

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

AMY L. RYMERS,	:	O P I N I O N
Plaintiff-Appellant/ Cross-Appellee,	:	CASE NO. 2011-L-064
	:	
- vs -	:	
	:	
JEFFERY G. RYMERS,	:	
Defendant-Appellee/ Cross-Appellant	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 09 DR 000158.

Judgment: Reversed and remanded.

Walter J. McNamara, III, McNamara & Loxterman, 8440 Station Street, Mentor, OH 44060 (For Plaintiff-Appellant/Cross-Appellee).

Donald Gallick, 190 North Union Street, #102, Akron, OH 44304 (For Defendant-Appellee/Cross-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant/cross-appellee Amy L. Rymers (“wife”), appeals from the judgment of divorce entered by the Lake County Court of Common Pleas. Wife challenges the trial court’s order of child support; appellee/cross-appellant, Jeffery G. Rymers (“husband”) has filed a cross-appeal of the same entry. Husband challenges: (1) the trial court’s failure to hold a further hearing after this court remanded the matter

to resume proceedings; (2) the trial court's failure to consolidate the underlying matter with a separate divorce action filed by husband while the current case was pending; (3) the trial court's failure to award him, inter alia, spousal support; and (4) the trial court's failure to "consider" various motions filed prior to the entry of the underlying final order on divorce. For the reasons discussed below, the matter is reversed and remanded.

{¶2} On March 18, 2009, wife filed a complaint for divorce against husband. The complaint sought a final order of divorce, custody of the parties' three children, temporary child support during the pendency of the proceedings and an order of child support after entry of the final decree, spousal support, and a fair and equitable division of all marital property. On April 29, 2009, husband filed his answer, but advanced no counterclaim(s). Neither party filed a motion for shared parenting.

{¶3} On October 7, 2009, the matter came before the court for hearing. Prior to taking testimony, stipulations were entered regarding the trial court's jurisdiction and venue. The parties further stipulated the date of the marriage, the names and ages of the children born as issue of the marriage, grounds for the divorce, and date of the parties' separation. The parties also agreed that their respective pensions should be divided equally, but disagreed on the date the parties' mutual interest in these plans ceased, i.e., whether on the date of trial or the date of separation.

{¶4} With respect to the value of the retirement plans, counsel for husband indicated he possessed the most recent information regarding the value of each party's "defined contribution plans," and stated wife's employer had faxed him "all the information" pertaining to any remaining information relevant to her retirement plans.

The record reflects husband's counsel would put this information into evidence during the hearing.

{¶5} After addressing these items, wife's counsel indicated she was withdrawing her prayer for spousal support representing that, in her belief, this was not "a spousal support case." Although counsel for husband stated his intention to put on evidence that husband was entitled to spousal support, he later conceded husband had failed to file a compulsory counterclaim for such relief.

{¶6} In light of these points, counsel for wife set forth the following issues for the court to adjudicate: (1) the nature of the child custody arrangement; (2) the propriety of child support; (3) the division of marital debt; and (4) the date the parties' pensions should be split.

{¶7} During her case-in-chief, wife's counsel called both parties as witnesses. The parties testified to their respective assets as well as to their respective debts and post-separation monthly expenses, itemized in documents marked Joint Exhibit 1, detailing husband's relative assets, debts, expenses, and values of his pension/retirement plans, and Joint Exhibit 2, detailing wife's relative assets, debts, expenses, and values of her pension/retirement plans. Wife additionally testified to the medical, dental, and optical insurance benefits she received from her employer, supported by documentation marked Exhibit A.

{¶8} With respect to the couple's three children, wife testified she has had sole custody since the parties separated. Wife also testified she has made all educational, medical, and recreational decisions since the separation. Husband testified his contact with the children had been limited since the parties' separation due to financial

problems. He further testified he defers all parental decisions to wife because he trusts her judgment on important matters pertaining to their daughters' lifestyle and well-being.

