

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Carolina Lopez-Ruiz, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 11AP-577
 : (C.P.C. No. 06JU-10-15927)
 Alejandro F. Botta, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on February 23, 2012

The Behal Law Group LLC, Robert J. Behal and Jeffrey A. Eyerman, for appellee.

Alejandro F. Botta, pro se.

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

BRYANT, J.

{¶ 1} Defendant-appellant, Alejandro F. Botta ("father"), appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, ordering on remand from this court, that father pay child support in the amount of either \$633.56 per month or \$557.86 per month plus \$93.67, depending on whether health insurance is in effect, a downward deviation of \$200 from the amount calculated under the child support guidelines. Because the trial court did not abuse its discretion in so ordering, we affirm.

I. Facts and Procedural History

{¶ 2} Father and plaintiff-appellee, Carolina Lopez-Ruiz ("mother"), married in 1997; they have one child together, born on December 16, 2000. The parties divorced in Pennsylvania in 2004, and the Pennsylvania court ordered father to pay child support. In 2005, mother moved to Columbus; father currently resides in Boston, Massachusetts.

{¶ 3} On December 5, 2006, the Pennsylvania orders governing parental rights and responsibilities were registered in Ohio, and the parties agreed to the Franklin County Juvenile Court's exercising jurisdiction over the matter. *Lopez-Ruiz v. Botta*, 10th Dist. No. 10AP-610, 2011-Ohio-2414, ¶ 3. Following several motions for contempt and to modify parental rights and responsibilities, the parties on November 13, 2009 entered into a shared parenting plan that allocated parental rights and responsibilities and resolved the motions, except for the amount of father's child support payments.

{¶ 4} Under the shared parenting plan, mother is the child's residential parent for purposes of school placement, but for all other purposes both mother and father are custodial parents when the child is in each parent's care. The child resides primarily with mother. During the school year, father is allocated two weekends per month, with some flexibility allowed because father resides in Boston. In the summer, the child splits his time between the parties.

{¶ 5} The parties agreed to submit affidavits to a trial court magistrate to determine the unresolved child support issue. On February 10, 2010, the magistrate issued a decision that the trial court adopted on March 3, 2010. In the decision, the magistrate determined father's child support payments under the statutory child support guidelines were \$833.56 per month when health insurance for the child is in effect, and \$757.86 per month, plus \$93.66 per month for medical support, when health insurance for the child is not in effect. The magistrate agreed, in part, with father's contention that for a variety of reasons the court should deviate downward from the guideline amount. After analyzing the factors in R.C. 3119.23, the magistrate reduced the guideline amount of father's child support to \$733.56 per month when health insurance for the child is in effect, and \$657.86 per month, plus \$93.66 per month for medical support, when health insurance is not in effect.

{¶ 6} Father objected to the magistrate's decision, contending the amount of child support should be further reduced. After addressing each of the pertinent R.C. 3119.23 factors, the trial court's June 3, 2010 Decision and Entry overruled father's objections and adopted the magistrate's decision deviating downward \$100 from the amount prescribed under the child support guidelines.

{¶ 7} On father's appeal, this court concluded the trial court erred when, in determining whether a downward deviation in child support was warranted, it considered the costs associated with the child's private schooling. As this court noted, the shared parenting plan precluded the private schooling from being a factor in calculating child support. "[U]nable to determine what weight the trial court afforded this improper consideration," this court reversed the trial court's decision and remanded the matter to allow the trial court to reconsider the deviation factors without the private school tuition and costs. *Lopez-Ruiz* at ¶ 11. This court declined to address father's remaining assignments of error, reasoning that any decision would be premature. *Id.*

{¶ 8} On remand, the trial court reiterated many of its findings but revised its decision to expressly state that it did not consider the costs associated with the child's private schooling in determining the necessity for, and degree of, any deviation from the amount specified in the child support guidelines. As a result of its reconsideration, the trial court modified father's child support payments downward by another \$100, ordering him to pay \$633.56 per month when health insurance is in effect, and \$557.86 per month plus \$93.67 for medical support, when health insurance is not in effect.

