the trial court's findings.'" *Id.* at 159 (citing, *Parks v. Delaware County Dep't of Child Servs.*, 862 N.E.2d 1275, 1281 (Ind. Ct. App. 2007)). Further, this Court concluded that the majority of "the trial court's findings presented here are merely a recitation of each party's contentions, arguments, proposed findings, and portions of relevant statutory provisions." *Id.* Once excluding these insufficient findings, this Court found two (2) findings "pertaining to the trial court's custody determination." *Id*. As such, this Court concluded "because the trial court failed to make appropriate findings, we are unable to determine whether the trial court's findings support it custody determination." *Id*.

This present matter is even more egregious than that in *Hazelett*. The trial court in this matter failed to enter any findings, other than the two set forth above, as to how Mother having primary custody would be in the Minor Children's best interests. Further, the trial court made no findings related to the Statutory Factors, nor even a mention of Indiana Code section 31-17-2-8. As previously noted, "once a trial court walks down the path of making findings, it is bound under Indiana Trial Rule 52(A) to make findings that support the judgment." *In re C.M.*, 963 N.E.2d 528,

529 (Ind. Ct. App. 2012) (citing, *Parks v. Delaware County Dep't of Child Servs.*, 862 N.E.2d 1275, 1281 (Ind. Ct. App. 2007)).

In summary, the trial court's award of primary physical custody to Mother is clearly erroneous because there are no findings to support same. Thus, this Court should reverse.

III. The Trial Court's Award of $16,500 to Mother as Half the Equity in the Marital Home is Clearly Erroneous Because the Facts and Inferences of the Record Fail to Support the Trial Court's Findings that the Marital Home Had Said Amount of Equity.

This Court has previously held that "[i]n a dissolution proceeding, the trial court's division of the marital estate is a two-step process: first, the trial court determines what property is to be included in the marital pot; second, the trial court must divide the property." *Pitcavage v. Pitcavage*, 11 N.E.3d 547, 565 (Ind. Ct. App. 2014) (citing, *Thompson v. Thompson*, 811 N.E.2d 888, 912 (Ind. Ct. App. 2004)). Further, "[i]t is well-established that all property goes into the marital pot for division, whether it was owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts." *Birkhimer v. Birkhimer*, 981 N.E.2d 111, 120 (Ind. Ct. App. 2012) (citing, *Smith v. Smith*, 938 N.E.2d 857, 860 (Ind. Ct. App. 2010)).

This Court has long held that, "[t]he trial court's division of the marital pot is subject to a statutory presumption of an equal split." *Pitcavage v. Pitcavage*, 11 N.E.3d 547, 565 (Ind. Ct. App. 2014) (citing, *Thompson v. Thompson*, 811 N.E.2d 888, 912 (Ind. Ct. App. 2004)). Therefore, "[i]f the court deviates from the presumptive equal division, it must state its reasons for that deviation in its findings and judgment." *Bock v. Bock*, 116 N.E.3d 1124, 1130 (Ind. Ct. App. 2018) (citing, *Barton v. Barton*, 47 N.E.3d 368, 379 (Ind. Ct. App. 2015)).

In this matter, the trial court's division of the marital home is clearly erroneous because the trial court's Findings do not support its Judgment. Specifically, the trial court found that the value of the marital home was $64,000.00. Appellant's App. Vol. II, pp. 14. Next, the trial court found:

> "4 There is a mortgage on the real estate which has a balance of $34,987.03 at the time of the separation, along with what is known as the basement loan with an initial balance of $19,376.00 and a remaining balance of $18,645.00 at the time of separation. Father shall be solely liable for these debts and hold Mother harmless from the same." Appellant's App. Vol. II, pp. 14.

The trial court concluded its analysis finding:

> "5 That there is believed to be equity in the house in the amount of $33,000.00. Mother shall be entitled to half of the equity, the same being $16,500.00, which shall be paid to her within 180 days." Appellant's App. Vol. II, pp. 14.

The trial court's award of $16,500.00 to Mother is clearly erroneous because the trial court's Findings do not support its conclusion that there is $33,000.00 in equity. Appellant's App. Vol. II, pp. 14. Using the trial court's numbers for the outstanding mortgage and remaining basement loan balance, the total amount of indebtedness on the marital home equals $53,632.03. Therefore, the equity in the marital home, again, based on the trial court's value of the home being $64,000.00, would only be $10,367.97. Therefore, the trial court's determination that there is $33,000.00 in equity is clearly erroneous because the trial court's own findings do not support its conclusion. Appellant's App. Vol. II, pp. 14

Even assuming, *arguendo*, the trial court did not consider the basement loan when calculating the amount of equity in the home, the trial court's conclusion that there is $33,000.00 in equity is still clearly erroneous. The trial court found the outstanding mortgage to be $34,987.03. Appellant's App. Vol. II, pp. 14. Subtracting what the trial court found to be the outstanding mortgage from what the trial court determined to be the value of the marital home would leave the equity in the marital home at $29,012.97. Therefore, regardless of whether the trial court included the basement loan as part of the indebtedness of the marital home, the trial court's calculation of

$33,000.00 in equity is clearly erroneous because it is unsupported by the trial court's Findings. Appellant's App. Vol. II, pp. 14.