{¶9} Each party testified to their current income and debt. Husband stated his debt and expenses at the time of trial well exceeded his income; he also testified he was over \$2,500 in arrears on his child support obligations. Further, Joint Exhibit 2 listed wife's purported expenses and debts. The record, however, established that wife's separate and marital debt had been discharged by way of bankruptcy subsequent to the preparation of that exhibit. As such, wife testified her debt at the time of trial included a \$295 per-month car payment and attorney fees.

{¶10} With respect to her income, appellant introduced two paystubs from July of 2009, marked as Exhibits B and C, respectively. Appellant testified the paystubs did not accurately reflect her current income because her pay had recently increased by \$0.90 per hour, from \$33.10 to \$34.00 per hour. These facts were additionally supported by the information contained in Joint Exhibit 2. As counsel for wife did not have copies of wife's 2006 through 2008 tax returns, counsel for husband agreed to introduce these documents when he put on evidence.

{¶11} After wife rested, she sought admission of her exhibits. Counsel for husband objected to their admission, complaining that wife's counsel failed to properly "identify or authenticate" the documents. The objection was overruled, but prior to the court formally admitting the exhibits, counsel for husband moved to dismiss the case. In support of his motion, counsel argued wife had failed to present sufficient evidence for the court to allocate parental rights and responsibilities under R.C. 3109.04. He further claimed wife failed to offer any information regarding her retirement assets. He

additionally argued wife failed to offer any evidence regarding her retirement assets. Given the purported lack of evidence and the absence of a counterclaim that would require husband to go forward, counsel for husband moved the court to dismiss the case.

{¶12} In response, counsel for wife asserted the testimony and exhibits were adequate for the matter to move forward and, even if evidence was lacking, counsel moved to reopen the case. Counsel for husband disputed the court's authority to permit the reopening of wife's case, exclaiming: "You can't do - - you don't do a do-over in reference to trial[!]" Apparently persuaded by counsel's rhetoric, the trial court denied wife's motion to reopen. Finally, and despite the detailed testimony of the parties, the exhibits germane to the issues before the court, as well as defense counsel's repeated representations to submit multiple documents that would assist the court in ruling on the merits of the case, the trial court dismissed the matter without prejudice pursuant to Civ.R. 41(B)(2). The court simply ruled it did not possess "the proper information" to render judgment.

{¶13} Wife subsequently filed a motion to stay the execution of the trial court's judgment, arguing a stay was necessary to preserve the temporary orders, including a \$567.22 per month child support order, previously issued pending appeal. The trial court granted the motion and wife filed a timely notice of appeal. Husband, in turn, moved to dismiss the appeal for lack of a final appealable order to which wife duly responded. After considering the arguments of both parties, this court denied husband's motion concluding the trial court's judgment was a final, appealable order pursuant to R.C. 2505.02(B)(1), and therefore wife's appeal could proceed.

{¶14} During the pendency of wife's appeal, on January 25, 2010, husband filed his own complaint for divorce in the Lake County Court of Common Pleas, Domestic Relations Division. The matter was assigned Case No. 10DR000035, and remained on the trial court's active docket while the underlying matter, Case No. 09DR000158, which had been properly stayed pending appeal, remained on the court's inactive docket. After filing the complaint, counsel for husband began filing duplicate pleadings in each case, affixing both case numbers to all filings.

{¶15} On December 23, 2010, this court reversed the trial court's judgment dismissing wife's complaint for divorce and remanded the matter for proceedings to resume. See *Rymers v. Rymers*, 11th Dist. No. 2009-L-160, 2010-Ohio-6439. In support of the judgment, this court reasoned there was adequate evidence either taken or available to the court on all relevant issues to overcome husband's motion. In particular, this court observed the record contained sufficient evidence regarding the children's best interests to establish that wife was entitled to sole custody of the couple's children. *Id.* at ¶24-26. This court further determined that the parties' testimony and the information included in joint exhibits 1 and 2 provided an adequate basis regarding how to divide the parties' marital debt. *Id.* at ¶27. This court further explained that, but for counsel for husband reneging on his agreement to introduce the tax returns or, alternatively, the court's refusal to permit wife to reopen her case, there would have been sufficient information for the court to issue a proper child support order. *Id.* at ¶28-31. With respect to the issue of division of the parties' pensions and retirement benefits, this court determined there was sufficient evidence to establish a termination date of the marriage from which the court could equally divide the parties'