II. Assignments of Error

{¶ 9} Father again appeals, assigning the following errors:

First Assignment of Error

Juvenile Court Erred and Abused its Discretion by not Weighing in Dr. Botta's Visitation Expenses for his Travel between Boston and Columbus failing to apply O.R.C. 3119.23(D) Extraordinary costs associated with parenting time.

Second Assignment of Error

Magistrate and Trial Court Erred and Abuse[d] its Discretion by not Considering O.R.C. 3119.03 and O.R.C. 3119.23(M) by

Failing to Apply Address Evidence Presented by the Appellant and the Appellee regarding to the real needs of the Child Rebutting the Statutory Child Support Calculation Guidelines amount.

Third Assignment of Error

Trial Court Erred by not Considering Cost of Living Differential between Boston and Columbus Failing to Apply O.R.C. 3119.23(L). Standard of living and circumstances of each party.

Fourth Assignment of Error

Trial Court Erred and Abused its Discretion by not Considering Dr. Lopez–Ruiz Financial Benefits from Re–Marrying and Moving in with her new Husband failing to apply O.R.C. 3119.23(H). Benefits that either parent receives from remarriage and sharing living expenses with another person.

Fifth Assignment of Error

Trial Court Erred by Considering Dr. Lopez–Ruiz's "in-Kind Contributions" in the Child Support Calculation Misunderstanding the Intention of O.R.C. 3119.23(J) Significant in-kind contribution from a parent.

Sixth Assignment of Error

Trial Court Erred and Abused its Discretion by not Considering the Circumstances of the Parties and the Needs of Dr. Botta for the Purpose of Child Support Calculation Failing to Apply O.R.C. 3119.23(K) The Relative Financial Resources and Need of Each parent.

Seventh Assignment of Error

Trial court did not indicate the basis for its Child Support Calculation in sufficient detail to enable a reviewing court to determine whether the award is fair, equitable, and in accordance with the law.

III. Applicable Law and Standard of Review

{¶ 10} All of father's assignments of error contest the amount of the downward deviation from the child support payment calculated under the guidelines, contending he is entitled to a greater deviation. Father asserts the trial court erred because it failed to consider some evidence, improperly considered other evidence, and generally neglected to indicate the basis for its decision in sufficient detail.

{¶ 11} Father's claims focus on the statutory deviation factors in R.C. 3119.23. R.C. 3119.22 allows a trial court to order child support that deviates from the amount calculated under the basic child support schedule and applicable worksheet if, after considering the factors and criteria set forth in R.C. 3119.23, the court determines the amount calculated "would be unjust or inappropriate and would not be in the best interest of the child." "Although the trial court is permitted to deviate from the standard child support worksheet" upon finding one or more of the factors listed in R.C. 3119.23, a party "is not *automatically* entitled to a downward deviation merely because a factor is present." (Emphasis sic.) *Mitchell v. Mitchell*, 11th Dist. No. 2009-L-124, 2010-Ohio-2680, ¶ 28, quoting *Lopez v. Coleson*, 3d Dist. No. 12-05-24, 2006-Ohio-5389, ¶ 9.

{¶ 12} The amount of child support calculated using the basic child support schedule and the applicable worksheet is presumed to be the appropriate amount under R.C. 3119.03. *Wood v. Wood*, 10th Dist. No. 10AP-513, 2011-Ohio-679, ¶ 56. "The party who seeks to rebut the presumption and asks the court to deviate has the burden of proof" and "must provide facts from which the court can determine that the actual annual obligation is unjust or inappropriate and would not be in the children's best interest." *Irish v. Irish*, 9th Dist. No. 10CA009810, 2011-Ohio-3111, ¶ 16, citing *Murray v. Murray*, 128 Ohio App.3d 662, 671 (12th Dist.1999). Once the trial court determines the evidence overcomes the presumption that the guideline amount is correct, it must enter in the journal the actual annual obligation, a determination that the guideline amount would be unjust or inappropriate and not in the best interests of the child, and findings to support that determination. R.C. 3119.22; see also *Depalmo v. Depalmo*, 78 Ohio St.3d 535, 538 (1997) and *Berthelot v. Berthelot*, 9th Dist. No. 22819, 2006-Ohio-1317, ¶ 24.