Further, it should be noted that, if the trial court did not include the basement loan as part of the indebtedness of the marital home, same would need to be divided equally between the parties. As has long been held, "[m]arital property includes both assets and liabilities." *Birkhimer v. Birkhimer*, 981 N.E.2d 111, 120 (Ind. Ct. App. 2012) (citing, *Smith v. Smith*, 938 N.E.2d 857, 860 (Ind. Ct. App. 2010)).

Again, assuming, *arguendo*, that the trial court intended for a deviation from the presumptive fifty-fifty division, the trial court's award of $16,5000.00 to Mother would be erroneous because the trial court failed to explain its deviation. Appellant's App. Vol. II, pp. 14. As previously stated, "[i]f the court deviates from the presumptive equal division, it must state its reasons for that deviation in its findings and judgment." *Bock v. Bock*, 116 N.E.3d 1124, 1130 (Ind. Ct. App. 2018) (citing, *Barton v. Barton*, 47 N.E.3d 368, 379 (Ind. Ct. App. 2015)).

In sum, the trial court's conclusion that there is $33,000.00 in equity in the marital home is clearly erroneous based upon the trial court's Findings. Appellant's App. Vol. II, pp. 14. Therefore, the award of $16,500.00 to Mother is clearly erroneous because it would create a windfall to Mother. Appellant's App. Vol. II, pp. 14. The trial court's decision as it relates to the marital home should be reversed and remanded with instruction to either: (1) divide the actual equity of $10,367.97 between the parties; (2) divide the equity of $29,012.97 between the parties and assign half of the remaining balance of $18,645.00 of the basement loan to both parties; or (3) as this Court otherwise directs.

IV. The Trial Court's Amount of Child Support is Clearly Erroneous Because the Trial Court Did Not Complete its Own Child Support Worksheet, Enter Findings Detailing the Amount Awarded, and Neither Party Submitted a Signed, Verified Child Support Worksheet.

The trial court ordered Father to pay One Hundred Seventy-Three ($173.00) dollars per week in child support. Appellant's App. Vol. II, pp. 13. The issue with the trial court's child support calculation is two-fold. First, neither party submitted a verified child support worksheet, and the trial court failed to complete its own worksheet or enter findings explaining its rationale. Second, the trial court failed to give Father a credit for the health insurance premium and a credit towards ordering Father to pay all uninsured medical expenses.

A. Failure to Include a Child Support Worksheet or Explanation of the Amount Awarded.

This Court has held that, "[s]ince 1989, the Indiana Child Support Guidelines have required, in all cases in which the court is requested to order support, that both parents complete and sign, under penalty of perjury, a child support worksheet to be filed with the court verifying the parents' income." *Payton v. Payton*, 847 N.E.2d 251, 253 (Ind. Ct. App. 2006) (citing, *Glover v. Torrence*, 723 N.E.2d 924, 931 n. 2 (Ind. Ct. App. 2000)). Here, neither Mother nor Father submitted a signed, verified child support worksheet as required under the Child Support Guidelines.[6] While it is true that Mother submitted two (2) separate Child Support Worksheets at the final hearing, neither were signed by Mother, thereby defeating the verification requirement. Exhibits Vol. III, p. 3-7.

Furthermore, the trial court's Findings do not explain the child support award nor did the trial court "complete its own child support worksheet to justify its order and permit [appellate review]." *Payton v. Payton*, 847 N.E.2d 251, 254 (Ind. Ct. App. 2006). As this Court has explained, "trial courts are required to make support orders in compliance with the guidelines and to spell out

[6] Mother and Father jointly signed a provisional Child Support Worksheet at the May 17, 2018 hearing on provisional issues. Appellant's App. Vol. II, pp. 38-39. However, the provisional amount ordered was different than the amount ordered at the final hearing. Appellant's App. Vol. II, pp. 13; 38. Thus, this provisional Child Support Worksheet has no impact on the final amount awarded.

the reasons for any support orders which deviate from the guideline results." *Cobb v. Cobb*, 588 N.E.2d 571, 574 (Ind. Ct. App. 1992). Further, this Court "cannot review a support order to determine if it complies with the guidelines unless the order reveals the basis for the amount awarded." *Id.* Finally, "[s]uch revelation could be accomplished either by specific findings or by incorporation of a proper worksheet." *Id*.

