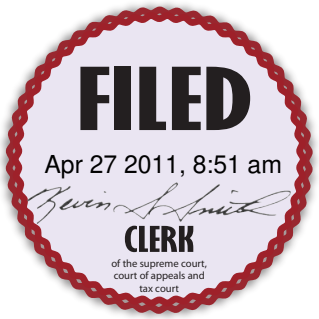

ATTORNEY FOR APPELLANT:

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IN THE COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
	)	
STEVEN L. FORTNER,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 67A01-1011-DR-564
	)	
JANET M. FORTNER,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE PUTNAM SUPERIOR COURT
The Honorable Charles D. Bridges, Judge
Cause No. 67D01-0810-DR-205

April 27, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Steven L. Fortner appeals the trial court's October 8, 2010 order following remand (the "Order Following Remand") from this court's opinion in Fortner v. Fortner, No. 67A05-1001-DR-36 (Ind. Ct. App. August 9, 2010) ("Cause No. 36"), regarding the dissolution of his marriage to Janet Fortner.[1] Steven raises five issues, which we consolidate, revise and restate as:

I. Whether the court's factual findings regarding the division of the parties' assets and liabilities are clearly erroneous;

II. Whether the court's factual findings regarding custody of G.F. are clearly erroneous;

III. Whether the court's factual findings regarding weekly child support are clearly erroneous.

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

In the previous appeal, Steven challenged various aspects of the court's October 9, 2009 Dissolution Decree, including whether the court properly granted dissolution and properly divided the marital estate, as well as concerns regarding the Dissolution Decree's handling of custody and child support for G.F. Janet raised issues on cross-appeal related to the property division. This court, in a nineteen-page memorandum decision issued on August

[1] The record from Cause No. 36 was transferred and made part of the record on this instant appeal, filed under Cause No. 67A01-1011-DR-564 ("Cause No. 564"). Steven also filed a new appendix for Cause No. 564, and thus we have two filings labeled "appellant's appendix." This opinion will therefore refer to the original appendix as the "Cause No. 36 Appendix" and will refer to the new appendix as the "Cause No. 564 Appendix."

Also, the only transcript and exhibit volumes contained in the record were generated as part of Cause No. 36.

9, 2010, affirmed the trial court in most respects, but we also remanded for consideration of various points raised by the parties.

Specifically, regarding the property division, we ordered the court to "consider" (1) the presumed debt which will result from the foreclosure on the marital residence; and (2) a debt owed to Janet's parents in the amount of $7,200. Fortner, slip op. at 9. Regarding custody of G.F., we noted that the court's order that "Janet should have 'the care and physical custody' of G.F." was "unclear" as to whether it "refers to only physical custody or both physical and legal custody," and we remanded for the court "to clarify its custody order on this issue."[2] Id. at 14. Finally, we addressed Steven's arguments regarding child support and initially noted that "Steven did not submit a child support worksheet, and [Janet] submitted an unsigned, unverified child support worksheet, to which Steven did not object." Id. We noted that although the recommended $106 per week the court ordered Steven to pay was consistent with the worksheet, the court deviated from the child support worksheet's recommendation regarding G.F.'s uninsured health care expenses and that it "did not explain its calculations." Id. at 15. We ordered that the court "either adopt a verified, properly completed child support worksheet or enter its own findings based on the requirements of the worksheet."[3] Id.

[2] In our conclusion, we stated: "We affirm the trial court's physical custody order but remand for clarification of the legal custody of G.F." Fortner, slip op. at 18.

[3] We also ordered that the court "explain its arrearage calculations and [to consider] extended parenting time . . . on the child support worksheet rather than as a child support abatement." Fortner, slip op. at 16. This aspect of the Order Following Remand is not challenged in this instant appeal.