{¶ 13} Where the trial court in its discretion concludes deviation from the guideline-established obligation is appropriate, the decision will not be reversed absent an

abuse of discretion. See *Roberts v. Roberts*, 10th Dist. No. 08AP-27, 2008-Ohio-6121, ¶ 5; *Cameron v. Cameron*, 10th Dist. No. 06AP-793, 2007-Ohio-3994, ¶ 7. The term "abuse of discretion" connotes that the court's decision is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Under the abuse of discretion standard, an appellate court may not merely substitute its judgment for that of the trial court. *Holcomb v. Holcomb*, 44 Ohio St.3d 128, 131 (1989). Further, a reviewing court should not independently reweigh the evidence. *Miller v. Miller*, 37 Ohio St.3d 71, 74 (1988).

IV. First, Second, Third, Fourth, and Sixth Assignments of Error—R.C. 3119.23 Factors

{¶ 14} The trial court expressly stated it considered all of the R.C. 3119.23 factors, and in its decision it listed each factor with the rationale supporting it. Nevertheless, father's first, second, third, fourth, and sixth assignments of error contend that the trial court failed to address or properly weigh evidence he presented pertaining to several R.C. 3119.23 factors.

A. First Assignment of Error - Extraordinary Costs Associated with Parenting Time

{¶ 15} Father's first assignment of error claims that the trial court abused its discretion when it "failed to properly weigh in \$11,000 in Appellant [sic] travel expenses" pursuant to R.C. 3119.23(D), which addresses extended parenting time or extraordinary costs associated with parenting time. (Appellant's brief, ii.)

{¶ 16} The shared parenting plan arguably addresses father's transportation expenses related to the exercise of his parenting time. It allocates "transportation expenses related to the regular parenting time" so that "[i]f Father travels to visit the child in the child's home state, Mother shall reimburse Father the amount of \$250.00 per time * * * for no more than one trip per month." (Shared parenting plan, 4.) The shared parenting plan also provides an alternative to father's traveling to Columbus, stipulating that "[t]he child may be transported unaccompanied on a direct or indirect flight when and if the parties agree that the child is mature enough, so long as said travel is allowable by law in the jurisdiction and conducted in accordance with pertinent air line rules and regulations." (Shared parenting plan, 4.) Under the shared parenting plan, "if the child

travels unaccompanied to visit the Father, the parties shall equally divide the cost of travel for their child." (Shared parenting plan, 4.) The trial court observed, as mother's 2009 affidavit and brief on appeal reflect, that mother believes the child to be capable of traveling to Boston on his own; father chooses instead to exercise his parenting time in Columbus.

{¶ 17} To the extent the shared parenting plan left room for further discussion of father's travel expenses in relation to his child support payment, the evidence indicates the court explicitly addressed the subject expenses and agreed that father incurs extraordinary costs in exercising his parenting time. The court recognized the elevated costs arose because the parties reside in different states, and it acknowledged father's affidavit listing \$13,450.25 in travel expenses related to exercising parenting time in 2009.

{¶ 18} Father presents various alternative methods of calculating his child support obligation with greater emphasis on his travel costs, asserting the trial court failed to properly "weigh in" his travel expenses. Although father's expenses could have been given more or less weight, no mandatory method or formula controls the trial court's discretion in distributing such expenses. The trial court explicitly considered the economic impact of father's travel, and reversal is not appropriate simply because opinions may differ about the precise evidentiary weight to be given this factor.

{¶ 19} Finally, although father indisputably spends substantial money on travel, those costs do not defray or diminish the costs associated with the child's day-to-day care. R.C. 3119.23(D) is merely one of sixteen factors the trial court considers in determining whether to deviate from the child support guidelines. The trial court appropriately considered it and factored it into its decision. Father's first assignment of error is overruled.