In this present matter, it is unknown whether the trial court complied with the Guidelines because the trial court failed to enter findings explaining the basis for the amount awarded. Appellant's App. Vol. II, pp. 11-17. Furthermore, the trial court did not complete its own child support worksheet, nor did, or could, the trial court properly incorporate one of the Parties child support worksheets because Mother's was unverified. Appellant's App. Vol. II, pp. 11-17; Exhibits Vol. III, p. 3-7.

This present matter was addressed in this Courts decision in *Vandenburgh v. Vandenburgh*, 916 N.E.2d 723 (Ind. Ct. App. 2009). In *Vandenburgh*, the father appealed, in part, the trial court's child support award. *Id*. at 725. This Court held that, "[t]he trial court's findings do not explain in detail how the court arrived at the amounts it awarded, and the worksheets were improper because they were not signed or verified." *Id*. at 728. Further, this Court noted, "basing child support order on unverified and unsigned worksheet was error because use of such a worksheet 'has no sanction under either the child support guidelines or the rules of evidence and trial procedure.'" *Id*. (citing, *Cobb v. Cobb*, 588 N.E.2d 571, 574 (Ind. Ct. App. 1992)). As such, this court remanded the issue of child support "so the trial court may provide more specific findings or signed and verified worksheets." *Id*.

In summary, in the instant case, the trial court abused its discretion in ordering Father to pay one hundred seventy-three ($173.00) dollars per week in child support because the trial court's

Findings fail to explain the basis of the amount awarded. Appellant's App. Vol. II, pp. 13-14. Furthermore, the trial court did not complete its own child support worksheet, nor did either of the parties complete a signed, verified child support worksheet in which the trial court could have properly incorporated same. Therefore, the child support issue should be remanded so that said award can be properly determined.

B. Trial Court Failed to Credit Father for Healthcare Expenses or Properly Explain its Deviation from the Child Support Guidelines

The trial court ordered Father to maintain health insurance, as well as to pay all uninsured medical expenses for the Minor Children. Appellant's App. Vol. II, pp. 13. As this Court has previously interpreted, "[t]he Child Support Guidelines provide that, generally, 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) (citing, *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1261 (Ind. Ct. App. 2010)). The trial court ordered Father responsible for maintaining health insurance. Appellant's App. Vol. II, pp. 13. However, due to the insufficiency of the Findings, coupled with the absence of a Child Support Worksheet, it is unclear whether Father received a credit for maintaining same.

Moreover, the trial court ordered that "Father shall be solely responsible for all uninsured medical costs based upon his having the Health Saving Account." Appellant's App. Vol. II, pp. 13. The issue with ordering Father to pay all uninsured medical expenses is that it does not take into account the fact that Father makes monthly payments to said Health Saving Account, and as such, Father should receive a credit for maintain the Health Saving Account. Tr. Vol. II, p. 42. As Mother testified to at the June 27, 2019 hearing:

> "Q. Okay. Do you know approximately what is paid into that account by Josh?
> A. $200 a month, at least while we were living there."
> Tr. Vol. II, p. 42

Therefore, ordering Father to maintain health insurance for the Minor Children, as well as pay all uninsured medical expenses, fails to take into account the amount of $200 per month that Father pays for the Health Saving Account.

Furthermore, ordering Father to pay all uninsured medical expenses constitutes a deviation from the Child Support Guidelines. As this Court has explained, "[c]ommentary to the Indiana Child Support Guideline 3 makes it clear that the child support obligation as determined by the Guidelines includes a component for ordinary medical expenses." *Tigner v. Tigner*, 878 N.E.2d 324, 328 (Ind. Ct. App. 2007). Expanding on same, this Court explained, "[s]pecifically, six percent (6%) of the support amount is for health care. The noncustodial parent is, in effect, prepaying health care expenses every time a support payment is made." *Id*. (citing, Commentary to Ind. Child Support Guideline 3(H)). Therefore, "[t]he six percent rule, then, is designed to ensure that the non-custodial parent does not pay twice for the same medical expenses." *Id*.

Here, ordering Father to pay all uninsured medical expenses is a deviation from the six percent (6%) rule. As this Court has explained, "[a] deviation must be supported by proper written findings justifying the deviation." *Quinn v. Threlkel*, 858 N.E.2d 665, 670 (Ind. Ct. App. 2006) (citing, *In re Paternity of C.R.R.*, 752 N.E.2d 58, 61 (Ind. Ct. App. 2001)). No such Findings were made in this case. Therefore, the trial court abused its discretion by failing to explain the deviation from the Child Support Guidelines.

