[Cite as *McCombs v. McCombs*, 2013-Ohio-5972.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of the Dissolution of Marriage of :	:	
Jimmy McCombs,	:	
Petitioner-Appellant,	:	No. 12AP-547 (C.P.C. No. 08DR-2332)
v.	:	(ACCELERATED CALENDAR)
Kathy McCombs,	:	
Petitioner-Appellee.	:	

D E C I S I O N

Rendered on April 4, 2013

Jimmy McCombs, pro se.

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

BRYANT, J.

{¶ 1} Petitioner-appellant, Jimmy McCombs, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, adopting the magistrate's decision issued on February 22, 2012 that modified the child support order requiring appellant to pay child support to petitioner-appellee, Kathy McCombs. Because the trial court did not err in adopting the magistrate's decision, we affirm.

I. Facts and Procedural History

{¶ 2} Appellant and appellee were married on July 30, 1988 and two children were born as issue of the marriage. On June 10, 2008, appellant and appellee jointly filed

a petition for dissolution of their marriage and a separation agreement. The trial court issued a decree of dissolution and shared parenting decree on July 18, 2008, ordering appellant to pay to appellee $700 per month in child support and $1,300 per month in spousal support, plus processing charges.

{¶ 3} On October 4, 2011, the Franklin County Child Support Enforcement Agency filed an administrative adjustment recommending that appellant pay the following: (1) $727.42 per month for child support plus processing charge when private health insurance is provided; (2) $660.89 per month for child support in addition to $157.17 per month for cash medical support plus processing charge when private health insurance is not provided; and (3) $400.00 per month as payment on arrears or other balances. Appellant filed on November 8, 2011 a request for a hearing to seek a deviation from the child support recommendation.

{¶ 4} The trial court referred the matter to a magistrate, who held a hearing on January 20, 2012; the magistrate rendered a written decision on February 22, 2012. Pursuant to R.C. 3119.24(A)(1), the magistrate, using the child support worksheet, modified the amount of calculated child support and ordered appellant to pay $267.72 per child per month plus processing charge when private health insurance is provided. The magistrate further ordered that when private health insurance is not provided, appellant is to pay $274.74 per child per month for child support in addition to $82.00 per child per month for cash medical support plus processing charge.

{¶ 5} On March 7, 2012, appellant filed a single objection to the magistrate's decision, asserting the magistrate erred in entering the amount of court-ordered spousal support appellant actually paid, rather than that he was ordered to pay, in calculating child support on the child support worksheet. The trial court held a hearing on the objection and issued a decision and entry on May 29, 2012 overruling appellant's objection and adopting the magistrate's decision. Appellant timely appeals.

II. Assignments of Error

{¶ 6} Appellant assigns three errors:

> FIRST ASSIGNMENT OF ERROR
> In Case number 08DR-06-2332 page 2 in the Standard Review Judge Geer sites correctly that he may undertake de novo determination in light of any objections. However he

> didn't look at all the documents presented in previous trial and didn't have any feedback from the Defendant Kathy McCombs as she didn't even show up to trial. As a result he couldn't have started from the beginning and accurately assessed the situation.
>
> SECOND ASSIGNMENT OF ERROR
> In Case number 08DR-06-2332 page 3 Judge Geer references R.C. 3119.05(B) allowing for the court ordered amount of child support actually paid. Judge Geer did not take into account 1.) that economy and hardships in employment were the only reasons that the full amount wasn't paid and 2.) that the full amount is being paid up. An additional $400 dollars every month is being paid to catch those up. In 2012 the amount of Spousal support being paid is over $22,000.00.
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> THIRD ASSIGNMENT OF ERROR
> In Case number 08DR-06-2332 page 3 Judge Geer states "the Petitioner-Husband will receive the relief he seeks". This is an outrageous comment. All along Jimmy has been asking for fairness in this matter. We had to wait three years for the first administrative review. There have been no reductions in the matter yet, and no relief from the potential burden of loosing our home simply because there is no money to pay those taxes.

III. First Assignment of Error – Trial Court's Independent Review

{¶ 7} Appellant's first assignment of error asserts the trial court did not thoroughly and independently review the magistrate's decision before overruling his objection and adopting the magistrate's decision.

{¶ 8} A magistrate's decision is effective when the trial court adopts it. Civ.R. 53(D)(4)(a). "Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification." Civ.R. 53(D)(4)(b). If a party files an objection, the court shall rule on the objection, undertaking an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Civ.R. 53(D)(4)(d). "An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." Civ.R. 53(D)(3)(b)(ii).

