[Cite as *Wood v. Wood*, 2011-Ohio-679.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Mary Ann Wood,	:	
Plaintiff-Appellant,	:	
		No. 10AP-513
v.	:	(C.P.C. No. 08DR08-3276)
Robert B. Wood,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on February 15, 2010

Edward F. Whipps and Associates, *Edward F. Whipps* and *Jessica M. Lahmon*, for appellant.

Gerrity & Burrier, Ltd., and *Timothy D. Gerrity*, for appellee.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations.

KLATT, J.

{¶1} Plaintiff-appellant, Mary Ann Wood, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, that granted a decree of divorce to her and defendant-appellee, Robert B. Wood. For the following reasons, we affirm in part and reverse in part.

{¶2} The parties married on May 14, 1988 and have one child, a son, born May 13, 1994. On August 19, 2008, Mary Ann filed a complaint for divorce.

{¶3} Before trial commenced, the parties reached an agreement regarding the custody of their son, as well as the division of almost all of their marital assets and liabilities. Additionally, Robert agreed to purchase a life insurance policy with a $125,000 payout value that named Mary Ann as the beneficiary. Robert also agreed to maintain that policy as long as he owes either child or spousal support. The parties memorialized their agreement in writing, and they introduced it into the trial record as the "Joint Stipulations of the Parties."

{¶4} During the February 2010 trial, the parties orally stipulated to the values and the division of the marital assets and liabilities set forth in Exhibit 1, entitled "Marital Financial Statement." For the most part, the values and division reflected in Exhibit 1 merely repeated the values and division that the parties had already agreed to in the joint stipulations. However, Exhibit 1 also provided that: (1) the parties would equally split the debt owed on the parties' New Mexico timeshare, (2) Mary Ann would assume the debt owed on her credit cards, and (3) Robert would pay Mary Ann $3,665 to equalize the division of the parties' marital property.

{¶5} Throughout the trial, the parties focused primarily on introducing evidence regarding their incomes and expenses. Both parties work as independent contractors. Robert drives a commercial van, making short- and long-haul deliveries for CEVA. Robert testified that, previously, he has worked as much as 80 to 100 hours per week, but more recently he has worked approximately 75 to 80 hours per week. In 2008, Robert's gross receipts totaled $144,919.85, and in 2009, his gross receipts totaled $118,942.98.

Accordingly to Robert, his 2009 gross receipts dropped from their 2008 level because fewer higher-paying long-haul deliveries were available to him in 2009, forcing him to undertake more lower-paying short-haul deliveries.

{¶6} Mary Ann is a mail carrier for the United States Postal Service. In 2008, Mary Ann's gross receipts equaled $35,137. Mary Ann testified that her monthly expenses amount to $5,606.46, which includes $1,725.51 in monthly mortgage payments on the Shawnee Hills home that the parties allocated to her in the joint stipulations.

{¶7} On May 5, 2010, the trial court issued a judgment decree entry of divorce. First, pursuant to the joint stipulations, the trial court designated Mary Ann the residential parent and legal custodian for the parties' son. After calculating each of the parties' incomes, determining the amount of child support owed, and deciding to deviate from the guideline amount, the trial court ordered Robert to pay $650 per month, plus a 2 percent processing fee, in child support. Next, the trial court apportioned the marital assets and liabilities in accordance with the parties' joint stipulations. Thus, the trial court allocated the parties' Shawnee Hills home, along with all associated debt, to Mary Ann, and the court allocated the parties' Columbus home, along with all associated debt, to Robert. The trial court then decided that an award of spousal support was appropriate, and it ordered Robert to pay Mary Ann $700 per month. Finally, the trial court required Robert to procure and maintain a life insurance policy under the terms he had agreed to in the joint stipulations.

{¶8} Mary Ann now appeals from the May 5, 2010 judgment, and she assigns the following errors:

> 1. The Trial Court erred to the prejudice of Ms. Wood by failing in the Judgment Entry Decree of Divorce to require Mr.

Wood to provide proof of his maintaining a life insurance policy in the amount of $125,000.00 naming Ms. Wood as the beneficiary as stipulated by the parties during the trial.

2. The Trial Court erred to the prejudice of Ms. Wood by failing in the Judgment Entry Decree of Divorce to allocate the liability associated with the timeshare and require the parties to equally, 50/50, share the liability as stipulated by the parties during the trial.

3. The Trial Court erred to the prejudice of Ms. Wood by failing in the Judgment Entry Decree of Divorce to allocate the two adjoining lots associated with 105 E. Mohawk Drive to Ms. Wood and require Mr. Wood execute a Quitclaim Deed concerning same as stipulated by the parties.