In summary, the trial court's Findings are erroneous because they fail to include a verified child support worksheet or explain in detail how the trial court calculated said amount. Appellant's App. Vol. II, pp. 11-17. Further, the Findings are insufficient to determine whether Father was properly credited for maintaining health insurance. Finally, the trial court abused its discretion in failing to account for, and credit, the amount Father pays per month to maintain the Health Saving

Account, or explain its deviation from the six percent (6%) rule. Appellant's App. Vol. II, pp. 11-17. As such, the issues should be remanded to the trial court so that Father is properly credited for same, or at the very minimum, so the trial court can explain its deviation and provide a child support worksheet.

CONCLUSION

For the reasons stated herein, this Court should reverse the trial court's Findings awarding Ashley primary physical custody of the Minor Children. This Court should also reverse the trial court's award of $16,500.00 to Ashley as half of the equity of the marital home and remand same for proper valuation. Finally, this Court should reverse the trial court's child support award and remand the issue to be properly considered and explained.

Respectfully submitted,

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I, Alexander N. Moseley, verify that this Appellant's Brief contains 6,319 words, including footnotes, as prescribed by Ind. App. Rule 44(E), notwithstanding those items excluded from page length limits under Ind. App. Rule 44(C), as determined by the word counting function of Microsoft Word 2010

/s/ Alexander N. Moseley
Alexander N. Moseley

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served upon the following this 31st day of January, 2020 via the Court's electronic filing system:

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Filed: 3/13/2020 4:07 PM

IN THE INDIANA COURT OF APPEALS
CAUSE NO. 19A-DC-02728

JOSHUA ANSELM,	)	
Appellant,	)	**Appeal from the Jasper Superior Court**
	)	
vs.	)	**Trial Ct Cause No. 37D01-1803-DC-205**
	)	
ASHLEY ANSELM,	)	**Hon. Russell D. Bailey, Judge**
Appellee.	)	

APPELLANT'S REPLY BRIEF

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SUMMARY OF ARGUMENT

In this matter, the trial court's Findings are clearly erroneous as to three separate issues. First, the trial court's award of primary physical custody to Mother is clearly erroneous because the Findings fail to support the award. A trial court is not required to enter findings of fact and conclusions of law absent the request of one of the parties. The trial court may, however, do so *sua sponte*, as was the case in this present matter. This Court has made clear that once a trial court walks down the path of making findings, it is bound under Indiana Trial Rule 52 to make findings that support the judgment.

In this present matter, the trial court's Findings do not support its judgment that the it is in the best interests of the Minor Children for Mother to be awarded primary physical custody. The insufficiency of the trial court's Findings is best evidenced by the fact the trial court failed to make any mention of Indiana Code section 31-17-2-8 (i.e., the statutory factors the trial court must consider in determining custody). Mother, in her Brief of Appellee, makes several unpersuasive arguments as to why the trial court did not error in awarding her custody. However, Mother's arguments carry little to no weight due to the fact Mother provides almost no citations to legal authority in support of same.

Second, the trial court's award of $16,500.00 to Ashley as half the equity in the home is clearly erroneous because it is unsupported by the facts and inferences of the record. Mother does not challenge the erroneous nature of this award and concedes the issues should be reversed and remanded.

Third, the trial court's child support calculation is clearly erroneous for two reasons. First, the trial court did not create its own child support worksheet detailing the amount awarded or enter findings explaining, in detail, how the trial court arrived at such an amount. Furthermore, neither

Mother nor Father submitted a signed, verified child support worksheet. While Mother submitted two (2) different child support worksheets at the final hearing, neither were signed or verified.

Mother, in her Appellee's Brief, argues that the trial court's child support calculation is consistent with the worksheets that Mother submitted into evidence. However, Indiana precedent makes it that basing a child support order on unverified and unsigned worksheet is error because use of such a worksheet has no sanction under either the child support guidelines or the rules of evidence and trial procedure. As such, the trial court erred in ordering Father to pay an amount of one hundred seventy-three ($173.00) dollars per week because there is no basis explaining such award.

Furthermore, the trial court's child support award is clearly erroneous because it is unclear whether Father was properly credited for his healthcare expenses, nor is there any explanation for a deviation from the Guidelines. Specifically, the trial court ordered Father responsible for maintaining healthcare insurance on the Minor Children, but it is unstated whether Father received a credit for same.

Mother argues that Father was properly credited for healthcare expenses through her testimony at the hearing. This argument is illogical as Mother is not the judge and therefore has no ability to "credit" Father. Again, Mother argues that Father was credited in her unsigned child support worksheet, but as explained above, a trial court cannot base its award amount on an unsigned child support worksheet.

