[Cite as *Hammonds v. Eggett*, 2011-Ohio-6510.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

EMILY R. HAMMONDS,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2010-G-2980**
- vs -	:	
THOMAS J. EGGETT,	:	
Defendant-Appellant.	:	

Civil Appeal from the Geauga County Court of Common Pleas, Juvenile Division, Case No. 09 CU 390.

Judgment: Affirmed in part; reversed in part and remanded.

Dennis J. Ibold, Petersen & Ibold, Inc., 401 South Street, Bldg. 1-A, Chardon, OH 44024 (For Plaintiff-Appellee).

Lisa R. Kraemer, 20133 Farnsleigh Road, Cleveland, OH 44122 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Thomas J. Eggett, appeals from the July 1, 2010 judgment of the Geauga County Court of Common Pleas, Juvenile Division, ordering him to pay child support based on an imputed annual income of $60,000.

{¶2} Appellant and appellee, Emily R. Hammonds, had a child together in 2008. The following year, appellee filed a complaint to establish a parent/child relationship and for allocation of parental rights and responsibilities. Appellant filed an answer and a motion for paternity testing. The trial court granted appellant's motion and

ordered the parties and the minor child to submit to genetic testing. Paternity was subsequently established.

{¶3} Appellee was designated as the residential parent. Appellant was granted parenting time with the minor child consistent with an agreement reached by the parties.

{¶4} A contested support hearing was held before the trial court.

{¶5} Appellant testified that he was 42 years old, in good health both physically and emotionally, and has a Master's Degree in finance from Case Western Reserve University. Before opening his current business, appellant was in another business and earned an annual salary of about $150,000 in a "good" year. Thereafter, appellant was Chief Operating Officer of an aerospace company and earned an annual salary of $250,000. He voluntarily left that position.

{¶6} In 2005, appellant opened his current business in which he invested over one million dollars. He testified he has worked without financial compensation for three years. Appellant pays his manager $60,000 per year. Appellant stated he could potentially perform the same job functions as what he pays his manager to do. He is able to invest his time and try to make his business work because he has been able to live off his wife's income. He ultimately filed for Chapter 11 business and personal bankruptcy. Appellant said that he typically works eight to 12 hours per day and is tired of working "for free." He hopes to get his million dollar investment back.

{¶7} Appellant's current residence with his wife was valued at 1.3 million dollars. He did not believe there would be any equity in that home if they were to sell it. Appellant's wife owns four automobiles titled in her name, including a truck, a Lexus, an Audi, and a Ferrari.

{¶8} Appellee testified that she is employed by Crestwood Local School District as a high school math teacher. She earns approximately $40,000 per year. Appellee stated she pays $35.00 per day in child care expenses and that the minor child is covered under her health plan.

{¶9} Following the support hearing, the trial court ordered appellant to pay child support based on an imputed annual income of $60,000. Specifically, appellant was ordered to pay $612.59 per month for 2008, $741.08 per month for 2009, and $843.20 per month on-going from January 1, 2010, when private health insurance is being provided. It is from that judgment that appellant filed a timely appeal, asserting the following assignments of error:

{¶10} "[1.] The trial court erred in imputing income of $60,000 to Defendant-Appellant for purposes of calculating child support.

{¶11} "[2.] The trial court abused its discretion in imputing income of $60,000 to Defendant for purposes of calculating child support.

{¶12} "[3.] The trial court erred in not considering the two other children of Appellant when calculating his child support obligation."

{¶13} In his first assignment of error, appellant argues the trial court erred by imputing his income for child support purposes at $60,000 even though he filed for bankruptcy and has no income.

{¶14} In his second assignment of error, appellant alleges the trial court erred by imputing his income at $60,000 for purposes of calculating his child support obligation.

{¶15} Because appellant's first and second assignments of error are interrelated, we will address them together.

{¶16} This court reviews matters involving child support under an abuse of discretion standard of review. *Onyshko v. Onyshko*, 11th Dist. No. 2008-P-0035, 2010-Ohio-969, at ¶84. An abuse of discretion is the trial court's "'failure to exercise sound, reasonable, and legal decision-making.'" *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, at ¶62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11.