4. The Trial Court erred to the prejudice of Ms. Wood by failing in the Judgment Entry Decree of Divorce to set a time frame in which Mr. Wood must remove the personal property from 105 E. Mohawk Drive.

5. The Trial Court erred to the prejudice of Ms. Wood by failing in the Judgment Entry Decree of Divorce to require Mr. Wood to refinance to remove Ms. Wood from the mortgage obligations associated with 2807 Bryden Road, which the parties stipulated would be granted to Mr. Wood.

6. The Trial Court erred as a matter of law, abused its discretion, and rendered a decision which was against the manifest weight of the evidence in failing in its RC§3105.18 analysis to provide sufficient support to allow Ms. Wood to comply with the stipulations of the parties and further by going against the expressed desire of the parties by not equalizing the parties [sic] incomes.

7. The Trial Court erred as a matter of law, abused its discretion, and rendered a decision which was against the manifest weight of the evidence in holding that Mr. Wood's income is based on working up to 90 to 100 hours per week and further finding that such work is not sustainable.

8. The Trial Court erred as matter of law, abused its discretion, and rendered a decision which was against the manifest weight of the evidence in determining Mr. Wood's income under RC§3119.01 for purposes of calculating Mr. Wood's child support obligation.

> 9. The Trial Court erred as a matter of law, abused its discretion, and rendered a decision which was against the manifest weight of the evidence in its RC§3119.22 analysis by finding it appropriate to deviate from the guideline child support figure.

{¶9} At oral argument, Mary Ann's counsel represented to this court that the parties had resolved the issues underlying the third and fourth assignments of error. Because Mary Ann's counsel withdrew both of these assignments of error, we will not address them.

{¶10} By Mary Ann's first assignment of error, she argues that the trial court erred in not ordering Robert to provide her with evidence that he has purchased a life insurance policy. We disagree.

{¶11} The trial court incorporated into its judgment paragraph 19 of the joint stipulations, which, in its entirety, states:

> The parties agree [Robert] shall maintain a life insurance policy with a payout value of not less than $125,000.00 with [Mary Ann] named as beneficiary so long as he has an obligation of child support or spousal support.

Even though the judgment reiterates the exact terms stated in paragraph 19, Mary Ann now argues that the trial court erred because it did not also impose on Robert a duty to demonstrate to Mary Ann his compliance with the trial court's order.

{¶12} A stipulation is a voluntary agreement between the parties concerning disposition of some relevant point. *Sherman v. Sherman*, 10th Dist. No. 05AP-757, 2006-Ohio-2309, ¶11. When the parties have agreed to enter into a stipulation for the record, a party cannot complain on appeal that the trial court abused its discretion in accepting the stipulation. *Presjak v. Presjak*, 11th Dist. No. 2009-T-0077, 2010-Ohio-1455, ¶40; *Stump*

v. Stump, 3d Dist. No. 8-07-11, 2007-Ohio-6553, ¶6; *Phillis v. Phillis*, 164 Ohio App.3d 364, 2005-Ohio-6200, ¶25; *Booth v. Booth*, 11th Dist. No. 2002-P-0099, 2004-Ohio-524, ¶9.

{¶13} Here, the trial court accepted the parties' stipulation and, without alteration, included it in the judgment. Consequently, Mary Ann has no basis on which to object to the trial court's actions. Since the stipulation did not include a proof requirement, the trial court did not abuse its discretion in omitting that requirement from its judgment. Accordingly, we overrule Mary Ann's first assignment of error.[1]

{¶14} By her second assignment of error, Mary Ann argues that the trial court erred in failing to allocate the debt associated with the New Mexico timeshare. We agree.

{¶15} R.C. 3105.171(C)(1) mandates that a trial court divide marital property equally, or if an equal division is inequitable, the court must divide the marital property equitably. See *Neville v. Neville*, 99 Ohio St.3d 275, 2003-Ohio-3624, ¶5. To ensure an appropriate division of marital property, a trial court must take into account both the assets and the liabilities of the spouses. R.C. 3105.171(F)(2). Thus, the duty to equitably divide the marital property necessarily obligates the trial court to divide the marital debt. *Byers v. Byers*, 4th Dist. No. 09CA3124, 2010-Ohio-4424, ¶18; *Ulliman v. Ulliman*, 2d Dist. No. 22560, 2008-Ohio-3876, ¶28; *Mitchell v. Mitchell*, 11th Dist. No. 2007-P-0023, 2008-Ohio-833, ¶36; *Vergitz v. Vergitz*, 7th Dist. No. 05 JE 52, 2007-Ohio-1395, ¶12; *Longo v. Longo*, 11th Dist. No. 2004-G-2556, 2005-Ohio-2069, ¶109.