Finally, Father was also ordered to pay all uninsured medical expenses for the Minor Children because Father has a Health Saving Account. However, the trial court failed to account for the fact that Father pays two-hundred dollars ($200.00) a month for same, which should be credited towards Father's child support amount. In addition, requiring Father to pay all uninsured

medical expenses without properly crediting Father for same is in contravention to the six-percent (6%) rule, and as such acts as a deviation from the Guidelines, which requires an explanation from the trial court.

Mother, in Appellee's Brief, argues that there is no evidence that Father pays $200 per month for the Health Saving Account. Mother apparently "forgot" about her testimony specifically stating that Father pays $200 per month for the Health Saving Account, testimony that Father cited to in Appellant's Brief. Despite Mother's contentions, the trial court's child support award is clearly erroneous because there is no basis supporting same.

ARGUMENT

I. The Trial Court's Award of Primary Physical Custody to Mother was Clearly Erroneous Because the Trial Court's Findings Fail to Support Same.

Mother's first argument, it appears, in support of the award of primary physical custody is that Mother had primary physical custody of the Minor Child during the pendency of the dissolution matter. Appellee Br., p. 8. Mother goes on to state that Father was awarded parenting-time, and that parenting time basically amounted to the parenting time Father would be entitled to under the Indiana Parenting Time Guidelines ("IPTGs"). Appellee Br., p. 8. However, it is unclear what Mother's argument is in this regard.

It is true that "it is permissible as part of a determination of the children's best interests for the court to consider the status and well-being of the children pending the final hearing." *Trost-Steffen v. Steffen*, 772 N.E.2d 500, 511 (Ind. Ct. App. 2002). However, this Court has made clear that "it would be improper for a trial court to award permanent custody to a parent simply because that parent had been awarded temporary custody." *Id*. Furthermore, statutory code dictates that "[t]he issuance of a provisional order is without prejudice to the rights of the parties or the child as adjudicated at the final hearing in the proceedings." Indiana Code § 31-15-4-13.

Therefore, Mother's argument, that the trial court did not error in awarding her primary physical custody because she was awarded preliminary custody, is unsupported by the case law and prohibited by statutory code. Finally, it is unknown how Father being granted parenting time during the pendency of this matter has any bearing on whether the trial court erred in granting Mother primary physical custody. Thus, Mother's argument is not cogent.

Next, Mother claims that "significant testimony was presented by both the Guardian Ad Litem and Mother about concerns as to Father being awarded primary physical custody."

Appellee's Br., p. 8. However, Mother provides no citation to any material in the record to support such a statement, nor does Mother provide examples of same. Appellee's Br., p. 8.

Mother goes on to discuss how the Guardian Ad Litem suggested that Mother be awarded primary physical custody. Appellee Br. p. 8. Again, however, Mother fails to make a cogent argument as to how the Guardian Ad Litem's recommendation makes the trial court's findings any less inadequate. Indiana Code section 31-17-2-7 makes it clear that the "court without a jury shall determine questions of law and fact." As such, the fact that the Guardian Ad Litem made a recommendation has no bearing on the duty of the trial court to make adequate findings to support its custody determination.

Additionally, Mother states that the Guardian Ad Litem delineated the statutory factors required to be considered pursuant to Indiana Code section 31-17-2-8. Appellee Br., p. 9. However, whether the Guardian Ad Litem applied the Statutory Factors to her recommendation has no bearing on the court's duty to consider the Statutory Factors. The trial court, not the Guardian Ad Litem, is to apply the Statutory Factors and determine the weight of each piece of evidence – including the Guardian Ad Litem's report and/or testimony.

Precisely, Indiana Code section 31-17-2-8, makes it clear that " **[t]he court shall determine custody** and enter a custody order in accordance with the best interests of the child." (emphasis added). Furthermore, "**the court shall consider** all relevant factors, including the following:

> (1) The age and sex of the child; (2) the wishes of the parents; (3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age; (4) the interaction and interrelationship of the child with: (A) the child's parents; (B) the child's siblings; and (C) any other person who may significantly affect the child's best interest; (5) the child's adjustment to the child's: (A) home; (B) school; and (C) community; (6)the mental and physical health of all individuals involved; (7) evidence of a pattern of domestic or family violence by either parent."

Ind. Code § 31-17-2-8[1] (emphasis added) (hereafter, "Statutory Factors"). Nowhere in the statutory code does it say that a trial court must determine custody *unless a guardian ad litem does*, or a trial court must consider the Statutory Factors *unless a guardian ad litem does*.