Our opinion was certified on September 21, 2010. On September 30, 2010, Steven filed a Petition for Modification of Physical and Legal Child Custody and Modification of Child Support, as well as a Motion for Change of Judge pursuant to Ind. Trial Rule 76(C)(3). On October 8, 2010, the court issued its Order Following Remand, which stated that "[p]ursuant to the Indiana Court of Appeals Order, on remand, this Court issues the following findings, specifically to the issues addressed by that Court. All other provisions of this Court's prior Order remain in full force and effect." Cause No. 564 Appendix at 34. On October 12, 2010, the court issued an order granting Steven's motion for change of judge. On November 8, 2010, Steven filed his notice of appeal of the court's Order Following Remand. On November 22, 2010, the Honorable Michael H. Eldred was appointed Special Judge.

Before addressing the issues raised by Steven, we note that Janet did not file an appellee's brief. When an appellee fails to submit a brief, we do not undertake the burden of developing appellee's arguments, and we apply a less stringent standard of review, that is, we may reverse if the appellant establishes prima facie error. Zoller v. Zoller, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). This rule was established so that we might be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. Wright v. Wright, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002). Questions of law are still reviewed *de novo*, however.[4] McClure v. Cooper, 893 N.E.2d 337, 339 (Ind. Ct. App. 2008).

[4] Steven notes in his brief that "[w]ith the exception of the division of the marital estate, the balance of

Also, where, as here, a request for special findings has been made, we may not set aside the findings or judgment unless they are clearly erroneous. Menard, Inc. v. Dage-MTI, Inc., 726 N.E.2d 1206, 1210 (Ind. 2000), reh'g denied. In our review, we first consider whether the evidence supports the factual findings. Id. Second, we consider whether the findings support the judgment. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. Menard, 726 N.E.2d at 1210. We give due regard to the trial court's ability to assess the credibility of witnesses. Id. While we defer substantially to findings of fact, we do not do so to conclusions of law. Id. We do not reweigh the evidence; rather we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. Yoon v. Yoon, 711 N.E.2d 1265, 1268 (Ind. 1999).

I.

The first issue is whether the court's factual findings regarding the division of the parties' assets and liabilities are clearly erroneous. Ind. Code § 31-15-7-4 governs the division of property in dissolution actions and requires that the trial court "divide the property in a just and reasonable manner." I.C. § 31-15-7-4(b). The court shall presume that an equal division of marital property between the parties is just and reasonable, and the trial court may only deviate from an equal division when that presumption is rebutted. Ind. Code § 31-15-7-5. The trial court's division of marital property is "highly fact sensitive and is subject to an

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[his] arguments in his Appellant's Brief appear to be de novo review and involve errors in the application of

abuse of discretion standard." Fobar v. Vonderahe, 771 N.E.2d 57, 59 (Ind. 2002). We "will not weigh evidence, but will consider the evidence in a light most favorable to the judgment." Id.

Steven argues that "the marital estate was comprised of a very nice home and substantial personal property," and that "[c]learly, there were allegations of dissipation and destruction of the marital home and estate." Appellant's Brief at 16. Steven argues that the portions of the Order Following Remand regarding property division "provides no theory as to how the trial court actually valued and divided the marital estate." Id. at 18. Steven argues that "[c]learly, a large asset of the marriage, the marital residence, was substantially damaged while under [Janet's] exclusive control due to the Protective Order she obtained against [Steven] which encompassed the duration of the divorce proceedings." Id.

Here, in its original Dissolution Decree, the court found that the marital residence was in foreclosure and thus declined to assign it a value. On appeal, we held that "presumably, a judgment was or will be entered against the parties as a result of the foreclosure action," and that "[b]ecause we remand for the trial court to consider another debt, we also direct the trial court to address this debt on remand." Fortner, slip op. at 9. Thus, there was no order that the court specifically consider the potential issue of dissipation, an issue which was thoroughly addressed at the dissolution proceedings and upon which there was little agreement. In its Order Following Remand, the court followed our directive and entered a finding of fact which assigned the marital debt as Finding 1:

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the law in one form or another." Appellant's Brief at 9.