{¶16} Here, the parties stipulated that they owed a marital debt for the purchase of a New Mexico timeshare. The parties agreed to equally split that debt to achieve an

equal division of the martial property. The trial court did not mention the timeshare in its judgment, although it otherwise accepted the parties' scheme for allocating their marital property. We find the trial court's lapse contrary to its statutory mandate. R.C. 3105.171(F)(2) required the trial court to consider the debt associated with the timeshare when dividing the parties' marital property. Additionally, given the trial court's allocation of the parties' other assets and liabilities, the division of the marital property will not be equal unless the trial court attributes half of the timeshare debt to each party. Accordingly, we sustain Mary Ann's second assignment of error.

{¶17} By her fifth assignment of error, Mary Ann argues that the trial court erred in failing to require Robert to refinance the Columbus home to remove her from the mortgage on that home. We disagree.

{¶18} The parties stipulated prior to trial that Mary Ann would retain the Shawnee Hills home and Robert would retain the Columbus home. In paragraph 10 of their stipulations, the parties agreed that:

> Each party shall pay and save the other harmless on the any [sic] debts and liabilities associated with the respective residences.

Incorporating the parties' stipulation into its judgment, the trial court held, in relevant part, that:

> [A]s stipulated by the parties, Mr. Wood shall retain complete and exclusive ownership of the real estate located at 2807 Bryden Road. Mr. Wood shall assume complete and full responsibility for payment of the balance of any mortgages, real estate taxes, homeowners' insurance and other liens on such real estate that are due on and after the date of

---

[1] We question Mary Ann's insistence that court intervention, either from this court or the trial court, is necessary to resolve this issue. Robert's counsel has stated that Robert will provide proof that he has purchased life insurance upon Mary Ann's request.

> journalization of this Decree, and Mr. Wood shall save Mrs. Wood harmless from collection thereon.

(Judgment entry, at 20.) Thus, the trial court accepted, without alteration, the parties' stipulation that Robert would save Mary Ann harmless on the debt for the Columbus home.

{¶19} Mary Ann now complains that the trial court should have ordered Robert to refinance the Columbus home instead of merely ordering Robert to hold Mary Ann harmless from collection on the mortgage. Because she agreed to the stipulation, Mary Ann cannot complain about its terms on appeal. A trial court does not abuse its discretion in coordinating the judgment to correspond with the parties' stipulation. *Presjak* at ¶40; *Stump* at ¶6; *Phillis* at ¶25; *Booth* at ¶9.

{¶20} Moreover, the trial court did not need to order Robert to refinance in order to equally divide the two homes between the parties. R.C. 3105.171(J) empowers a trial court to order a spouse to refinance marital property allocated to the spouse to achieve an equal (or equitable) division of the property. *Baker v. Baker*, 4th Dist. No. 07CA24, 2007-Ohio-7172, ¶38. Here, because the parties stipulated that the marital equity in the two homes was equal, the trial court could equally divide the property without ordering a refinancing. In accordance with the stipulations, the trial court simply awarded each party a home and then ordered each party hold the other harmless on the debts associated with the home. This order accomplished an equal division of the marital assets (the homes) and the marital debts (the mortgages and other liabilities associated with the homes). Accordingly, we overrule the fifth assignment of error.

{¶21} By her sixth assignment of error, Mary Ann argues that the trial court erred in failing to award her sufficient spousal support to allow her to meet her financial

obligations and by not using spousal support as a means to equalize the parties' incomes. We disagree with both arguments.

{¶22} A trial court may determine spousal support is appropriate and reasonable, and it may set the nature, amount, and terms of payment, as well as the duration of the support, only after considering:

> (a) The income of the parties, from all sources including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;
>
> (b) The relative earning abilities of the parties;
>
> (c) The ages and the physical, mental, and emotional conditions of the parties;
>
> (d) The retirement benefits of the parties;
>
> (e) The duration of the marriage;
>
> (f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;
>
> (g) The standard of living of the parties established during the marriage;
>
> (h) The relative extent of education of the parties;
>
> (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;
>
> (j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;
>
> (k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact sought;

> (l) The tax consequences, for each party, of an award of spousal support;
>
> (m) The lost income production capacity of either party that resulted from that party's marital responsibilities;
>
> (n) Any other factor that the court expressly finds to be relevant and equitable.