Furthermore, Indiana precedent has made clear that "the fact-finder is not required to accept the opinions of experts regarding custody." *Maddux v. Maddux*, 40 N.E.3d 971, 980 (Ind. Ct. App. 2015). As such, Mother's argument that the Guardian Ad Litem considered the Statutory Factors is unpersuasive and has no impact on whether the trial court's Findings were sufficient to support a custody modification.

Mother ends her argument as to the custody portion of the trial court's order by stating that "there was sufficient evidence presented to show what was in the best interests of the minor child, and those factors were clearly delineated in the Guardian Ad Litem's report which was part of the record and discussed in the day-long final hearing." Appellee's Br., p. 9. Once again, Mother provides no citation to the record to support her statement that "sufficient evidence was presented" other than citing to the Guardian Ad Litem's report in toto. Appellee's Br., p. 9. The Guardian Ad Litem is not the judge, and therefore, is not the decision maker, so the fact Mother continues to rely on the Guardan Ad Litem as a source of judicial authority is unsupported by all law in Indiana.

As this Court has made clear, "[i]n the initial custody determination, both parents are presumed equally entitled to custody." *Green v. Green*, 843 N.E.2d 23, 26-27 (Ind. Ct. App. 2006) (citing, *Leisure v. Wheeler*, 828 N.E.2d 409, 414 (Ind. Ct. App. 2005)). Furthermore, "an initial custody order is determined 'in accordance with the best interests of the child.'" *Baxendale v. Raich*, 878 N.E.2d 1252, 1254 (Ind. 2008) (citing, Ind. Code § 31-17-2-8). As this Court has

[1] Factor 8 and 9 are not listed as they are inapplicable to this current matter.

explained, "[i]n determining the child's best interest, **the trial court must** consider all relevant factors, including specifically" the Statutory Factors. *Purnell v. Purnell,* 131 N.E.3d 622, 626 (Ind. Ct. App. 2019) (emphasis added).

Furthermore, while it is true that a trial court is not required to enter Findings without a request made by one of the parties, it is also true that "once a trial court walks down the path of making findings, it is bound under Indiana Trial Rule 52(A) to make findings that support the judgment." *In re C.M.*, 963 N.E.2d 528, 529 (Ind. Ct. App. 2012) (citing, *Parks v. Delaware County Dep't of Child Servs.*, 862 N.E.2d 1275, 1281 (Ind. Ct. App. 2007)).

The trial court in this matter entered *sua sponte* Findings. Appellee's Br., p. 9; Appellant's App. Vol. II, pp. 11-17. As such, the trial court was "bound under Indiana Trial Rule 52(A) to make findings" that supported its award of primary physical custody to Mother. The trial court failed to make any findings relating to the Statutory Factors, or even reference Indiana Code section 31-17-2-8. Appellant's App. Vol. II, pp. 11-17. As such, the Findings are insufficient to support this award and the trial court's Findings, as it relates to physical custody, should be reversed.

II. Trial Court's Findings as to the Equity in the Marital Home is Clearly Erroneous Because it is Unsupported by the Facts and Inferences of the Record.

Because Mother agrees that the trial court erred in the amount of equity it awarded to her, it is unnecessary to develop Father's argument any further on this issue. Appellee's Br., p. 9-10.

It is worth noting that Mother makes a convoluted statement in her brief that "Father did not attempt to allow the trial court to correct this issue as he did not file a Motion to Correct Error, but instead brought this instant appeal before the matter could be clarified."[2] Appellee's Br., p. 10.

[2] Incidentally, while Mother concedes reversal, she too did not file a Motion to Correct Error.

It is confusing in that it seems Mother is implying Father was in the wrong for appealing this issue, or that Father had some duty to file a motion to correct error.

Despite Mother's protestations, Trial Rule 59 is crystal clear when it comes to mandatory motions to correct error. Ind. Rule Tr. Procedure 59(A). There are two (2) instances when a motion to correct errors is mandatory. Ind. Rule Tr. Procedure 59(A). This issue raised by Father does not fall under one of those two (2) circumstances, and as such, "may be initially addressed in the appellate brief." Ind. Rule Tr. Procedure 59(A). Ultimately, Mother's entire argument is surplusage.

III. The Trial Court's Amount of Child Support is Clearly Erroneous Because the Trial Court Did Not Complete its Own Child Support Worksheet, Enter Findings Detailing the Amount Awarded, and Neither Party Submitted a Signed, Verified Child Support Worksheet.

Mother once again fails to make a cogent argument in response to Father's Brief or provide any citation to legal precedent in support of her arguments. Appellee's Br., pp. 10-11. Mother's arguments will be addressed in turn.