> Any foreclosure judgment debt, from the sale of the marital residence shall be apportioned by the parties with 75% of the debt to be borne by [Steven], and 25% by [Janet]. Likewise, any surplus is to be divided by the parties, with [Steven] to receive 75% and [Janet] to receive 25% of any net proceeds.

Cause No. 564 Appendix at 34.[5]

Moreover, we note that there is evidence in the record which supports the court's finding. In the child support worksheet, admitted as Respondent's Exhibit R, the weekly gross incomes for Steven and Janet are listed at $840.00 and $217.50, respectively. Thus, Steven earns roughly four times what Janet earns. We cannot say that the court abused its discretion when it ordered Steven to be responsible for seventy-five percent of the debt associated with the marital estate. We conclude that the court's finding regarding the debt associated with the marital estate was not clearly erroneous.

II.

The second issue is whether the court's factual findings regarding custody of G.F. are clearly erroneous. A trial court's custody determination is afforded considerable deference as it is the trial court that sees the parties, observes their conduct and demeanor and hears their testimony. Kondamuri v. Kondamuri, 852 N.E.2d 939, 945-946 (Ind. Ct. App. 2006). Thus, on review, we will not reweigh the evidence, judge the credibility of witnesses or substitute our judgment for that of the trial court. Id. at 946. We will reverse the trial court's custody determination only if it is clearly against the logic and effect of the facts and circumstances or the reasonable inferences drawn therefrom. Id.

[5] We note that in Finding 2, the court addressed the other property division issue we ordered it to address on remand and assigned the $7,200 debt owed to Janet's parents to Janet. Cause No. 564 Appendix at

As previously mentioned, we noted in our original opinion that the court's Dissolution Decree was unclear as to whether it "refers to only physical custody or both physical and legal custody," and we remanded for the court "to clarify its custody order on this issue." Fortner, slip op. at 14. We also stated in our conclusion that "[w]e affirm the trial court's physical custody order but remand for clarification of the legal custody of G.F." Id. at 18. The court, in its Order Following Remand, issued Finding 3 complete with subparts a-h, recited below.

We address Steven's arguments addressing the court's findings regarding the: (A) physical custody of G.F.; and (B) legal custody of G.F., separately.

A. Physical Custody of G.F.

Regarding the court's order as it pertained to physical custody of G.F., Steven argues that "any action taken by a trial court upon remand must conform to the opinion and order promulgated" by this court, and the trial court was therefore "without authority to reweigh physical custody on the closed record." Appellant's Brief at 21. Steven argues that "these special findings and conclusions now purport to rely on a pattern of domestic violence to support its physical custody award of G.F. in [Janet]," and "this new legal rationale, if accepted, would violate [Steven's] due process right to be heard." Id. Steven cites to Lane v. State, a criminal case in which the trial court, following a remand from this court, enhanced the defendant's sentence. 727 N.E.2d 454, 457 (Ind. Ct. App. 2000), trans. denied. On appeal, we held that "[b]y the time of re-sentencing, the court was without authority to

34.

reweigh aggravating and mitigating factors," and that "the trial court erred in failing to follow the remand order and impose a forty-year sentence upon Lane." Id.

In the original Dissolution Decree the court, in Finding 5, made the following finding on custody of G.F.:

