

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Tonya R. Drum,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 12AP-887
	:	(C.P.C. No. 97DR-09-3896)
Sean D. Drum,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 27, 2013

Tonya R. Drum, pro se.

Sean D. Drum, pro se.

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

TYACK, J.

{¶ 1} Sean D. Drum is appealing from the results of proceedings to compute his child support obligation. He assigns three errors for our consideration:

[I.] THE FRANKLING [sic] COUNTY CHILD SUPPORT AGENCY ERRED BY IMPROPERLY IMPUTING A WAGE.

[II.] THE MAGISTRATE ERRED BY MAKING A JUDGEMENT [sic] WHERE THE WEIGHT OF THE EVIDENCE DOES NOT SUPPORT IT.

[III.] THE TRIAL COURT ERRED BY DENYING APPELLANT'S ORAL MOTION FOR CONTINUATION.

{¶ 2} Neither Sean's ex-wife nor the Franklin County Child Support Enforcement Agency ("FCCSEA") has filed a brief in this appeal, so we address the issues solely based

upon the brief filed by Sean and upon the record transmitted to us. That record includes two transcripts of proceedings, only one of which pertains to the present issues.

{¶ 3} Sean is responsible for a total of eight children which he has fathered. He has an extensive history of not paying his child support which has led to numerous contempt findings against him.

{¶ 4} In these proceedings, Sean claimed to be unemployed. The magistrate who heard some of the proceedings obviously did not believe that Sean was unemployable and imputed \$46,320 of income to him, based upon the median annual income for food service managers. Sean's wife is listed on their tax returns as the proprietor of a tavern which allegedly turned a profit of only \$132 in 2009, despite gross receipts of over \$125,000. In 2010, with gross receipts of \$91,255 a profit of only \$2,048 was declared. The magistrate clearly believed Sean helped manage the bar, despite his denial of involvement and therefore imputed the food service manager income to him.

{¶ 5} Sean did not provide a copy of the transcript of the evidentiary proceedings before the magistrate to the trial court judge when he filed objections to the magistrate's decision. As a result, the trial court judge really had no choice but to adopt the magistrate's factual findings. We now have that transcript.

{¶ 6} We cannot fault the trial court for relying on the only record it had as to the appropriateness of imputing income to Sean and accepting the income imputed by FCCSEA and the magistrate.

{¶ 7} The first assignment of error is overruled.

{¶ 8} Likewise, the trial court could not weigh the evidence without the benefit of a transcript. As a result, we cannot say the trial court judge erred in its weighing of the evidence. We do not reweigh the evidence on appeal when the trial court judge has had no opportunity.

{¶ 9} The second assignment of error is overruled.

{¶ 10} The trial court judge was within her discretion to refuse to delay addressing the merits of the case when Sean showed up at the hearing on his objections to the magistrate's decision and had made no arrangements for a transcript to be available for the judge's review. The trial court judge could have reasonably concluded, in light of

Sean's extensive history of not paying child support, that Sean was just trying to delay a raise in his child support payments, not trying to litigate issues of merit.

{¶ 11} The third assignment of error is overruled.

{¶ 12} All three assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

Judgment affirmed.

KLATT, P.J., and CONNOR, J., concur.