{¶17} R.C. 3119.01(C)(11) permits a trial court to impute income to a parent who is voluntarily unemployed or voluntarily underemployed for the purpose of determining the parent's child support obligation. The income to be imputed by the trial court is the income the parent would have earned if fully employed as determined by the factors listed in R.C. 3119.01(C)(11)(a)(i)-(x). Those factors include the parent's prior employment experience; education; physical and mental disabilities, if any; the availability of employment and the prevailing wage and salary levels in the geographic area in which the parent resides; special skills and training; whether there is evidence that the parent has the ability to earn the imputed income; the age and special needs of the child; the parent's increased earning capacity because of experience; and any other relevant factor. Id.

{¶18} The determinations of whether a party is voluntarily underemployed, and the amount of income that should be imputed to him or her, if any, are factual determinations to be made by the trial court based on the circumstances of each particular case and should not be disturbed absent an abuse of discretion. *Rock v. Cabral* (1993), 67 Ohio St.3d 108, syllabus.

{¶19} In his appellate brief, appellant cites to *Apps v. Apps*, 10th Dist. Nos. 02AP-1072 and 03AP-242, 2003-Ohio-7154, for the proposition that a trial court abuses its discretion by imputing income to a party without determining that the party was

voluntarily unemployed or underemployed and without applying any of the R.C. 3119.01(C)(11) factors.[1] Appellant's reliance on *Apps*, however, is misplaced.

{¶20} In our case, the trial court imputed income to appellant after determining he was underemployed, based on the facts presented. Specifically, the trial court considered the fact that appellant voluntarily left a position, in which he earned an annual salary of $250,000 per year, to start another business venture. Appellant now works without financial compensation in his current bankrupt business, even though he pays his manager $60,000 per year. Appellant testified that he could potentially perform the same job functions as what he pays his manager to do. In addition, unlike the court in *Apps*, the trial court in the instant matter applied the relevant factors set forth in R.C. 3119.01(C)(11).

{¶21} The trial court stated the following at the conclusion of the support hearing:

{¶22} "And it seems like Mr. Eggett and his wife have made a decision that they're going to work together as a team. She's going to be supporting the family while he gives up his earning opportunities in order to try and make this work where they'll both benefit.

{¶23} "So in my mind, the bottom line is the couple has a decision that they need to make. Does she want to help him cover whatever this support obligation is determined to be owed by this Court and help him with those payments the way she's

1. Appellant incorrectly cites to "*Stephen v. Marie*, _Ohio App.3rd_, N.E. 3rd_, 2003 Ohio App. LEXIS 6478 (Dec. 30, 2003)." However, our LEXIS search reveals that the correct case name and citation is *Apps v. Apps*, 10th Dist. Nos. 02AP-1072 and 03AP-242, 2003-Ohio-7154. It appears appellant used the parties' middle names rather than their last names in citing to the foregoing case, as their full names are Bret Stephen Apps and Dawn Marie Apps.

helping him with all of his other living expenses, or does he need to quit what he's doing, go out and get a job so he can pay child support.

{¶24} "Their decision to make, but I will determine, based on the evidence presented, as best as I can, what I think is a fair support obligation for him to be paying, he's got to pay.

{¶25} "Whether he's getting help from his wife or he's going out and getting a job and paying it himself. That's really a decision that they have to make as a couple."

{¶26} The trial court subsequently stated the following in its July 1, 2010 judgment entry:

{¶27} "The Court has imputed income to *** Thomas J. Eggett based on his ability to earn income in prior years, the level of education he has achieved, and his decision to work extensive hours at his current place of employment without any provision for compensation. The Court observes Thomas Eggett is able to maintain a high standard of living without earning an actual income because his wife is able to provide for their family with her own substantial earnings."