> There was one (1) minor child born of the marriage, [G.F.], age 5 . . . . A custody evaluation was performed by Elaine Smith, who recommended custody of [G.F.] should be awarded to [Steven]. However, after the first scheduled court date, [Steven] was heard stating if [Janet's] family and supporters did not stop looking at him he was going to hurt, sue or kill someone. Additionally, on the final court date, after an admonishment by the Court on improper conduct, during [Janet's] testimony, [Steven] mouthed to her that he still loved her and never wanted this to happen, causing her to begin crying and requiring the Court to admonish him specifically. Although this Court has great respect for Ms. Smith's opinions and work product, the Court is more persuaded by [Steven's] conduct in and around the courtroom, outside of Ms. Smith's observation. The Court has the authority to reject a custody evaluator's opinion pursuant to Rogers v. Rogers, 876 [N.E.2d] 1121 (Ind. Ct. App. 2007)[, trans. denied]. Following I.C. 31-17-2-8, the Court finds it to be in the child's best interest to remain in his mother's custody. [G.F.] is 5 years old and has received almost all of his care from her. Both parents wish to have custody of [G.F.], and he expresses a desire to remain in both homes. Due to his young age, the Court finds this unpersuasive. [G.F.] is most closely bonded with his mother, and half-brother, [P.L.], who resides with his mother as well. Surely moving [G.F.] to Terre Haute with [Steven] would disrupt his adjustment to community, school, and home. *Although since dismissed at [Janet's] request, there was a Protective [Order] issued against [Steven] for domestic violence, in this cause of action, for the protection of [Janet].* Although she admitted to smoking marijuana, the Court finds that to be the lesser of two evils since [Steven] has admitted to using methamphetamines. [Janet] is a proper person to have the care and physical custody of [G.F.] . . . . [The] Court finds it noteworthy that [Janet's] ex-husband . . . testified that he has been divorced from [her] for 13 years and has never had a complaint with her parenting skills, and had to quit going to the Fortner's house over a year ago due to [Steven's] behavior. Parenting Time will be by agreement. If the parties are unable to agree, then parenting shall be pursuant to the Indiana Parenting Time Guidelines.

Cause No. 36 Appendix at 15-16 (emphasis added).

Then, in the Order Following Remand, the court re-addressed custody of G.F., per our directive to clarify, in Finding 3:

> 3. In the best interests of the minor child, [G.F.,] the parties shall have joint legal custody, with [Janet] having primary physical custody. Pursuant to I.C. 31-17-2-8, the Court finds the following:
>
> a. The age and sex of the child; [G.F.] is a five year old boy, and has received most of his care from [Janet], albeit in part do [sic] to [Steven's] work schedule. However, testimony was offered that when [Steven] was off work and at home, he spent an inordinate amount of time in his garage. This factor weighs in favor of [Janet].
>
> b. The wishes of the child's . . . parents; as both parents desire custody of the child, this factor does not weigh in favor of either parent.
>
> c. The wishes of the child, . . . ; [G.F.] has indicated an interest in living with both parents[;] therefore this factor does not weigh in favor of either parent.
>
> d. The interaction and interrelationship of the child with:
>
> 1. the child's parents; as stated above, [G.F.] has received the majority of his care and affection from [Janet], and therefore the Court finds the bond with her to be stronger than that with [Steven].
>
> 2. the child's sibling(s); [G.F.] appears to be strongly attached to his half-brother [P.L.] who resides with [Janet]. Accordingly, this factor weighs in favor of [Janet].
>
> e. The child's adjustment to the child's:
>
> 1. home, school and community; if custody were awarded to [Steven], [G.F.] would be uprooted from his home, school, family and friends to move to Terre Haute, Indiana, therefore this factor weighs in favor of [Janet].
>
> f. The mental and physical health of all individuals involved; both parties admitted to drug usage during the marriage, and in spite of the custody evaluator's recommendation, testimony was offered that [Steven] shut off the

> utilities to the marital residence, while [Janet] and her children were still living there. He failed to notice while two year old [G.F.] played with a power drill to drill a hole through the hot tub cover, and allowed [G.F.] to wander off from the marital home in nothing but a diaper and he eventually was found in a public street. Further, the Court was also persuaded by [Steven's] conduct in and around the courtroom, outside of the custody evaluator's presence, that substantiated [Janet's] claims of [Steven's] violent behavior during the marriage of the parties. [Steven] was admonished in open Court, on at least two occasions to contain his disruptive behavior and threats to [Janet's] witnesses, or face contempt citations. This factor weighs in favor of [Janet].
>
> g. Evidence of a pattern of domestic or family violence by either parent; a Protective Order was issued in this cause of action, although never legally challenged by [Steven], was subsequently dismissed by [Janet]. Said Order was issued against [Steven] for the protection of [Janet]. Additionally, [Steven], on at least two occasions, either called or had Child Protective Services called on [Janet]. Both reports were unsubstantiated. This factor weighs in favor of [Janet].
>
> h. Evidence that the child has been cared for by a de facto custodian . . . does not apply as no evidence that a de facto custodian was involved in the case at bar.
>
> Therefore, for the foregoing factors, the Court finds that it is in the best interests of the child to be in the primary physical custody of [Janet], his mother.