respective pensions pursuant to their stipulation. *Id.* at ¶32-34. And, finally, this court emphasized that, even though the value of the parties' retirement benefits was not at issue, such information could have been placed into the record had counsel for husband honored his agreement to introduce evidence of the information or, alternatively, had wife been given an opportunity to reopen her case to introduce such details. *Id.* at ¶32 and ¶35. Accordingly, this court held "that [wife] either produced enough evidence or would have produced enough evidence, absent the gamesmanship of opposing counsel, on all issues submitted for trial to overcome [husband's] motion to dismiss pursuant to Civ.R 41(B)(2)." *Rymers, supra*, at ¶39.

{¶16} Upon receipt of this court's order of remand, a telephonic conference was held between the trial court and counsel for both parties. Both wife's and husband's respective counsel had differing ideas as to the manner in which the court should proceed in light of this court's opinion and judgment in *Rymers*. Wife's counsel argued that, to the extent there was adequate evidence available in the record for the court to render a decision on all issues, no additional evidence or testimony was necessary. Alternatively, husband's counsel claimed that the court should consolidate the underlying matter with the divorce action he filed in Case No. 10DR00035 and, once consolidated, the hearing should resume and additional evidence taken. On March 25, 2011, after considering each party's position, the trial court denied husband's motion to consolidate and, in so doing, accepted wife's recommendation on going forward. In particular, the court ruled:

{¶17} Husband's argument regarding consolidation could have been handled in the original case had he filed a counterclaim. Since he

did not have a counterclaim, the Court could not proceed on his behalf. He had an opportunity to present the facts of his case, but chose not to do so. Instead, he moved to dismiss Wife's Complaint for Divorce. While this Court agrees with Husband's attorney that this Court did not find that it had all the necessary evidence for a final determination of the divorce, the appellate court said that "a court abuses its discretion when its judgment comports with neither reason nor the record." (Opinion, page 6 ¶ 18)

{¶18} The trial court went on to conclude, in light of this court's remand order, that the testimony adduced at trial and the exhibits of which wife was a proponent were sufficient to render an order on all remaining issues germane to wife's complaint for divorce. The judge consequently ordered wife's attorney to submit the trial transcript and exhibits to the court to prepare a final order.

{¶19} On April 5, 2011, husband filed a motion for reconsideration and a "notice of submitting exhibits and request for new trial or further hearing." The exhibits included husband's W-2s for 2008, 2009, 2010; husband's 2008 income tax return; and his current pay stubs. Husband also included wife's income information from the years 2008 through 2011 as well as information regarding the January 2011 value of wife's retirement plans. The trial court did not expressly rule upon the foregoing pleadings.

{¶20} On April 21, 2011, the trial court entered final judgment on divorce. The court's factual findings and legal conclusions were derived exclusively from the testimony taken at the October 7, 2009 hearing and the exhibits utilized during wife's case-in-chief; to wit: Joint Exhibits 1 and 2 as well as wife's Exhibits A, B, and C. From

this evidence, the court granted custody of the party's children to wife and ordered husband to pay \$300 per month in child support. The court determined that wife could claim two of the party's daughters as dependents for federal tax purposes and allowed husband to claim the third. The court further determined the parties had no marital debt to divide. Finally, the court ordered the parties to equally divide the marital portions of their pension/retirement plans, life insurance cash value, and shares of stock as of July 1, 2007.

{¶21} Wife subsequently moved the trial court to reconsider the following issues: (1) the child support calculation; (2) its determination that husband could claim one of the party's three daughters as a dependent; and (3) its finding that the marriage was between April 25, 1993 and July 1, 2007. Wife maintained the couple was married on April 25, 1992.

