[Cite as *Havens v. Havens*, 2013-Ohio-3166.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Amy L. Havens,	:	
Plaintiff-Appellee,	:	
		No. 12AP-1051
v.	:	(C.P.C. No. 09DR-05-2151)
Jeff Havens,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on July 18, 2013

Laura M. Peterman, for appellee.

Jack L. Moser, Jr., for appellant.

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

KLATT, P.J.

{¶ 1} Defendant-appellant, Jeff Havens, appeals a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, that denied him a deviation from the guideline child support amount. For the following reasons, we affirm.

{¶ 2} Jeff married plaintiff-appellee, Amy L. Havens, on September 6, 2002. Two children were born during the marriage. In a judgment entry-decree of divorce dated July 25, 2011, the trial court granted the parties a divorce, determined a schedule for shared parenting, and ordered Jeff to pay child support in the amount of $1,487.70 per month, plus a processing charge. The trial court determined the amount of child support by using the basic child support schedule and the shared parenting worksheet.

{¶ 3} Jeff requested that the trial court deviate from that guideline amount. In support of this request, Jeff argued that four R.C. 3119.23 factors militated in favor of a deviation: extended parenting time, the disparity of income between the parties, significant in-kind contributions from him to the children, and the relative financial resources of each parent. *See* R.C. 3119.23(D), (G), (J) and (K). The trial court found that the extended-parenting-time factor did not apply because the court had awarded Jeff and Amy equal parenting time, i.e., a 50/50 split. According to the trial court, a parent only had extended parenting time if he or she cared for the children for significantly more than 50 percent of the time. Since the children would be under Jeff's care exactly 50 percent of the time, the trial court found that Jeff's time with the children did not qualify as extended parenting time. The trial court then considered each of the remaining factors that Jeff raised, and it determined that a deviation was not just, appropriate, or in the best interests of the children.

{¶ 4} Jeff appealed the July 25, 2011 judgment to this court and, in part, challenged the trial court's definition of extended parenting time. We agreed with Jeff that the trial court interpreted the phrase "extended parenting time" too narrowly. We held that " 'extend[ed] parenting time' as used in R.C. 3119.23(D) contemplates something more than parenting time during the standard visitation schedule established by the court for all non-custodial parents and does not necessarily require parenting time in excess of 50 percent." *Havens v. Havens*, 10th Dist. No. 11AP-708, 2012-Ohio-2867, ¶ 30. Loc.R. 27 of the Franklin County Court of Common Pleas, Division of Domestic Relations, provides a guideline parenting time schedule that allows the residential parent 75 percent of the parenting time and the non-residential parent 25 percent of the parenting time. Parenting time in excess of 25 percent, therefore, qualifies as extended parenting time in Franklin County. Jeff's parenting time exceeds 25 percent. Therefore, we remanded the case to the trial court "for the limited purpose of considering appellant's request for a child support deviation in light of our holding concerning only the trial court's disposition of R.C. 3119.23(D)." *Havens* at ¶ 31.

{¶ 5} On remand, the trial court recognized that Jeff had extended parenting time with his children because he parented them more than 25 percent of the time. Nevertheless, the trial court did not grant Jeff a downward deviation. The trial court

concluded that, given the disparity in the parties' income, the guideline child support amount was just, appropriate, and in the children's best interests.

{¶ 6} Jeff now appeals the trial court's judgment, and he assigns the following errors:

> [1.] THE TRIAL COURT ERRED, ABUSED ITS DISCRETION, AND RULED AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHEN IT RULED THAT APPELLANT WAS NOT ENTITLED TO DEVIATION FROM CALCULATED CHILD SUPPORT.
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> [2.] THE TRIAL COURT ERRED, ABUSED ITS DISCRETION, AND RULED AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHEN IT FAILED TO BALANCE ALL STATUTORY FACTORS OF O.R.C. §3119.23 AND §3119.24 WHEN RULING THAT APPELLANT WAS NOT ENTITLED TO A DEVIATION IN CHILD SUPPORT.

{¶ 7} By his first assignment of error, Jeff argues that the trial court erred in not granting him an automatic 50 percent downward deviation from the guideline child support amount. We disagree.

{¶ 8} Generally, if a trial court issues a shared parenting order, the trial court must also order the payment of an amount of child support calculated using the child support schedule and the worksheet set forth in R.C. 3119.022. R.C. 3119.24(A); *Havens* at ¶ 7. The guideline child support amount that results from the use of the basic child support schedule and the applicable worksheet (through the line establishing actual annual obligation) is presumed to be the correct amount of child support due. R.C. 3119.03. However, if the guideline child support amount "would be unjust or inappropriate to the children or either parent and would not be in the best interest of the child because of the extraordinary circumstances of the parents or because of any other factors or criteria set forth in section 3119.23 of the Revised Code, the court may deviate from that amount." R.C. 3119.24(A). The factors that guide the trial court's decision to deviate include R.C. 3119.23(D), "[e]xtended parenting time."

{¶ 9} In *Pauly v. Pauly*, 80 Ohio St.3d 386 (1997), the Supreme Court of Ohio addressed whether a previous iteration of R.C. 3119.24(A) mandated an automatic decrease in child support for any time a parent might spend with a child beyond the shared parenting plan schedule. The court found that the relevant statute did not extend

any automatic reductions; instead, the statute invested the trial court with the discretion to deviate downward from the guideline child support amount if the circumstances, including extended parenting time, justified such a deviation. *Id.* at 389-90.