Cause No. 564 Appendix at 34-36.

Contrary to Steven's assertions, the two findings as they pertained to physical custody are substantially similar. Indeed, the findings from the Dissolution Decree and the Order Following Remand both note that G.F. has received most of his care from Janet, that both parents want custody, that G.F. desires to be in both homes, that G.F. has an attachment to his half-brother P.L., that moving G.F. to Terre Haute would affect his adjustment to home, school, and community, that both parents are admitted drug users, that Steven's courtroom behavior required repeated admonishments from the court, and that there was a Protective

Order issued regarding domestic violence for Janet's protection against Steven that was since dismissed. The only information contained in the court's finding issued in its Order Following Remand which was not contained in the Dissolution Decree was a few pieces of anecdotal evidence regarding G.F. while in the care of Steven and that Steven twice called or had Child Protective Services called on Janet.

Thus, we conclude that Finding 3's analysis of the physical custody of G.F. in the Order Following Remand was an attempt by the trial court to clarify its ruling by issuing its order in subparts corresponding to Ind. Code § 31-17-2-8 and to assign relative weight regarding each factor.

B. Legal Custody of G.F.

Steven argues that the relevant finding in the Order Following Remand "is clearly erroneous because it is a general judgment and does constitute [sic] special findings under T.R.52(A)." Appellant's Brief at 19. Steven argues that it "is in the final analysis a general judgment made in terms of an ultimate conclusion of law; critically it does not provide any theory upon which the trial court relied in determining the propriety of joint legal custody." Id. at 19-20.

Ind. Code § 31-17-2-13 states that "[t]he court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child." Here, the court found in its Order Following Remand that "[i]n the best interests of the minor child, [G.F.,] the parties shall have joint legal custody . . . ." Also, the court made numerous findings regarding physical custody which are instructive regarding the legal

custody of G.F. Thus, we cannot say that the court's ordering joint legal custody was clearly erroneous. Accordingly, the court's finding regarding custody of G.F. was not clearly erroneous.

III.

The third issue is whether the court's factual findings regarding weekly child support are clearly erroneous. A trial court's calculation of a child support obligation under the child support guidelines is presumptively valid. Kondamuri, 852 N.E.2d at 949. We review a trial court's decision to award child support for an abuse of discretion. Id. "An abuse of discretion occurs if the trial court's decision is clearly against the logic and the effect of the facts and circumstances before the court or if the court has misinterpreted the law." Id. On appeal, we will consider only the evidence and reasonable inferences favorable to the judgment. Quinn v. Threlkel, 858 N.E.2d 665, 670 (Ind. Ct. App. 2006) (citing Payton v. Payton, 847 N.E.2d 251, 253 (Ind. Ct. App. 2006)). "We also bear in mind that although a trial court has broad discretion to tailor a child support award in light of the circumstances before it, 'this discretion must be exercised within the methodological framework established by the guidelines.'" Id. (quoting McGinley-Ellis v. Ellis, 638 N.E.2d 1249, 1251-1252 (Ind. 1994)).

