[Cite as *Eisan v. Strawn*, 2013-Ohio-611.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kimberly L. Eisan,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-580 (C.P.C. No. 04JU-08-11941)
James G. Strawn,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on February 21, 2013

Michael P. Vasko, for appellee.

Jodelle M. D'Amico, for appellant.

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

TYACK, J.

{¶ 1} James G. Strawn is appealing from the orders pertaining to the support of his two children, ages 9 and 10, issued by the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch. He assigns two errors for our consideration:

> I. THAT THE TRIAL COURT ERRED IN CALCULATING DEFENDANT-APPELLANT'S INCOME FOR CHILD SUPPORT PURPOSES.
>
> II. THAT THE TRIAL COURT ERRED WHEN IT DECLINED TO GRANT A DOWNWARD DEVIASTION [sic] IN CHILD SUPPORT.

{¶ 2} In resetting the child support Strawn is to pay, the trial court used an average of Strawn's income over a three-year period. The hearing to reset Strawn's child support was held in late July 2011. The magistrate who heard the case had the precise

figures Strawn earned in 2009 and 2010 to use in computing child support, but had to estimate Strawn's income for 2011. As of July 21, 2011, Strawn had earned $46,535. Strawn estimated that his total income for the year would be $75,000 to $80,000 because, he alleges, his income was somewhat seasonal. He was paid a commission on hot tubs and related equipment he sold for Scioto Valley Hot Tubs and Spas.

{¶ 3} The magistrate doubled the basically six-months of income Strawn claimed for early 2011 to arrive at an annual income for 2011 of $93,069.86.

{¶ 4} Based in part on the 2011 estimate, the magistrate filled out a child support worksheet and included an annual gross income figure of $89,354.29 and $14,519.70 for Kimberly Eisan, the mother of the children.

{¶ 5} The record before us does not indicate that the actual income figure for 2011 was ever placed in evidence before the trial judge. Instead, by agreement of the parties, the issues set forth in the objections to the magistrate's decision were to be resolved by the trial judge based upon the transcript of the hearing before the magistrate and "pleadings already filed with the court."

{¶ 6} The trial judge used an average income figure for Strawn of $83,135.05, which was over $6,200 less than the figure used by the magistrate. The figure used by the magistrate had exactly matched Strawn's income for 2010.

{¶ 7} Counsel for Strawn did not file objections to the magistrate's decision. Instead, counsel for Strawn asked that the trial court "uphold the decision of the Magistrate." The $93,069.86 figure computed for Strawn's income for 2011 was not the subject of an objection in the trial court.

{¶ 8} Despite the lack of an objection on behalf of Strawn, the trial judge used the income figures in evidence and then gave Strawn the benefit of a lower income figure than that used by the magistrate. The trial judge acted well within his discretion in assigning the income figures consistent with the evidence before the magistrate, especially since counsel for Strawn had not filed objections to the income estimate done by the magistrate and since the trial court lowered the income figures for Strawn in computing child support.

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

{¶ 10} The second assignment of error asserts that the trial court should have lowered Strawn's child support obligation based upon the amount of time he spent with the children. The trial judge who issued the support order viewed the amount of time the private arrangement between the parties allocated to Strawn as insignificant when compared to the model visitation rule for Franklin County. We do not disagree. The private arrangement was for parenting time from Wednesday evening to Friday evening and on alternate weekends from Saturday at 7:00 p.m. until Sunday at 11:00 a.m.

{¶ 11} The alternate weekend schedule actually was significantly less than that allocated by the model rule for visitation in Franklin County. Basically, the children were to be picked up after Strawn got off work on Saturday and to be returned after breakfast on Sunday. The model rule calls for seven meals and two overnights per weekend on those weekends when there is visitation.

{¶ 12} The week day time exceeds the model rule by one overnight visitation, but most of the visitation is during time the children are in school.

{¶ 13} We see no basis for finding the trial court abused its discretion in failing to give Strawn a deviation based upon the private visitation arrangement, especially since Strawn could have discontinued the arrangement at any time. The full impact of a subsequent visitation order entered in another county was not developed before the magistrate or the trial judge and is not before us in evidence.

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

{¶ 15} Both assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

BROWN and McCORMAC, JJ., concur.

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