{¶ 10} The statutory language now found in R.C. 3119.24(A) has changed since the Supreme Court of Ohio examined it in *Pauly*. However, those changes are not substantive. R.C. 3119.24(A) still leaves a reduction based on extended parenting time to the trial court's discretion; it provides no automatic reductions. *Keith v. Keith*, 12th Dist. No. CA2010-12-335, 2011-Ohio-6532, ¶ 18 (recognizing that while a trial court may deviate from the guideline child support amount, no one is automatically entitled to a downward deviation merely because a factor is present); *Epitropoulos v. Epitropoulos*, 10th Dist. No. 10AP-877, 2011-Ohio-3701, ¶ 27 (holding that no automatic credit in a child support order is warranted, but rather, the trial court should balance all statutory factors when a shared parenting plan is involved).

{¶ 11} Jeff argues that an automatic reduction is logical and necessary in cases where the parent who is obligated to pay child support exercises extended parenting time. In such cases, Jeff contends, the obligor parent pays twice for some of his or her children's expenses. The obligor parent pays once through child support payments, and then again when the children incur costs while in the obligor's care. According to Jeff, a reduction in child support would eliminate these unfair double payments.

{¶ 12} Jeff sets forth a cogent argument for why the General Assembly should amend the statutes governing child support. For the reason Jeff raises, some states employ statutory formulas to reduce child support when the obligor's parenting time exceeds 20 percent. Beld & Biernat, *Federal Intent for State Child Support Guidelines: Income Shares, Cost Shares, and the Realities of Shared Parenting*, 37 Fam.L.Q. 165, 195-97 (2003). In contrast, under Ohio law, the reduction of child support is left solely to the discretion of the trial court. Therefore, we cannot impose the automatic reduction Jeff seeks, and we overrule Jeff's first assignment of error.

{¶ 13} By his second assignment of error, Jeff argues that the trial court erred in not reexamining all of the R.C. 3119.23 and 3119.24 factors on remand. We disagree.

{¶ 14} The judgment Jeff now appeals resulted from a limited remand. In its first judgment, the trial court rejected the statutory factors as either inapplicable or not

persuasive in justifying a deviation. On appeal, we held that the trial court erred in finding the extended-parenting-time factor inapplicable, and we directed the court to decide whether that factor warranted a deviation. In so directing the trial court, we recognized that the extended-parenting-time factor is but one factor among many. Nevertheless, even one factor may sway a trial court's decision to deviate. *See Dyson v. Dyson*, 8th Dist. No. 96285, 2011-Ohio-4826, ¶ 24 ("[A] deviation in child support may be warranted and in the best interest of the child based upon a nonresident parent's increased time with the child."). Thus, we remanded so that the trial court could properly consider the extended-parenting-time factor.

{¶ 15} A trial court must follow the mandate of the appellate court and, in the case of a limited remand, the trial court may not try any other issue other than that set forth in the mandate. *Pingue v. Hyslop*, 10th Dist. No. 01AP-1000, 2002-Ohio-2879, ¶ 35. Here, the trial court followed our instructions and conducted a limited review of Jeff's deviation request. Essentially, Jeff contends that the trial court should have exceeded those instructions and reevaluated each statutory factor. If the trial court had done as Jeff now argues, it would have erred. Instead, the trial court properly restricted its consideration to whether the extended-parenting-time factor altered its earlier determination not to deviate.

{¶ 16} Jeff next attacks the reason the trial court gave for rejecting Jeff's extended parenting time as a basis for deviating from the guideline child support amount. The trial court found that a decrease in child support was not in the best interests of the children because of the disparity in the parties' incomes. That disparity matters because the expenditures of an obligee parent with a significantly lower income do not decrease in direct relation to the out-of-pocket expenditures of the higher-income obligor parent. The obligee's fixed costs, such as housing and utilities, remain the same regardless of the extended time the children spend with the obligor. The higher-income obligor is better equipped to absorb the obligee's fixed costs. Keeping the child support at the guideline level ensures that the children enjoy a uniform standard of living while shifting between the obligee's and obligor's households.

{¶ 17} Multiple appellate courts have refused to find an abuse of discretion in a trial court's denial of a deviation request based on extended parenting time when a

significant disparity of income between the parties existed. *Preece v. Stern*, 12th Dist. No. CA2008-09-024, 2009-Ohio-2519, ¶ 38; *Stauffer v. Stauffer*, 11th Dist. No. 2008-G-2860, 2009-Ohio-998, ¶ 23; *Lopez v. Coleson*, 3d Dist. No. 12-05-24, 2006-Ohio-5389, ¶ 9; *Hardy v. Mott*, 5th Dist. No. 2005CA00071, 2005-Ohio-5172, ¶ 24-25. We join those courts in holding that, in this case, the trial court did not abuse its discretion in rejecting extended parenting time as a reason to grant Jeff a deviation due to the significant disparity between his and Amy's income. We can find no abuse of discretion particularly because Amy bears the burden of substantial daycare and schooling costs, which do not go down when Jeff cares for the children. Accordingly, we overrule Jeff's second assignment of error.

{¶ 18} For the foregoing reasons, we overrule Jeff's two assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

TYACK and T. BRYANT, JJ., concur.

T. BRYANT, J., retired, of the Third Appellate District, assigned to active duty under authority of Ohio Constitution, Article IV, Ohio Constitution, Section 6(C).