R.C. 3105.18(C)(1)(a)-(n). The trial court must consider all of these factors; it may not base its decision regarding spousal support on any one factor in isolation. *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 96. An appellate court will not reverse a trial court's determination as to spousal support absent an abuse of discretion. *Leimbach v. Leimbach*, 10th Dist. No. 09AP-509, 2009-Ohio-6991, ¶20; *Alexander v. Alexander*, 10th Dist. No. 09AP-262, 2009-Ohio-5856, ¶31.

{¶23} Mary Ann first argues that the trial court erred in not awarding her sufficient spousal support to meet the monthly obligations on the debt allocated to her, which includes the mortgage on the Shawnee Hills home, her credit card debt, and her vehicle loan. Essentially, Mary Ann contends that the trial court abused its discretion because it did not award her enough to meet her monthly needs. We find this argument unavailing.

{¶24} Spousal support is not designed solely to meet the needs of the spouse receiving the support. *Brown v. Brown*, 5th Dist. No. 08-CA-64, 2009-Ohio-3832, ¶22. When determining what amount to award in spousal support, a trial court should award an amount which is appropriate and reasonable, not an amount based only upon need. *Schultz v. Schultz* (1996), 110 Ohio App.3d 715, 724. See also *Hutta v. Hutta*, 177 Ohio App.3d 414, 2008-Ohio-3756, ¶9 ("Awards of spousal support are not limited to meeting the needs of the requestor; rather, current Ohio law directs the trial court to use a broad

standard in determining whether support is reasonable and appropriate."). Although the inquiry into what amount of spousal support is reasonable and necessary encompasses consideration of the parties' needs, it is not the sole consideration. *Lepowsky v. Lepowsky*, 7th Dist. No. 06 CO 23, 2007-Ohio-4994, ¶9; *Waller v. Waller*, 163 Ohio App.3d 303, 2005-Ohio-4891, ¶63. Therefore, "whether or not an award of spousal support is greater or less than the total financial needs established at trial is only one factor for the court to consider." *Hiscox v. Hiscox*, 7th Dist. No. 07 CO 07, 2008-Ohio-5209, ¶36.

{¶25} Here, in setting the amount of spousal support, the trial court considered Mary Ann's liabilities, expressly noting that her total monthly mortgage payment is $1,725.51. The trial court also considered Mary Ann's testimony that her monthly expenses, including the mortgage payment, equal $5,606.46.[2] The trial court acknowledged that Mary Ann's annual income only amounts to $28,828.58, or $2,402.38 per month. Thus, the trial court understood that Mary Ann's monthly expenses exceed her own monthly income.

{¶26} If need were the only factor for the trial court to consider, it would have simply awarded Mary Ann an amount of spousal support equal to the disparity between her monthly expenses and her monthly income. However, the trial court balanced Mary Ann's need against Robert's ability to pay Mary Ann spousal support. The trial court

[2] Mary Ann's budget included her monthly vehicle loan payment ($272.28), monthly vehicle insurance payment ($40), and monthly expenses for vehicle repair and supplies (approximately $450). The trial court recognized that Mary Ann calculated her annual income by deducting these items from her annual gross receipts, resulting in a double-counting of these items. Since the trial court adopted Mary Ann's calculation of her income, it presumably disregarded these items in her budget.

calculated Robert's annual income at $96,357, an amount "significantly more" than Mary Ann's annual income. (Judgment entry, at 27.) The trial court, however, concluded that Robert's income did not accurately reflect his ability to pay spousal support. Robert earned $96,357 a year only because he worked extremely long hours, which adversely affected his health. Because the trial court found that "Mr. Wood's ability to continue working up to 90 to 100 hours per week is not sustainable given his age and health," it awarded Mary Ann only $700 per month in spousal support. (Judgment entry, at 27.)

{¶27} Before adjudging the reasonableness and appropriateness of the $700 award of spousal support, we must turn to Mary Ann's seventh assignment of error. By that assignment of error, Mary Ann challenges the trial court's factual finding that Robert's age and health prevent him from continuing to work the long hours needed to maintain his current annual income. We find that Mary Ann's challenge is baseless.

{¶28} Courts of appeals apply the "some competent, credible evidence" standard to attacks on the factual findings underlying a support order in order to determine whether the trial court abused its discretion in its award of support. *Ostmann v. Ostmann*, 168 Ohio App.3d 59, 2006-Ohio-3617, ¶48. See also *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 401, 1998-Ohio-403 ("If there is some competent, credible evidence to support the trial court's decision, there is no abuse of discretion."). In accordance with the "some competent, credible evidence" standard, reviewing courts give deference to the trial court's factual findings when some competent, credible evidence supporting those findings exists in the record. *Myers v. Garson*, 66 Ohio St.3d 610, 614, 1993-Ohio-9. Reviewing courts afford this deference because "the trial judge is the best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these

observations in weighing the credibility of the proferred testimony." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶29} Here, Robert testified that, previously, he worked an average of 80 to 100 hours a week. Robert stated that more recently he has been working 14 to 16 hours a day, which amounts to 70 to 80 hours a week. Mary Ann, however, asserts that Robert only worked approximately 60 hours a week during 2008. Mary Ann reaches this estimate through a multiple-step formula involving the number of miles Robert drove in 2008 as reported on his tax forms, as well as the assumptions that Robert drove each mile at 50 miles per hour, Robert is only working when driving, and Robert used his van 80 percent of the time for business and 20 percent of the time for personal reasons.