B. Second Assignment of Error-Actual Needs of the Child

{¶ 20} Father's second assignment of error contends the trial court did not consider evidence presented pursuant to R.C. 3119.03 and 3119.23(M), which address the physical and emotional condition and needs of the child. The evidence in question is father's affidavit, which he argues contains "uncontested evidence about how much [the child] needs in terms of cloth[ing], food, housing, etc." (Appellant's brief, 5.) Father's

affidavit addresses the child's needs "based on his experience during the summer six weeks visitations, two weeks spring breaks, and two weeks alternate years Winter breaks" as well as the "Statistics from the United States Department of Agriculture, Center for Nutrition Policy and Promotion" that establish that a "Child needs between \$139.70 and \$276.49 (*idem*)." (Appellant's brief, 6.)

{¶ 21} Father cites *Irish v. Irish*, 9th Dist. No. 09CA009577, 2010-Ohio-403, ¶ 12, to buttress his position, but *Irish* addresses a different issue. *Irish* acknowledged "[t]he trial court has discretion when considering the evidence presented relative to the [R.C. 3119.23] statutory factors." *Id.* The court, however, concluded that "because the trial court does not have the discretion to ignore those factors, it commits an error of law if it fails to consider the factors enumerated in R.C. 3119.23 for which evidence has been presented at trial." *Id.*

{¶ 22} Here, by contrast, the trial court cited the proper statutory law, specifically considered the deviation factors in R.C. 3119.23, pointed to evidence in the record, and indicated that it based its deviation upon those factors. When the issue as a whole is sufficiently addressed, a trial court is "not required to cite every piece of evidence or testimony offered in its decision, and the fact that a particular piece of evidence or testimony was not mentioned does not mean it was ignored." *Gardner v. Bisciotti*, 10th Dist. No. 10AP-375, 2010-Ohio-5875, ¶ 22.

{¶ 23} Father nonetheless contends the trial court should not have believed mother's assertions regarding, among other things, her monthly budget. Father questions mother's "character and credibility," especially concerning the veracity of her affidavit. Father asserts the trial court, instead of accepting mother's accounting, should have based its opinion on his affidavit and statistical research. (Appellant's reply brief, 3.)

{¶ 24} Ordinarily, the trial court, as the trier of fact, is the sole judge of witness credibility and, as such, may believe or disbelieve all or part of any witness' testimony. *Ruben v. Ruben*, 10th Dist. No. 82AP-914 (July 26, 1983). A reviewing court is not permitted to substitute its judgment for that of the trial court in ruling on witness credibility. *Id.*; *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223 (1994), citing *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77 (1984). "Mere disagreement over the credibility of witnesses or evidence is not sufficient reason to reverse a judgment." *Hills v. Patton*, 3d

Dist. No. 1-07-71, 2008-Ohio-1343, ¶ 22, citing *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202.

{¶ 25} Here, the dispute is once removed from the typical challenge to credibility, because the parties agreed that the matter be submitted to the magistrate on affidavits, which are less susceptible to credibility determinations and not subject to cross-examination. The parties having agreed to that procedure, father's challenge to mother's credibility is even more difficult and, as a result, unpersuasive.

{¶ 26} Moreover, to the extent father further argues the court erred when it "decided to take the Guidelines amount as a point of departure for Child Support calculation" instead of using his evidence, his argument fails. (Appellant's Brief, 13.) "Whether a court is establishing an initial child support order" or "modifying an order based on agreement between parties that does not include any order for the payment of child support, the court must apply the Child Support Guidelines as required by the standards set out in *Marker v. Grimm (1992)*, 65 Ohio St.3d 139." *DePalmo* at paragraph one of the syllabus.