{¶28} In reaching its decision to impute an annual income of $60,000 to appellant for purposes of calculating child support, the trial court heard the testimony from the support hearing and considered, inter alia, the following relevant factors pursuant to R.C. 3119.01(C)(11): appellant is 42 years old; he is in good health both physically and emotionally; he testified there is no physical or emotional reason he could not be employed; he has a Master's Degree in finance from Case Western Reserve University; he invested over one million dollars in his current business which is now in bankruptcy; he hopes to get his investment back; he works without financial compensation; he pays his manager an annual salary of $60,000; appellant testified that

he could potentially perform the same job functions as what he pays his manager to do; appellant lives off his wife's income; prior to starting his current business, appellant was in another business and earned an annual salary of about $150,000 in a "good" year; and he later was Chief Operating Officer of an aerospace company in which he earned an annual salary of $250,000, a position that he voluntarily terminated.

{¶29} Based on the facts presented, the trial court did not err in imputing an annual income of $60,000 to appellant. The trial court determined that appellant is underemployed, as he voluntarily terminated a $250,000 position for his current business which is now in bankruptcy. Appellant, a highly educated finance major, currently works without financial compensation but pays his manager $60,000 per year at a job that he could potentially perform himself. Appellant is able to maintain a high standard of living without earning an actual income because he is able to live off his wife's earnings. The record establishes the trial court applied the relevant R.C. 3119.01(C)(11) factors to this case. Thus, contrary to appellant's assertions, the trial court did not abuse its discretion.

{¶30} Appellant's first and second assignments of error are without merit.

{¶31} In his third assignment of error, appellant contends the trial court erred by failing to consider his two other children when calculating his child support obligation.

{¶32} R.C. 3119.02 states in part: "In any action in which a court child support order is issued or modified, *** the court or agency *shall* calculate the amount of the obligor's child support obligation in accordance with the basic child support schedule, the applicable worksheet, and the other provisions of sections 3119.02 to 3119.24 of the Revised Code." (Emphasis added.)

{¶33} R.C. 3119.05(C) states in part: "If other minor children who were born to the parent and a person other than the other parent who is involved in the immediate child support determination live with the parent, the court or agency *shall* deduct an amount from that parent's gross income that equals the number of such minor children times the federal income tax exemption for such children less child support received for them for the year, not exceeding the federal income tax exemption." (Emphasis added.)

{¶34} In our case, the Guardian ad Litem, in one of her reports, indicated that appellant lives with his wife and two minor children. Appellant filed proposed child support guidelines based on an annual salary of $15,080. He listed his two minor children on line eight of the worksheet in order to receive an adjustment to his income. Line eight of the worksheet, Adjustments to Income, states: "Adjustment for minor children born to or adopted by either parent and another parent who are living with this parent; adjustment does not apply to stepchildren (number of children times federal income tax exemption less child support received, not to exceed the federal tax exemption)." Appellant did not list on the worksheet any support received. However, he listed a federal tax exemption of $3,650 for each child, for a total gross income adjustment of $7,601.60, including local income taxes actually paid or estimated to be paid.

{¶35} The record establishes that the trial court did not follow the mandatory statutory requirements in computing appellant's child support obligation. Although appellant has two minor children who live with him, the trial court did not include them on line eight in its child support calculation for purposes of adjusting appellant's income. Appellee posits the trial court did not give the adjustment on line eight because appellant's wife, not appellant, provides support for their household. While this may be

the underlying rationale for the trial court's rejection of the adjustment proposed by appellant, the trial court failed to explain the deviation as required, and thus we cannot speculate. The trial court's judgment regarding child support is reversed and remanded. On remand, the trial court shall include appellant's other two minor children on the worksheet for purposes of determining his child support obligation at his imputed income level of $60,000. Further, on remand, the trial court is permitted, if it so chooses, to enter any deviation with specific facts supporting the deviation at line 27 as allowed.

{¶36} Appellant's third assignment of error is with merit.

{¶37} For the foregoing reasons, appellant's first and second assignments of error are not well-taken and his third assignment of error is with merit. The judgment of the Geauga County Court of Common Pleas, Juvenile Division, is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.