A. <u>The Trial Court Did Error by Failing to Include a Child Support Worksheet or Explanation of the Amount Awarded.</u>

Mother begins her argument by stating that the "trial court's support order is consistent with Mother's Exhibit 2." Appellee's Br., pp. 10. While it is true Mother submitted two (2) child support worksheets into evidence, Mother did not sign either of the child support worksheets. Exhibits Vol. III, pp. 3-7. As this Court has explained, "[s]ince 1989, the Indiana Child Support Guidelines have required, in all cases in which the court is requested to order support, that both parents complete and sign, under penalty of perjury, a child support worksheet to be filed with the court verifying the parents' income." *Payton v. Payton*, 847 N.E.2d 251, 254 (Ind. Ct. App. 2006) (citing, *Glover v. Torrence*, 723 N.E.2d 924, 931 n. 2 (Ind. Ct. App. 2000)).

Furthermore, nowhere in the trial court's Findings did the trial court adopt Mother's proposed child support worksheet. Appellant's App. Vol. II, pp. 11-17. Again, as this Court has made clear, "[t]o determine whether a child support order complies with the child support guidelines, we must first know the basis for the amount awarded." *Walters v. Walters,* 901 N.E.2d 508, 513 (Ind. Ct. App. 2009) (citing, *Heiligenstein v. Matney*, 691 N.E.2d 1297, 1303 (Ind. Ct. App. 1998)). This can "be accomplished **either by specific findings or by incorporation of a proper worksheet**." *Id*. (emphasis added).

The trial court did not enter specific findings detailing its amount awarded, nor did the trial court incorporate a child support worksheet because there was no proper worksheet available for the trial court to incorporate. Appellant's App. Vol. II, pp. 11-17. Again, Mother's proposed worksheets were not signed. Exhibits Vol. III, pp. 3-7. As this Court explained, "basing child support order on unverified and unsigned worksheet was error because use of such a worksheet 'has no sanction under either the child support guidelines or the rules of evidence and trial procedure.'" *Vandenburgh v. Vandenburgh,* 916 N.E.2d 723 (Ind. Ct. App. 2009) (citing, *Cobb v. Cobb*, 588 N.E.2d 571, 574 (Ind. Ct. App. 1992)).

Furthermore, Mother's argument that the Parties stipulated to income is unpersuasive and has no impact on the trial court's duty to enter findings detailing the amount awarded, enter its own child support worksheet to support the awarded amount, or incorporate a proper child support worksheet submitted by one of the Parties. Appellee's Br. pp. 10; *Walters v. Walters,* 901 N.E.2d 508, 513 (Ind. Ct. App. 2009). Mother also claims that Father's counsel did not object to Mother's entry of her child support worksheet into evidence. Appellee's Br., pp. 11. Again, however, Mother fails to make any argument as to why or how Father's counsel's lack of objection as to entry of

her worksheet into evidence relieves the trial court of its duty to make detailed Findings explaining the amount awarded, enter its own child support worksheet, or incorporating a proper worksheet.

This Court's decision in *Vandenburgh v. Vandenburgh* provides clarity. In *Vandenburgh*, the father was appealing, in part, the trial court's child support award. 916 N.E.2d 723 (Ind. Ct. App. 2009). This Court first noted that "[w]e cannot review a support order to determine if it complies with the guidelines unless the order reveals the basis for the amount awarded." *Id*. at 728. This Court went on to explain that this can "be accomplished either by specific findings or incorporation of a proper worksheet." *Id*. This Court went on to find that "[t]he trial court's findings do not explain in detail how the court arrived at the amounts it awarded, and the worksheets were improper because they were not signed or verified." *Id*. As such, the *Vandenburgh* court found that "[w]e must therefore remand so the trial court may provide more specific findings or signed and verified worksheets." *Id*.

The same is true in this present matter. The trial court's Findings do not detail the amount awarded or how the trial court arrived at such amount, and the trial court did not incorporate a proper child support worksheet because there was not one available for the trial court to incorporate. Appellant's Br. Vol. II, pp. 11-17; Exhibits, Vol. III, pp. 3-7. Furthermore, Mother's arguments in support of the trial court's award is unpersuasive and Mother cites to no legal authority in support of her argument. Appellee's Br., pp. 10-11.

In summary, the child support issue should be remanded so that said award can be properly determined.

B. <u>The Trial Court Did Fail to Credit Father for Healthcare Expenses or Properly Explain its Deviation from the Child Support Guidelines.</u>

Mother argues that the trial court did properly credit Father for healthcare expenses because "on the child support calculation worksheet, as well as through Mother's testimony, Father was

given credit for paying the premium for the children's health care coverage." Appellee's Br., pp. 11.