{¶ 27} *Marker*, in turn, specifies that "[a] child support computation worksheet, required to be used by a trial court in calculating the amount of an obligor's child support obligation in accordance with R.C. 3113.215, must actually be completed and made a part of the trial court's record." *Id.* at paragraph one of the syllabus (noting in the opinion that the terms of former R.C. 3113.215, analogous to the current R.C. 3119.02 and 3119.22, are "mandatory in nature and must be followed literally and technically in all material respects"). *Cameron v. Cameron*, 10th Dist. No. 04AP-687, 2005-Ohio-2435, ¶ 11 (stating "Sections 3119.02 and 3119.22 are among the current provisions analogous to former R.C. 3113.215, and contain language identical to the language in former R.C. 3113.215 concerning the responsibility of the trial court to calculate the amount of child support in accordance with the child support schedule and applicable worksheet"). The trial court properly initiated its child support determination under the child support guidelines.

{¶ 28} Because the trial court did not abuse its discretion in refusing to apply father's affidavit as dispositive of the child's real needs, father's second assignment of error is overruled.

C. Third Assignment of Error-Standard of Living and Circumstances of Parties

{¶ 29} Father's third assignment of error contends the trial court failed to apply R.C. 3119.23(L), which addresses the standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued. Father concedes the trial court "accepted" the difference in standards of living between the two cities involved, but argues the court nevertheless "failed to weigh in the accepted evidence into the Child Support's Calculation." (Appellant's brief, iv.)

{¶ 30} Contrary to father's contentions, the record indicates the trial court not only explicitly in general weighed the relevant evidence regarding the relative differences in the cost of living between the cities, but also considered the actual standards of living of the parties in particular. The court found that both parents "appear to maintain a middle class standard of living," but the difference in the cost of living between Boston and Columbus, and mother's remarriage and shared living expenses resulted in mother's ability to "maintain a higher standard of living." (Amended Decision and Entry, 7.) The court acknowledged father's argument that "his standard of living is significantly lower than [mother]'s, as he is unable to purchase a car and unable to complete dental treatment," but also noted that "he is still able to purchase several expensive electronic toys for [the child] and many memberships to attractions, all of which are in addition to the substantial travel expenses he incurs for parenting time." (Amended Decision and Entry, 7.)

{¶ 31} In an attempt to support his assertion that the trial court failed to address adequately the differences in the parties' cost of living, father provides an alternative child support calculation pursuant to *Booth v. Booth*, 44 Ohio St.3d 142 (1989), suggesting the trial court should have used his net income, as opposed to his gross income, so as to lessen the cost of living difference. In *Booth*, the Ohio Supreme Court responded to the trial court's attempt to account for the difference in cost of living between the New York City area and Guernsey County, Ohio, by calculating the father's child support payment based on his net income rather than gross income. In determining the trial court did not abuse its discretion in so doing, *Booth* highlighted the importance of recognizing the flexibility trial courts enjoy under an abuse of discretion standard, noting "it is axiomatic that a trial court must have discretion to do what is equitable upon the facts and

circumstances of each case." *Id.* at 144, citing *Cherry v. Cherry*, 66 Ohio St.2d 348, 355 (1981).

{¶ 32} Simply because *Booth* determined the trial court did not abuse its discretion when it so modified the child support formula does not mean all trial courts must, or even should, do the same. The trial court in the present case was well within its discretion to utilize the "gross income" figure set forth in the guidelines. Father's third assignment of error is overruled.

D. Fourth Assignment of Error-Benefits from Remarriage and Cohabitation

{¶ 33} Father's fourth assignment of error alleges the trial court abused its discretion by not considering the benefits mother receives from her remarriage. Father suggests the trial court admitted the magistrate erred in not considering those facts but nonetheless refused to adjust the magistrate's ruling to correct the error.

{¶ 34} Contrary to father's suggestion, the trial court indicated only that the affidavits the parties submitted to the magistrate were unclear about whether mother resides in a home she rents or her husband owns. The trial court concluded that any error the magistrate committed in finding the home was rented was harmless because, "[i]n light of all of the other evidence, the decision would not change." (Amended Decision and Entry, 7, fn. 1.) The trial court further conducted its own inquiry into the benefits mother receives from her current living situation and recognized mother shares expenses with her husband, "does not have a housing expense," but is responsible for expenses related to the child, her car, her insurance, some of the household expenses, and expenses related to her second child.