{¶30} The trial court had sound reason to rely on Robert's testimony rather than Mary Ann's calculations. First, Mary Ann's estimate depends in part on assumptions that lack any verification. Second, Mary Ann ignores that Robert's work encompasses more than mere driving. Robert testified that for every 50 hours he drives, he spends 15 to 18 hours stopped in traffic, doing administrative work, or waiting for his van to be loaded or unloaded. The addition of these non-driving work hours to the 60 hours per week that Mary Ann contends that Robert drives means that Robert spends 75 to 78 hours per week working even under Mary Ann's calculation.

{¶31} In the end, Robert's testimony alone constitutes competent, credible evidence supporting the trial court's determination that Robert works far more than the 60 hours a week that Mary Ann claims. The trial court found Robert credible, and we cannot second-guess that credibility determination.

{¶32} Mary Ann next argues that the evidence fails to prove that Robert needs to curtail his current work schedule due to his age and health. Robert was born on September 11, 1947, so he was 62 years old when the trial court issued its judgment. Robert's physician, Dr. Peter Hucek, testified that Robert suffers from hypertension, hyperglycemia, peripheral edema, and sleep problems. Dr. Hucek has recommended to Robert that he only work 40 to 60 hours per week, and that he arrange his work schedule so that he can sleep six to eight hours consecutively.

{¶33} Mary Ann urges this court to discount Dr. Hucek's testimony. She contends that Robert's health problems do not interfere with his ability to work long hours, and that Dr. Hucek testified as he did merely out of sympathy for Robert. We reject Mary Ann's invitation to reweigh the evidence and reject Dr. Hucek's testimony. We defer to the trial court's finding, based on Robert's age and Dr. Hucek's testimony, that Robert cannot sustain his heavy work schedule. Accordingly, we overrule Mary Ann's seventh assignment of error.

{¶34} Having affirmed the trial court's factual finding that Robert cannot continue working long hours, we can now consider whether that fact, when added to the other evidence the trial court considered pursuant to R.C. 3105.18(C)(1), justified a spousal support award of $700 per month. While Mary Ann's estimated monthly expenses will exceed her monthly income (even with the $650 per month child support payment), we cannot find that the trial court erred in setting the amount of spousal support at $700. The trial court properly weighed Mary Ann's need against the financial resources Robert will have to satisfy that need. Thus, we conclude that the trial court acted within its discretion

when, after expressly considering all the R.C. 3105.18(C)(1) factors, it determined that an award of $700 per month was appropriate and reasonable spousal support.

{¶35} Mary Ann next argues that the trial court erred in ignoring Robert's desire that the trial court use an award of spousal support to equalize the parties' incomes. We disagree.

{¶36} Nothing in R.C. 3105.18 requires a trial court to equalize spouses' incomes through an award of spousal support. *Lepowsky* at ¶43; *Simkanin v. Simkanin*, 9th Dist. No. 22719, 2006-Ohio-762, ¶27; *Avery v. Avery*, 2d Dist. No. 2001-CA-100, 2002-Ohio-1188. Mary Ann, however, contends that the trial court should have awarded her sufficient spousal support to equalize her income with Robert's income because Robert wanted it that way. To support this contention, Mary Ann points to Robert's opening statement, in which Robert's attorney stated:

> My client has reviewed the Fin plan prepared at the Court's request and stamped ready, Your Honor, to be certain and to pledge the appropriate resolution in this case as an equalization of incomes.

(Tr. 14-15.)

{¶37} We are hard pressed to decipher the meaning of this statement. Apparently, it refers to the financial plan attached to Robert's written closing argument. That plan, in which Robert's annual income is set at $71,873 and Mary Ann's at $29,297, indicates that the trial court could virtually equalize the parties' incomes if it awarded Mary Ann $525 per month in spousal support. Thus, Robert's attorney appears to be claiming that Robert "pledges" that, if the trial court accepts the income figures in his financial plan, the appropriate award of spousal support will result in an equalization of the parties' incomes. We do not interpret the statement at issue as a broad directive to the trial court

to equalize the parties' incomes, regardless of what amount the trial court arrives at for each party's annual income. Consequently, we conclude that the trial court did not err in failing to award Mary Ann sufficient spousal support to render the parties' incomes equal.