{¶22} In response, husband filed a motion to strike wife's motion, asserting the civil rules do not contemplate a motion to reconsider a final order. After considering the party's arguments, the trial court granted wife's motion as it pertains to the date of the marriage; the court, however, granted husband's motion to strike as it related to the remaining issues.

{¶23} After wife filed her notice of appeal, husband filed a cross-appeal. For her sole assignment of error, wife contends:

{¶24} "The trial court erred to the prejudice of plaintiff-appellant and abused its discretion in determining the defendant's child support obligation."

{¶25} Under this assignment of error, wife initially contends the trial court failed to follow the statutorily prescribed method for computing child support and, as a result,

the court's support figure is contrary to law. Wife argues the trial court failed to utilize the statutorily-required means of calculating husband's income for purposes of child support; furthermore, wife asserts, even if a deviation from the standard child support calculation was appropriate, the trial court improperly considered unsubstantiated factors to support its decision to deviate. We hold wife's arguments have merit.

{¶26} R.C. 3119.01(C)(7) defines gross income as the "total of all earned and unearned income from all sources during a calendar year * * * and includes income from salaries, wages, overtime pay, and bonuses * * *." When calculating child support, R.C. 311.05(A) requires that the trial court verify the parents' current and past income by electronic means or by other suitable documentation. *Collins v. Collins*, 9th Dist. No. 10CA0004, 2011-Ohio-2087, ¶25; see also *Johnson v. Melton*, 12th Dist. No. CA2010-07-160, 2011-Ohio-792, ¶24; *Staffrey v. Smith*, 7th Dist. No. 09-MA-107, 2010-Ohio-1296, at ¶28. A parent's gross income must be supported by evidence in the record. See e.g. *Collins*, *supra*.

{¶27} In this case, even though husband filed a "notice of submitting exhibits," which was uncontested by wife and included verification of the parties' income information from 2008 through 2011, the trial court made it clear that it *only* considered evidence introduced at the October 2009 hearing. The court did so despite this court's remand order in *Rymers*, *supra*, mandating the proceedings to *resume* in accordance with the analysis set forth in that opinion. *Id.* at ¶41. The trial court could have complied with the remand order by permitting wife to reopen her case for the purpose of introducing the necessary documentation or, on the other hand, requiring husband to submit the documentation in his possession. In fact, a review of the materials in the

“notice of submitting exhibits” filed by husband demonstrates the trial court could have met the demands of the remand order by simply accepting the uncontested exhibits and using those documents in its child support computation. It declined to select any of the above options and, as a result, the trial court failed to comply with the mandate set forth in *Rymers, supra*.

{¶28} As highlighted above, when determining gross annual income for purposes of a child support calculation, the record must disclose evidence of parents’ *current and past income and personal earnings* which, in turn, must be verified. R.C. 3119.05(A). The only information considered by the trial court relating to husband’s base income was a July 2009 paystub which demonstrated, *at that time*, he was working 32 hours a week at a rate of \$12.74 per hour. Although this helps establish and potentially verify husband’s base income and hours worked for that year, it provides no insight into husband’s current base income or hours he currently works. Similarly, the only evidence of wife’s income was two paystubs from July of 2009 submitted via wife’s Exhibits B and C.

{¶29} Further, while Joint Exhibit 1 and 2 set forth numbers depicting husband’s and wife’s respective earnings from the years 2007, 2008, and 2009, the trial court did not require verification of the figures relating to the 2007 and 2008 information by electronic means or other “suitable” documentation. This is significantly problematic because the stated incomes from the years 2007 and 2008 appear to reflect the estimations of their respective incomes for those years. Neither husband’s nor wife’s current base income was considered, let alone verified. And, with the exception of the base income of both parties during July of 2009, there is no reliable information

regarding their past income. We therefore hold the support amount generated from the trial court's child support worksheet was inherently inaccurate as it was processed and calculated in violation of R.C. 3119.05(A).

