

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Cleophus Dulaney,	:	
	:	
Plaintiff-Appellant,	:	No. 12AP-365
	:	(C.P.C. No. 11JU10-13796)
v.	:	
	:	(REGULAR CALENDAR)
Dashon L. Taylor,	:	
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 26, 2013

Cleophus Dulaney, pro se.

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

BROWN, J.

{¶1} This is an appeal by plaintiff-appellant, Cleophus Dulaney, from an entry of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, in which the court overruled appellant's objections to a magistrate's decision setting a child support order.

{¶2} Appellant and defendant-appellee, Dashon L. Taylor, are the parents of Shaleigh K. Dulaney born July 5, 2011. On October 19, 2011, the Child Support Enforcement Agency ("CSEA") issued an administrative order requiring appellant to pay child support for the parties' minor child in the amount of \$314.74 per month, with \$53.92 in cash medical support, from October 12 to October 31, 2011. The order further provided for support in the amount of \$498.93 per month when health insurance is being provided, and \$478.66 per month, with \$82 per month for cash medical support, when health insurance is not being provided, effective October 31, 2011.

{¶3} Appellant subsequently filed a "complaint to set support" (objection to the order of CSEA), and the matter was referred to a magistrate of the trial court. The magistrate conducted a hearing on December 22, 2011, in which neither party was represented by counsel. The magistrate issued a decision on January 12, 2012, which included the following findings:

The father is self-employed and operates a retail business which sells mattresses. Father previously had been employed by [M]attress Mart and earned an annual salary of between \$37,000 and \$44,000. Father asserts that he is currently not earning anywhere close to the amount he earned at Mattress Mart. Father did not provide tax returns or business records to the Court. Father testified as to his current expenses for himself and the business. In totaling his expenses, the Court finds his gross earnings are in excess of \$40,000 per year. The Court finds it appropriate to set his income at \$40,000.00.

Mother is presently employed at an annual income of \$20,800. Both mother and father have two additional minor children residing in their homes. Mother receives a small amount of support for one of her children. Father does not receive any support for his two additional dependants.

{¶4} The magistrate sustained appellant's objection and ordered modified child support, effective October 12, 2012, in the amount of \$398.07 per month when health insurance is in effect, and \$375.06 per month, with \$72.42 in cash medical support, when health insurance is not in effect. On January 24, 2012, appellant filed objections to the magistrate's decision. On April 16, 2012, the trial court filed a decision and judgment entry overruling appellant's objections and adopting the decision of the magistrate.

{¶5} On appeal, appellant, pro se, sets forth the following assignment of error for this court's review:

The tr[ia]l court erred by not allowing the IRS transcripts to be allowed as proof of income for the years in question.

{¶6} Under his single assignment of error, appellant contends that the trial court erred in failing to properly consider evidence he submitted with respect to his income for the years 2009 through 2011. Specifically, appellant argues that tax information he submitted supported his claim of reduced income.

{¶7} Pursuant to Civ.R. 53(D)(4)(d), if objections are filed to a magistrate's decision, the trial court "shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." A trial court "must conduct a de novo review of the facts and an independent analysis of the issues to reach its own conclusions about the issues in the case." *Radford v. Radford*, 8th Dist. No. 96267, 2011-Ohio-6263, ¶ 13, citing *Kapadia v. Kapadia*, 8th Dist. No. 94456, 2011-Ohio-2255, ¶ 9. A trial court's ruling on objections to a magistrate's decision will not be disturbed absent an abuse of discretion. *Radford* at ¶ 14. Further, "when reviewing the propriety of a trial court's determination in a domestic relations case, an appellate court generally applies an abuse of discretion standard," and this includes a trial court's decision regarding a child support obligation. *Li v. Yang*, 8th Dist. No. 96741, 2012-Ohio-2491, ¶ 18.

{¶8} In the instant case, in the hearing before the magistrate, appellant testified that he started his own mattress business, Dulaney Mattress, in 2009, after having previously been employed by Mattress Mart. Appellant testified that his current income is substantially less than when he was employed by Mattress Mart. Specifically, he testified that his income had been reduced from approximately \$48,000 per year to approximately \$13,000 per year after leaving his employer and starting his own business. In support, appellant submitted several one-page "account transcripts" from the Internal Revenue Service ("IRS") for the tax periods 2008, 2009, and 2010. When questioned by the magistrate whether he had a copy of a signed Form 1040 income tax return, appellant responded: "I don't have it with me, no, sir." (Tr. 26.) During the hearing, the magistrate heard evidence as to appellant's monthly personal and business expenses.

{¶9} In addressing appellant's objection to the magistrate's decision, the trial court held in pertinent part:

Defendant testified that he currently operates his own business but failed to produce *any* tax returns or business records for his business. After totaling expenses to which Defendant testified, the magistrate found that Defendant earned approximately \$40,000 per year. Defendant did not request more time to present additional evidence or testimony.

Due to Defendant's lack of evidence to support his testimony, the magistrate properly deduced his income from the

testimony concerning Defendant's expenses. While Defendant testified that he was significantly in arrears in his financial obligations, Defendant failed to present any evidence as to any such arrears.

(Emphasis sic.)

{¶10} Upon review, we find no abuse of discretion by the trial court. As noted above, appellant testified during the hearing that he began his own business in 2009; appellant estimated that his income for 2011 would be approximately \$13,000. Appellant, however, offered no copies of his IRS Form 1040s but, instead, presented one-page tax summaries (account transcripts) for years 2008, 2009, and 2010, and none of the documents provided any information related to his business. Appellant was questioned about his expenses, and he testified that his current expenses included a monthly rent payment of \$1,750 for his business, a monthly car payment of \$260 for a 2005 Sonata, and a monthly mortgage payment of \$930. The magistrate also heard conflicting testimony about whether appellant was current with his monthly payments. Appellant testified that he was seeking to reduce his car and mortgage payments because of financial hardship. As noted by the trial court, however, appellant "failed to present any evidence as to any such arrears." The magistrate also heard the testimony of appellee who stated she had observed appellant's bank and mortgage statements, and that "[h]e's not behind on * * * his bills. * * * All of his bills have a zero balance." (Tr. 30.)

{¶11} On the record presented, the trial court did not err in concluding that appellant failed to provide sufficient evidence to support his testimony regarding claimed income. Further, based upon evidence as to appellant's monthly expenses and lack of debt, the trial court could have reasonably concluded that the magistrate properly calculated appellant's gross income. Accordingly, the trial court did not err in overruling appellant's objections to the magistrate's decision.

{¶12} Based upon the foregoing, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is hereby affirmed.

Judgment affirmed.

CONNOR and DORRIAN, JJ., concur.