{¶ 35} The "crux of R.C. 3119.23(H) is the 'benefit' the spouse receives." *Cameron* at ¶ 8. Here, although mother undoubtedly receives a financial benefit from her remarriage, the trial court appropriately considered her affidavit stating that she is separately responsible for the child's expenses, as well as various other costs related to her household, insurance, car, new child, and attorney fees. With those facts, including her responsibility for the child's expenses, we cannot say the trial court abused its discretion in determining mother is entitled to a reasonable contribution from father for the costs associated with the child's care. *Id.*

{¶ 36} Father's fourth assignment of error is overruled.

E. Sixth Assignment of Error-Relative Financial Resources and Needs

{¶ 37} Father's sixth assignment of error contends the trial court abused its discretion by not considering the relative resources of the parties and father's own financial needs pursuant to R.C. 3119.23(K).

{¶ 38} Applying R.C. 3119.23(K) and considering the disparity in income between the parties pursuant to R.C. 3119.23(G), the trial court found "the cost of living in Boston is significantly greater than the cost of living in Columbus. Materials submitted with father's affidavit state that cost of living in Boston is 131.6% of the national average while the cost of living in Columbus is 94.4% of the national average." (Amended Decision and Entry, 6) The trial court also explicitly recognized and considered the statistics father offered, observing father argued both that "it is 28.5% less expensive to live in Columbus" and that the cost of living in Boston is 39.4% higher than the cost of living in Columbus. (Amended Decision and Entry, 5.) The trial court concluded that "the Magistrate considered the difference in the parents' costs of living and specifically accepted [father's] evidence of the difference between the two cities." (Amended Decision and Entry, 5.)

{¶ 39} Father concedes the court "accepted" the facts surrounding his current financial circumstances, but nevertheless asserts the trial court committed an abuse of discretion in accepting the "extremely different living conditions and financial situations but not weighing them in the Child Support Calculation." (Appellant's brief, 12.) As evidence of mother's lifestyle, father contends mother was able "to afford a \$14,000 dollar car during her first month at OSU; has always been able to afford the best lawyers—even when unemployed; has lived in comfortable housing; travels to Europe twice a year; and continues to save for her retirement." (Appellant's brief, 12.)

{¶ 40} Voluntary expenses of one parent can be "particularly relevant if they [are] extravagant." *Cameron* at ¶ 9. The expenditures father enumerates, however, are not extravagant for mother's financial and familial circumstances. Moreover, in discussing the parties' standards of living, the court considered evidence regarding father's own discretionary purchases. Although noting the relative standard of living for mother is higher and father's financial condition has caused him to forego certain expenditures, including a car and dental work, the court observed that father nevertheless spent a significant amount of money on gifts for the child.

{¶ 41} External factors, such as city of residence, affect a party's financial circumstances and standard of living, but so do the parties' personal choices about how to spend money. By father's own admission, he purchases many expensive toys and electronics for the child, items mother finds unnecessary. Such information, in combination with the other factors under R.C. 3119.23, allowed the trial court to conclude father's financial situation as compared to mother's does not warrant further deviation beyond the \$200 granted. Accordingly, the trial court's decision regarding the weight to give the relative circumstances and needs of the parties was not an abuse of discretion. Father's sixth assignment of error is overruled.

V. Fifth Assignment of Error—In Kind Contributions

{¶ 42} Father's fifth assignment of error contends the trial court improperly considered mother's in-kind contributions in its child support calculation. Father contends the trial court's decision reflects a misunderstanding of the intention of R.C. 3119.23(J), which addresses "significant in-kind contribution from a parent, including, but not limited to, direct payment for lessons, sporting equipment, schooling, or clothing." According to father, the court should consider only the in-kind contributions of the obligor parent, as the child support mother receives from him covers her in-kind contributions. Mother disagrees with father's interpretation and, relying on basic principles of statutory construction, urges this court to find significant the fact that "the General Assembly chose to use the term 'a parent' and not 'the obligor.'" (Appellee's brief, 10.)