{¶ 9} In the absence of evidence to the contrary, we presume regularity in the trial court. *Lavelle v. Lavelle*, 10th Dist. No. 12AP-159, 2012-Ohio-6197. Appellant points to no evidence in the record demonstrating or even suggesting the trial court failed to undertake a proper review. *See* App.R. 16(A). We therefore presume the trial court conducted an independent analysis of the underlying issues, substituted its own judgment for that of the magistrate, and ultimately reached the same conclusions as did the magistrate. *See Shihab & Assoc. Co., L.P.A. v. Ohio Dept. of Transp.*, 168 Ohio App.3d 405, 2006-Ohio-4456, ¶ 13 (10th Dist.), citing *DeSantis v. Soller*, 70 Ohio App.3d 226, 232 (10th Dist.1990); *Harbeitner v. Harbeitner*, 94 Ohio App.3d 485, 494 (8th Dist.1994).

{¶ 10} Moreover, appellee's failure to attend the hearing does not affect the trial court's review of the evidence actually presented at the hearing; it deprives appellee of the opportunity to present evidence favorable to her side of the issues being litigated. Accordingly, we overrule appellant's first assignment of error.

IV. Second Assignment of Error – Spousal Support Amount

{¶ 11} Appellant's second assignment of error essentially reasserts appellant's objection to the magistrate's decision, arguing the court, through its magistrate, erred in entering on the child support worksheet the amount of spousal support appellant actually paid instead of the amount the trial court ordered him to pay.

{¶ 12} Pursuant to R.C. 3119.24, a trial court that issues a shared parenting order must calculate the amount of child support to be paid using the basic child support schedule and the worksheet as set forth in R.C. 3119.022. The amount calculated using the basic child support schedule and worksheet is rebuttably presumed to be correct. R.C. 3119.03. R.C. 3119.24(A)(1), however, allows the trial court to deviate from that amount. According to the statute, deviation is permissible if the amount would be unjust or inappropriate to the children or either parent and would not be in the best interest of the children because of the extraordinary circumstances of the parents or because of any other factors listed in R.C. 3119.23. Extraordinary circumstances include, among other factors, the amount of time the children spend with each parent. R.C. 3119.24(B)(1).

{¶ 13} Appellant claims that because the court ordered him to pay $15,600.00 in spousal support, the magistrate erred by entering $9,877.20 in line 10 of the child support

worksheet as the amount of "[a]nnual court-ordered spousal support paid to any spouse or former spouse." Appellant admits he is in arrears on his spousal support obligation and does not dispute that at the time of the magistrate's decision he had actually paid $9,877.20 to appellee in spousal support.

{¶ 14} The child support worksheet requires the amount entered to be the amount paid, not the amount ordered to be paid. *State ex rel. Athens Cty. Child Support Enforcement Agency v. Patel*, 4th Dist. No. 05CA20, 2006-Ohio-2951, ¶ 20 (noting that "[h]ad the General Assembly only intended for the amount of 'court-ordered' support to be deducted, it would have stopped there and not included in the statute the words 'paid' or 'actually paid' "). *See also Tuscarawas Cty. Child Support Enforcement Agency v. McCamant*, 5th Dist. No. 2003AP060049, 2004-Ohio-443, ¶ 9 (concluding that allowing "non-paying obligors to receive the same worksheet income credit as parents who pay their court-ordered child support" was not reasonable); *Albright v. Albright*, 4th Dist. No. 06CA35, 2007-Ohio-3709, ¶ 9. The magistrate correctly entered the amount of spousal support appellant actually paid at the time the magistrate completed the child support worksheet.

{¶ 15} Although appellant notes that he expects to pay additional spousal support to reduce his arrearage and that he has paid completely his child support obligations, such facts do not alter the amount of spousal support he paid at the time of the magistrate's decision. Because the trial court did not err in overruling appellant's objection and adopting the magistrate's decision, we overrule appellant's second assignment of error.

V. Third Assignment of Error – Additional Objection

{¶ 16} Appellant's third assignment of error objects to the trial court's statement that "[a]dditionally, one of the parties' minor children emancipates this month, so the Petitioner-Husband will receive the relief he seeks." (R. 112, Decision and Entry, at 3.) Appellant's objection in the trial court did not include such an argument, and his failure to object in the trial court to the magistrate's findings of fact or conclusions of law on those grounds waives any error, absent plain error. Civ.R. 53(D)(3)(b)(iv).

{¶ 17} Plain error is disfavored in appeals of civil cases and may be found only in the "extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or

public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson,* 79 Ohio St.3d 116 (1997), syllabus. Although appellant's frustration with the process is evident in his third objection, he fails to articulate any error that rises to the level of plain error. In the absence of plain error, we overrule appellant's third assignment of error.

VI. Disposition

{¶ 18} Because the trial court did not abuse its discretion in adopting the magistrate's decision, we overrule petitioner-appellant's three assignments of error and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

DORRIAN and McCORMAC, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of the Ohio Constitution, Article IV, Section 6(C).