Steven argues that the court in its Order Following Remand did not follow our instructions to either conduct an evidentiary hearing "to receive and adopt a verified, properly completed child support worksheet" or, in the alternative, to "enter into its own findings and make conclusions thereupon." Appellant's Brief at 23. Steven argues that the court instead

"merely adopted [Janet's] inaccurate trial exhibit, an unsigned worksheet." Id. Steven argues that "it is impossible to determine the trial court's actual finding on the uninsured medical expense division" because the Order Following Remand "is silent on this component of child support . . . ." Id. at 25. Steven also argues that "this worksheet does not provide health insurance premium credit for child support . . ." and that "there are no facts and inferences of the record to support the weekly gross income the trial court utilizes as a starting point in its Order Following Remand." Id. at 25-26.

As noted in our original opinion, at the dissolution proceeding Janet "submitted an unsigned, unverified child support worksheet, to which Steven did not object." Fortner, slip op. at 14. The trial court ordered Steven to pay $106 per week in child support as Janet's worksheet recommended. On appeal, we highlighted a discrepancy between the worksheet and the trial court's order relating to G.F.'s uninsured health care expenses. Specifically, the worksheet recommended that Janet "as custodial parent, pay the first $486 in uninsured health care expenses and that she pay 19% of the remaining expenses while Steven pay 81% of the remaining expenses." Id. at 14-15. However, the court in the Dissolution Decree deviated from those calculations and "ordered that Janet pay $167 in uninsured healthcare expenses and that Janet pay 25% of the remaining expenses while Steven pay 75% of the remaining expenses." Id. at 15. In so ordering, the court did not explain its calculations. Id.

We held that:

> We have previously reversed and remanded to the trial court where we cannot adequately review the trial court's child support order because the parties had failed to submit verified child support worksheets and the trial court failed to enter adequate findings to justify and explain its order. Quinn,

> 858 N.E.2d at 670 (citing Payton, 847 N.E.2d at 253-54). The trial court here neither obtained and adopted a party's verified child support worksheet, *nor did it make findings paralleling [Janet's] worksheet*. We are simply unable to determine how the trial court arrived at its child support calculations, especially the payment of uninsured healthcare expenses. We conclude that reversal and remand is necessary for the trial court to either adopt a verified, properly completed child support worksheet *or to enter its own findings based on the requirements of the worksheet*. See id. at 671.

Id. (emphasis added).

In the Order Following Remand, the trial court made the following finding entered as Finding 4:

> Child Support Calculation; the Court finds that a Child Support Worksheet was entered into the record, as Respondent's Ex. R, and may have been inadvertently excluded from the transcript provided to the Court of Appeals, see attached. The Worksheet is an accurate reflection of the Parties' income and child care expenses as of the date of trial. Accordingly, [Steven] is to pay child support in the amount of $106.19 per week, through income withholding, if available through [his] employer.

Cause No. 564 Appendix at 36.

Thus, our directive gave the court two options on how to proceed on remand, and the court attempted to follow the second option by entering its own findings based on the requirements of the worksheet. Such findings could parallel the worksheet submitted by Janet. However, this attempt fell short of addressing the entirety of what we identified as the shortcomings of the Dissolution Decree. Specifically, although Finding 4 in the Order Following Remand parallels Janet's worksheet regarding the parties' income,[6] it does not

[6] To the extent that Steven challenges the veracity of Janet's worksheet regarding the parties' weekly income levels, we note that the following appears in the transcript:

> [Janet's Counsel]: Judge, I've got a, [Steven's Counsel] and I discussed this matter,

address the issue of G.F.'s uninsured health care expenses. The court's failure to address this issue must be interpreted as its reliance on its finding in the Dissolution Decree which deviated from Janet's worksheet and which we have already stated required an explanation for the deviation. We therefore remand for the trial court to make findings based upon the requirements of the worksheet.[7] See Quinn, 858 N.E.2d at 671 (holding that a trial court could enter its own findings based upon the requirements of the child support worksheet).