{¶ 43} Father points to no case law supporting his proposition that R.C. 3119.23(J) applies only to the parent paying child support. Indeed, at least one Ohio appellate court allowed the trial court to include in-kind contributions of both parents in a child support determination. *Irish*, 9th Dist. No. 09CA-009577, 2010-Ohio-403, at ¶ 17 (stating "[w]e further observe that the evidence adduced at the hearing revealed that *both* Mother and Father were making additional financial contributions to the children such as the purchase of uniforms or payment of extracurricular activities"). (Emphasis sic.) Moreover, the trial court properly considered the significant in-kind contributions father made to the child's care and, pursuant to this court's holding and the shared parenting plan, did not consider the expenses associated with the child's private schooling. The trial court did not

abuse its discretion in the manner it considered and applied R.C. 3119.23(J). Father's fifth assignment of error is overruled.

VI. Seventh Assignment of Error—Basis for Decision to Deviate

{¶ 44} Father's seventh assignment of error asserts the trial court did not sufficiently indicate the basis for its decision to deviate downward \$200 from the guideline amount. Father presumably relies on the language of R.C. 3119.22 stating that "[i]f it deviates, the court must enter in the journal the amount of child support calculated pursuant to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, its determination that that amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting that determination." R.C. 3119.22. Those findings should explain why the worksheet amount is unjust, inappropriate, and not in the best interests of the child and, correspondingly, why a downward deviation better suits those interests in the context of the case and the financial situation of the parties. *Berthelot* at ¶ 24.

{¶ 45} Contrary to father's contention, the trial court not only indicated it considered all of the statutory deviation factors but also explicitly detailed its reasoning for individual determinants. In addition, the trial court specifically acknowledged father's request for a deviation due to the travel expenses incurred in the exercise of father's visitation rights, the real needs of the child, the cost of living differential, the financial benefits mother received from re-marrying, and the circumstances of the parties and needs of father.

{¶ 46} In response, father contends the failure of the trial court to sufficiently review all of the evidence presented is reflected in "[f]ixed and formulaic expressions" stating that the court or magistrate "considered the procedure required under R.C. 3119.23" and its specific factors. (Appellant's reply brief, 1.) Father suggests such language "should not certainly be taken at face value." (Appellant's reply brief, 1.)

{¶ 47} Father appears to expect the trial court to explain how it arrived at its total deviation by assigning a value or an amount to each deviation factor, but the statute does not demand the trial court do so. To the contrary, the statute provides "no set method for a court to employ to formulate a deviation." *Cameron* at ¶ 15, citing *Drzal v. Drzal*, 7th Dist. No. 05 CO 31, 2006-Ohio-5230, ¶ 14. Accordingly, "a trial court's findings in

support of a deviation need not be so specific as to support the particular numbers chosen by the court." *Sexton v. Sexton*, 10th Dist. No. 07AP-396, 2007-Ohio-6539, ¶ 18, citing *Ohlemacher v. Ohlemacher*, 9th Dist. No. 04CA008488, 2005-Ohio-474, ¶ 22; see also *Berthelot* at ¶ 36-38 (determining the trial court need not provide a dollar-for-dollar justification for deviations from the guidelines worksheet amount).

{¶ 48} Instead, the court sufficiently fulfilled its duty by considering all relevant evidence, articulating its reasoning as to each pertinent factor, and justifying its conclusion with the reasoning it articulated. Accordingly, father's seventh assignment of error is overruled.

VII. Unrelated Procedural Issue

{¶ 49} Father's reply brief raises a new procedural issue pertaining to Loc.R. 4 and attendance at mandatory mediation conferences. The record contains no evidence regarding this matter, and father did not raise it in the trial court. Accordingly, we decline to address the issue as part of this current appeal.

VIII. Disposition

{¶ 50} Having overruled father's seven assignments of error, we affirm the judgment of the trial court.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.