{¶38} In sum, we find that the trial court did not abuse its discretion when awarding spousal support. Accordingly, we overrule Mary Ann's sixth assignment of error.

{¶39} By her eighth assignment of error, Mary Ann argues that the trial court erred in its calculation of Robert's income for the purpose of determining the appropriate amount of child support. We disagree.

{¶40} A trial court has considerable discretion in the calculation of child support. *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 1997-Ohio-105. Consequently, a reviewing court will not disturb a child support order absent a showing of an abuse of discretion. Id.

{¶41} A trial court must calculate the amount of child support using the basic child support schedule and the applicable child support computation worksheet. R.C. 3119.02. Here, the trial court appropriately relied on the worksheet set forth in R.C. 3119.022, which applies to situations in which one parent is designated the residential parent and legal custodian. To complete that worksheet, a trial court must first determine each party's income. For a parent who is employed to full capacity, "income" means "the gross income of the parent." R.C. 3119.01(C)(5). According to R.C. 3119.01(C)(7), "gross income" is "the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable, and includes * * * self-generated income." R.C. 3319.01(C)(13) defines "self-generated income" as "gross receipts received by a parent from self-employment, proprietorship of a business, joint ownership

of a partnership or closely held corporation, and rents minus ordinary and necessary expenses incurred by the parent in generating the gross receipts." "Ordinary and necessary expenses incurred in generating gross receipts" include "actual cash items expended by the parent or the parent's business." R.C. 3119.01(C)(9)(a). Each parent must verify their income and personal earnings "by electronic means or with suitable documents, including, but not limited to, paystubs, employer statements, receipts and expense vouchers related to self-generated income, tax returns, and all supporting documentation and schedules for the tax returns." R.C. 3119.05(A).

{¶42} Particularly when a parent's income is self-generated, the parent's taxable income may not equal the parent's income as calculated for child support purposes. *Dannaher v. Newbold*, 10th Dist. No. 05AP-172, 2007-Ohio-2936, ¶12; *Foster v. Foster*, 150 Ohio App.3d 298, 2002-Ohio-6390, ¶13. The purposes underlying the Internal Revenue Code and the child support guidelines are vastly different. *Amlin v. Amlin*, 2d Dist. No. 2008 CA 15, 2009-Ohio-3010, ¶70. The federal tax code allows deductions from gross income based on a myriad of economic and social policy reasons that have no bearing on child support. Id. In contrast, the child support guidelines focus on determining how much money is actually available for child support purposes. Id. Consequently, a trial court must not blindly accept all of the expenses deducted on previous tax returns as ordinary and necessary business expenses incurred in generating gross receipts. Id.; *Buening v. Buening*, 3d Dist. No. 10-10-01, 2010-Ohio-2164, ¶13, *Dressler v. Dressler*, 12th Dist. No. CA2003-05-062, 2004-Ohio-2072, ¶10, 14.

{¶43} In the case at bar, Robert's income consists solely of "self-generated income." The trial court, therefore, did not rely much on Robert's tax returns to determine

Robert's income. Rather, the trial court focused primarily on evidence of Robert's 2008 and 2009 gross receipts and the necessary and ordinary expenses that Robert claimed that he incurred in generating those receipts.

{¶44} Unfortunately, Robert does not retain much documentation of his expenses. Robert testified that he does not keep those records because he does not use his actual expenses to figure his federal taxes but, instead, he relies on a business deduction based on the amount of mileage that he drives. Due to his lax recordkeeping, Robert could not produce at trial receipts for the fuel he purchased for his van, or bills or cancelled checks showing the cost of the utilities needed to power his home office. The trial court, nevertheless, deemed both of these ordinary and necessary expenses and deducted from Robert's gross receipts $11,520 and $344, respectively, for each of these business expenses.

{¶45} On appeal, Mary Ann now argues that Robert is not entitled to these deductions from his gross receipts because he failed to provide documentation to verify the expenses. In her post-trial filings before the trial court, Mary Ann directed the court's attention to R.C. 3119.05(A)'s requirement that each party present the court with documentation demonstrating expenses related to self-generated income. However, Mary Ann then conceded that deductions for a portion of Robert's fuel and utilities expenses were appropriate, despite the lack of verifying documentation. Mary Ann advised the trial court to limit the deduction for fuel to $11,520 and the deduction for utilities to $459.20. In its judgment, the trial court adopted Mary Ann's calculation for the fuel deduction and decreased the amount of Mary Ann's recommended utilities deduction.