> also. I prepared a child support worksheet in this matter that I've marked as Respondent's R. I pointed out to counsel that there's nothing in here for (INAUDIBLE) parties, the other children they are obligated to support, parenting time credit for father, but nothing health insurance costs and I think that [Steven] has a pay stub (INAUDIBLE). Counsel and I have agreed to (INAUDIBLE).
>
> THE COURT: Okay. Done by agreement so, Respondent's Exhibit R is entered into the record without objection;
>
> **RESPONDENT'S EXHIBIT R ADMITTED WITHOUT OBJECTION**
>
> [Steven's Counsel]: And with the understanding that the testimony from my client and his recent pay stubs has went from a forty hour week to a thirty six hour week and I think this reflects a forty hour week, it is.
>
> [Janet's Counsel]: That's accurate. And I'm . . . that's the way the evidence has come in, but we don't, we believe the forty hour work week is legitimate and certainly the Court can determine what's appropriate.
>
> THE COURT: Okay.

Transcript at 479.

[7] Steven also raises the issue of whether the court erred in issuing the Order Following Remand after Steven timely filed a motion for change of judge pursuant to Ind. Trial Rule 76(C)(3). Steven terms this a "threshold issue" because "if dispositive, it may necessitate deeming the [] Order Following Remand a nullity . . . ." Appellant's Brief at 13. Steven argues that the court, in order to adequately address this court's orders on remand, was required to conduct a "new trial," and was therefore "divested of jurisdiction to act with regard to the remand, save to grant [Steven's] Motion for Change of Judge since it was pending." Id. at 15. Because we affirm the trial court's handling of those issues in its Order Following Remand, we need not address this issue.

However, in the event that the court decides that a new hearing is warranted to receive evidence in order to make findings based on the requirements of the child support worksheet, we note that pursuant to Ind.

For the foregoing reasons, we affirm the trial court's Order Following Remand in all respects except that we remand for findings based upon and satisfying the requirements of the child support worksheet.

Affirmed in part, reversed in part, and remanded.

BAILEY, J., concurs.

FRIEDLANDER, J., concurs in part and dissents in part with separate opinion.

Trial Rules 76(B) and 76(C)(3), Special Judge Michael H. Eldred is the appropriate judge to hear the evidence and render such findings.

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
	)	
STEVEN L. FORTNER,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 67A01-1011-DR-564
	)	
JANET M. FORTNER,	)	
	)	
Appellee-Respondent.	)	
	)	

FRIEDLANDER, Judge, concurring in part and dissenting in part

I concur with the Majority except with respect to its decision to remand for findings concerning the child support worksheet. I would affirm the trial court in all respects.

The allocation of the child's medical expenses is the lone matter that the Majority determines requires a remand. The child support worksheet that Janet submitted reflects one set of figures (Janet to pay first $486 of the child's uninsured medical expenses and 19% of the remainder of the child's medical expenses), while the trial court's order reflects a different set of figures (Janet to pay first $167 of the child's uninsured medical expenses and

25% of the remainder of the child's medical expenses). Because the trial court entered findings that Janet's worksheet "is an accurate reflection of the Parties' income and child care expenses", *Cause No. 564 Appendix* at 36, the Majority seeks an explanation as to why the court did not merely adopt the worksheet's figures with respect to uninsured medical expenses.

I observe first that the trial court did not indicate upon remand that it had adopted the figures on Janet's worksheet *it toto*. Rather, it indicated that the parties' respective incomes, a disputed matter at the hearing, were as reflected on the worksheet. Second, it seems to me that the discrepancy here is a relatively small one. The worksheet calls for Janet to pay more up front, and a lesser percentage after that, while the trial court's order calls for her to pay less up front, but a greater percentage after that. The up-front amounts differ by a little more than $300, while the percentages differ by only 6 percent. I am not persuaded that the lack of perfect symmetry between the two justifies remand. In fact, I believe the differences are small enough that they should be regarded as de minimis and not justifying further explanation and delay in finally resolving this appeal. *See Nienaber v. Marriage of Nienaber,* 787 N.E.2d 450 (Ind. Ct. App. 2003). I would affirm the trial court in all respects.