{¶30} In addition to the foregoing problems, the record indicates, and the parties agree, that husband receives an annual bonus from his employer. R.C. 3119.05(D) sets forth the method by which a trial court must include bonus or overtime earnings in its gross income calculation. Namely, a trial court must include in the calculation the lesser of either (1) the yearly average of all bonuses and overtime received during three years *immediately prior to the support calculation* or (2) the total bonuses received during *the year immediately prior to the support calculation*. *Id.* In its judgment entry, the trial court utilized the bonus amount purportedly received by husband through August 2009; to wit: \$7,800. Because the final judgment was entered in April of 2011, the trial court was required to compare the average, annual bonus earnings received by husband from 2008, 2009, and 2010 with husband's 2010 bonus and include the lesser of the two figures in calculating husband's gross income for purposes of child support. The court admittedly did not consider any evidence of husband's 2010 bonuses (or base income) in calculating the child support worksheet. As a result, the trial court failed to follow the statutory procedure set forth under R.C. 3119.05(D) for computing husband's gross income.

{¶31} With these points in mind, wife also argues that the trial court erred when it deviated from the child support amount it calculated using standard child support worksheet as the factors it considered in entering a deviation were not supported by the record. In particular, wife asserts the trial court failed to properly utilize accurate figures

in computing her per-month household expenses and further imputed an unsubstantiated amount of \$2,000 to which a friend purportedly contributes to assist wife with monthly expenses. A review of the relevant documents supports wife's argument.

{¶32} Joint Exhibit 2 sets forth two monthly expense scenarios: One in which wife lives with a friend who assists her and one in which she lives without assistance. Under the former scenario, wife's monthly living expenses total \$10,928; under the latter, they total \$7,068. In its judgment entry, however, the trial court imputed a total of \$6,881 for wife's living expenses and further imputed a \$2,000 contribution from her friend to meet these expenses. Not only did the court use an expense figure different from both scenarios set forth in Joint Exhibit 2, it is unclear where it obtained the \$2,000 figure it imputed as contribution toward those estimated expenses. To the extent the court's determination of wife's expenses are not premised upon figures taken from the record, we hold its use of those figures as a basis for deviating from the child support worksheet was arbitrary and unreasonable, i.e., an abuse of discretion. See *e.g. Grae v. Grae*, 11th Dist. No. 2010-L-013, 2010-Ohio-4083, ¶19 (a court abuses its discretion when its judgment is either unreasonable or fails to comport with the record.)

{¶33} The foregoing conclusion notwithstanding, the failure to properly calculate and verify the parties' current and past gross income fundamentally invalidated the trial court's deviation exercise. Statutorily, a court may deviate from the basic child support schedule and the applicable worksheet calculations if it determines "that amount would be unjust or inappropriate and would not be in the best interest of the child." R.C. 3119.22. Logically, however, deviating from a child support amount generated from the

worksheet presumes the amount from which deviation was taken was accurate. In this case, as discussed above, the amount generated from the worksheet was premised upon inaccurate figures due to the court's failure to properly compute the parties' gross income. Thus, even had the court used proper expense figures to justify deviating from the worksheet amount, its decision to deviate cannot be upheld because the initial calculation upon which deviation was premised was inaccurate.

{¶34} The trial court failed to consider and verify the parties' current income and failed to follow the statutory procedure required for including bonus earnings in its calculation of husband's gross income. As a result, the amount obtained from the child support worksheet was inaccurate and, by implication, the trial court's decision to deviate from the worksheet was inappropriate. The trial court therefore erred as a matter of law in calculating husband's child support obligation and the matter must therefore be remanded for a proper computation utilizing all necessary information relating to the parties' income updated as of the date the court recalculates that amount.

{¶35} Next, wife asserts the trial court abused its discretion when it determined husband should receive an income tax exemption for one of the couple's three children.

{¶36} Pursuant to R.C. 3119.82, the custodial parent has a presumptive entitlement to claim a minor child for income tax purposes, and a trial court may only award the tax exemption to a non-custodial parent if it finds that doing so serves the best interests of the child. *Hall v. Hall*, 3d Dist. No. 6-10-01, 2010-Ohio-4818, ¶49, citing *Bobo v. Jewell*, 38 Ohio St.3d 330, 332 (1988). Where the parties disagree regarding the allocation of the tax exemption, the court shall, in rendering a decision, consider:

{¶37} “any net tax savings, the relative financial circumstances and needs of the parents and children, the amount of time the children spend with each parent, the eligibility of either or both parents for the federal earned income tax credit or other state or federal tax credit, and any other relevant factor concerning the best interest of the children.” R.C. 3119.82.