{¶46} Under the invited-error doctrine, " '[i]t is the well-settled rule that a party will not be permitted to take advantage of an error which he himself invited or induced the trial court to make.' " *Fostoria v. Ohio Patrolmen's Benevolent Assn.*, 106 Ohio St.3d 194, 2005-Ohio-4558, ¶12 (quoting *Lester v. Leuck* (1943), 142 Ohio St. 91, 92). Therefore, a litigant cannot induce or mislead a court into the commission of an error and then procure a reversal of the judgment for an error for which he was actively responsible. Id. See also *Schulte v. Schulte* (Nov. 20, 1998), 6th Dist. No. WD-97-097 (holding that the invited-error doctrine precluded the appellant from prevailing on error that resulted from the trial court adopting the language in the appellant's proposed findings of fact and conclusions of law).

{¶47} Here, Mary Ann recommended that the trial court allow fuel and utilities deductions even though Robert could not prove those deductions with documentation. Therefore, Mary Ann invited the trial court to commit the error that she now complains about on appeal. Under the invited-error doctrine, we refuse to reverse the trial court's judgment based on an alleged error that Mary Ann led the court to make.

{¶48} Mary Ann next argues that the trial court erred in presuming that Robert drove his van 80 percent of the time for business and 20 percent of the time for personal errands. To account for this dual use, the trial court reduced by 20 percent Robert's expenses for his vehicle loan payment, his vehicle insurance, and his fuel. Although Mary Ann is correct that Robert failed to adduce any evidence regarding how much of the time he drives his van for business versus personal reasons, Mary Ann invited any error the trial court made in arriving at the 80/20 split. In her post-trial briefing, Mary Ann advised the trial court that such a split was appropriate, and she reduced Robert's claimed

deductions by 20 percent to ensure that Robert did not receive credit for personal expenses. Again, we refuse to allow Mary Ann to take advantage of any alleged error that she induced the trial court to commit.

{¶49} Finally, Mary Ann argues that the trial court erred when it deducted Robert's 2008 business expenses from his 2009 gross receipts. In its judgment entry, the trial court found that:

> [F]or purposes of the support calculation, using the ordinary and necessary expenses deductions taken in 2008 would be a fair approximation of Mr. Wood's business related expenses in 2009. Therefore, deducting the aforementioned business expenses as outlined herein from Mr. Wood's 2009 gross receipts figure of $118,900.00 results in a gross income in the amount of $96,357.00.

(Judgment entry, at 10.)

{¶50} Mary Ann asserts that the record contains no evidence of Robert's 2009 business expenses, so the trial court had no basis for finding that Robert's 2008 business expenses would approximate his 2009 expenses. Moreover, Mary Ann contends that, if anything, Robert's 2009 business expenses probably decreased because his 2009 gross receipts were less than his 2008 gross receipts. Mary Ann opines that the drop in the gross receipts means that Robert drove less in 2009, which would result in lower fuel expenses.

{¶51} Mary Ann is wrong when she asserts that the record is devoid of evidence regarding Robert's 2009 business expenses. In fact, *Mary Ann* introduced much of the evidence of Robert's 2009 business expenses. Exhibit 37, offered into evidence by Mary Ann, shows that, in 2009, Robert expended $2,135 for his vehicle insurance and $230 for his accountant. Exhibit 37B indicates that, in 2009, Robert spent $3,444 for gas, electric,

and water, and $2,076 for his cell phone. According to Exhibit 39, Robert bought $15,210.26 of fuel during 2009. Finally, Robert testified that he pays $899.62 a month for his vehicle loan.[3]

{¶52} Using the same limitations on the 2009 deductions as the trial court used for the 2008 deductions, we conclude that Robert could deduct the following:

Vehicle loan	$8,636.35 (80 percent of the total expense)
Utilities	$344 (10 percent of the total expense)
Cell phone	$1,038 (50 percent of the total expense)
Vehicle insurance	$1,708 (80 percent of the total expense)
Fuel	$12,168.21 (80 percent of the total expense)
Professional	$230
Total 2009 deductions	**$24,124.56**

Thus, the evidence supports the trial court's determination that Robert's 2008 total deductions ($22,543.20) would fairly approximate his 2009 total deductions ($24,124.56).

{¶53} Additionally, even if the 2009 total deductions were not comparable to the 2008 total deductions, Mary Ann's attack on the trial court's calculation of the deductions would still fail. The trial court's decision to approximate the 2009 total deductions, rather than calculate them based on the evidence, worked in Mary Ann's favor. Robert's actual

[3] Given that Robert's monthly vehicle loan payment is $899.62, he remitted a total of $10,795.44 to his lender during 2009.