First, whether Father was given credit on Mother's unsigned Child Support Worksheet that was entered into evidence has absolutely no impact on whether the trial court, in fact, credited Father for healthcare expenses. The trial court's Findings make no mention of the amount Father pays for health insurance. Appellant's App. Vol. II, pp. 11-17. The trial court's Findings make no mention of whether Father was credited for the amount of health insurance he pays for the Minor Children. Appellant's App. Vol. II, pp. 11-17. The only reference to health insurance made by the trial court is that the trial court ordered Father to "continue to provide medical, dental, optical, and pharmaceutical coverage for the minor children . . .". Appellant's App. Vol. II, pp. 13. This finding is insufficient to determine whether Father was properly credited for maintaining same, and if Father was not credited, the trial court failed to enter Findings to support a deviation. Appellant's App. Vol. II, pp. 11-17.

Second, Mother's claim that Father was given credit for the health insurance "through Mother's testimony" is illogical. Appellee's Br., pp. 11. Mother is not the trial judge, and as such, Mother does not have the ability to "credit" Father for the health insurance he pays for the Minor Children. Mother's testimony, again, has absolutely no impact on whether Father was properly credited for the health insurance he was ordered to maintain.

Finally, Mother does not make a cogent argument as to Father's contention that the trial court failed to take into account the amount of $200 per month that Father pays for the Health Saving Account. Appellee's Br., pp. 11. Mother claims that "Mother testified that his employer puts money into the health savings account and the parties have never exceed that amount for the children's expenses." Appellee's Br., pp. 11.

However, Mother inexplicably leaves out relevant parts of her testimony ***relating to the amount Father pays each month into the health saving account***. Specifically, at the June 27, 2019 hearing, Mother testified to the following:

> "Q. So through his employment, Josh – Josh has a health saving account?
> A. Yes.
> . . .
> Q. Okay. **Do you know approximately what is paid into that account by Josh?**
> A. **$200 a month**, at least while we were living there.
> Q. Okay. **And you said his employer also made money (sic) paid towards it**; is that correct?
> A. **Yes.**"
> Tr. Vol. II, pp. 42 (emphasis added).

As evidenced by Mother's own testimony, Mother did not simply testify that Father's employer puts money into the health savings account. Tr. Vol. II, pp. 42; Appellee's Br., pp. 11. Mother specifically testified that Father pays $200 per month for the account and his employer contributes money toward same. Tr. Vol. II, pp. 42. As such, Mother either misspoke on the witness stand by testifying that Father paid $200 a month toward the health saving account, or Mother misspoke in her Brief by stating that she only ever testified that Father's employer contributed to the health saving account. Additionally, in closing arguments, Father's counsel made clear that Father contributes his own money towards the health savings account. Tr. Vol. II, pp. 174.

As this Court has explained, "[c]ommentary to the Indiana Child Support Guideline 3 makes it clear that the child support obligation as determined by the Guidelines includes a component for ordinary medical expenses." *Tigner v. Tigner*, 878 N.E.2d 324, 328 (Ind. Ct. App. 2007). Expanding on same, this Court explained, "[s]pecifically, six percent (6%) of the support amount is for health care. The noncustodial parent is, in effect, prepaying health care expenses every time a support payment is made." *Id*. (citing, Commentary to Ind. Child Support Guideline

3(H)). Therefore, "[t]he six percent rule, then, is designed to ensure that the non-custodial parent does not pay twice for the same medical expenses." *Id*.

The fact of the matter is that the trial court ordered Father, in addition to maintaining health insurance, to be "solely responsible for all uninsured medical costs based upon his having the Health Saving Account." Appellant's App. Vol. II, pp. 13. Father pays $200 per month for said Health Saving Account. Tr. Vol. II, pp. 42. Ordering Father to be solely responsible for all uninsured medical expenses results in Father paying twice for the same medical expenses.

In summary, the Findings are insufficient to determine whether Father was properly credited for maintaining health insurance. Finally, the trial court abused its discretion in failing to account for, and credit, the amount Father pays per month to maintain the Health Saving Account, or explain its deviation from the six percent (6%) rule. Appellant's App. Vol. II, pp. 11-17. As such, the issues should be remanded to the trial court so that Father is properly credited for same, or at the very minimum, so the trial court can explain its deviation and provide a child support worksheet.

CONCLUSION AND SIGNATURE BLOCK

For the reasons stated herein, this Court should reverse the trial court's award of primary physical custody of the Minor Children to Ashley as the Findings fail to support such award. Next, this Court should reverse the trial court's award of $16,000.00 to Ashley as half of the equity of the marital home and remand same for proper valuation. Finally, this Court should reverse the trial court's child support award and remand the issue to be properly considered and explained.

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/s/ Alexander N. Moseley
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I certify that a true and accurate copy of the foregoing was served upon the following this 13th day of March, 2020 via the Court's electronic filing system:

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