2009 total deductions exceeded his 2008 total deductions by $1,581.36.[4] His gross income, therefore, would have decreased to $94,775.64 (from the $96,357 the trial court calculated it at). A lesser income would have meant a lower child support obligation. Consequently, Mary Ann did not suffer any material prejudice due to the alleged error she complains of. Because the alleged error is harmless, it cannot serve as a basis for reversal. *Theobald v. Univ. of Cincinnati*, 160 Ohio App.3d 342, 2005-Ohio-1510, ¶17 ("A reviewing court will not disturb a judgment unless the error contained within is materially prejudicial to the complaining party.").

{¶54} In sum, we decline to reverse the trial court's calculation of Robert's income for child support purposes. Accordingly, we overrule the eighth assignment of error.

{¶55} By her ninth assignment of error, Mary Ann argues that the trial court erred in deciding to deviate from the guideline child support figure. We disagree.

{¶56} A rebuttable presumption exists that the amount of child support that a trial court calculates using the basic child support schedule and the applicable worksheet is the correct amount of child support due. R.C. 3119.03. Nevertheless, a trial court may deviate from that amount if, after considering the factors and criteria set forth in R.C. 3119.23, it determines that that amount "would be unjust or inappropriate and would not be in the best interest of the child." R.C. 3119.22. An appellate court will not reverse a trial court's decision to deviate from the guideline amount of child support absent an abuse of discretion. *Roberts v. Roberts*, 10th Dist. No. 08AP-27, 2008-Ohio-6121, ¶5; *Cameron v. Cameron*, 10th Dist. No. 06AP-793, 2007-Ohio-3994, ¶7.

[4] Robert's expenses grew in 2009 due to higher vehicle loan payments and higher fuel costs.

{¶57} In the case at bar, the trial court decided to deviate from the guideline amount of child support after finding that:

> While the difference in income between the two parties in this case is significant, Mr. Wood is working non-stop to earn his current income which is not only taking a toll on his health, but is also interfering with his opportunity to have a relationship with his son. The Court finds that his current work schedule, as Mr. Wood described it during trial, makes it nearly impossible to have meaningful time with a teenaged son and follow his doctor's recommendation to alleviate some of his health problems. Furthermore, both parties seem to live a relatively frugal lifestyle. It became apparent during trial that the basis for Mrs. Wood's need for support emanates predominately from her desire to continue to raise the minor child in the home he has always known, the marital residence, which, no doubt, the parties and their son would have continued to enjoy had the marriage continued. However, that reason alone cannot take precedence over Mr. Wood's opportunity to have a relationship with his son and his ability to maintain good health so he can continue to work and provide support for his son and Mrs. Wood.

(Judgment entry, at 13-14.) Based on the above findings, the trial court concluded that ordering Robert to pay the guideline amount of child support would be unjust or inappropriate and would not be in the best interest of the child. The trial court then determined that the appropriate amount of child support was $650 per month (approximately $200 less than the guideline amount of child support).

{¶58} Mary Ann first challenges the trial court's deviation from the guideline child support amount by arguing that it erred in finding that Robert will take time off of work to cultivate a relationship with his son. Actually, the trial court did not prognosticate about how Robert will act in the future. Instead, the trial court found that Robert's current work schedule makes it nearly impossible for him to spend time with his son. Given the long and erratic hours Robert currently works, the trial court did not err in so finding.

{¶59} Optimally, a reduced child support obligation will allow Robert to decrease and normalize his work hours, which will benefit Robert's health and leave him with more time to spend with his son. The latter benefit is consistent with Robert's expressed desire to work less so that he can see his son more often. We conclude that the trial court did not abuse its discretion in ensuring that Robert has the capacity to be more involved in his son's life.

{¶60} Next, Mary Ann attacks the trial court's factual finding that Robert works "non-stop." As we discussed above, the trial court did not err in making that finding because competent, credible evidence establishes a basis for it. Accordingly, we conclude that the trial court did not abuse its discretion in deviating from the guideline child support amount, and thus, we overrule Mary Ann's ninth assignment of error.

{¶61} For the foregoing reasons, we overrule Mary Ann's first, fifth, sixth, seventh, eighth, and ninth assignments of error, and we sustain her second assignment of error. Consequently, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, and we remand this case to that court so that it can equally divide the marital debt associated with the timeshare between the parties.

Judgment affirmed in part; reversed in part;
and cause remanded with instructions.

SADLER and CONNOR, JJ., concur.