{¶38} In the instant matter, wife was deemed the residential parent and legal custodian of the parties’ three children. The court further determined that wife would be permitted to claim two of the three children as dependents, but permitted husband to claim the third child. Nothing in the record indicates the parties agreed to this arrangement. To the contrary, wife, in moving the court to reconsider the trial court’s judgment, specifically objected to this aspect of the order. Accordingly, the court was required to consider the children’s best interest as well as the factors enumerated under R.C. 3119.82. The trial court’s judgment, however, is devoid of any such discussion. This court has held that a domestic court must follow R.C. 3119.82 “and enumerate the factors it finds relevant in allocating the tax dependency exemption.” *In re Marriage of Henson*, 11th Dist. No. 2006-T-0065, 2007-Ohio-4376, ¶46, citing *In re Marriage of Chewning*, 11th Dist. No. 2004-P-0021, 2005-Ohio-698. As the trial court neither discussed the children’s best interests nor the statutory factors it found relevant to its designation, its order runs afoul of R.C. 3119.82.

{¶39} The issues raised by wife under her assignment of error have merit. We therefore reverse and remand the underlying judgment for the trial court to properly calculate and verify, pursuant to statute, the parties’ gross income, both current and past, for purposes of computing an accurate child support amount pursuant to the basic

child support schedule and the applicable worksheet. If, after engaging in this analysis, the court determines a deviation from the schedule or worksheet is proper, R.C. 3119.22 and 3119.23 affords the court such authority; if it selects to so deviate, however, its decision must be premised upon evidence gleaned from the record. We further reverse and remand the underlying judgment to determine the allocation of the tax exemption, pursuant to R.C. 3119.82.

{¶40} Wife's sole assignment of error is sustained.

{¶41} On cross-appeal, husband asserts two assignments of error. As they present interrelated issues, we shall consider them together. They allege:

{¶42} "[1.] The trial court erred and/or abused its discretion by issuing its judgment entry of divorce without further hearing and evidence presented from the point where the error occurred by failing to consolidate the two (2) pending divorce matters; and by failing to award spousal support and issue other equitable orders requested by appellee/cross-appellant.

{¶43} "[2.] The trial court erred and/or abused its discretion by failing to consider appellee/cross-appellant's motion for reconsideration and requests for a new trial or further hearing, and by failing to consider his emergency motion to modify his motion to show cause and motion for attorney fees."

{¶44} Husband raises multiple issues on cross-appeal. To avoid analytic overlap, we shall address his arguments somewhat out of sequence. We will first consider husband's contention that the trial court erred when it entered final judgment without consolidating the underlying case with the divorce action he filed on January 25, 2010 in Case No. 10DR000035. This argument is not well-taken.

{¶45} Civ.R. 13(A) governs compulsory counterclaims and provides in relevant part:

{¶46} A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

{¶47} The goal of the rule is to resolve all related claims in one action thereby avoiding multiple lawsuits on claims arising from a single transaction or occurrence. *Lewis v. Harding*, 182 Ohio App.3d 588, 2009-Ohio-3071, ¶12 (8th Dist.), citing *State ex rel. Massaro Corp. v. Franklin Cty. Court of Common Pleas*, 65 Ohio App.3d 428, 430 (10th Dist.1989). The rule additionally implicates res judicata as a party who fails to assert a compulsory counterclaim will be barred from doing so in any later action. *Lewis, supra*, citing *ATAC Corp. v. Lindsay*, 8th Dist. Nos. 70293, 20294, and 70295, 1997 Ohio App. LEXIS 109 (Jan. 16, 1997). Accordingly, "all existing claims between opposing parties that arise out of the same transaction or occurrence must be litigated in a single lawsuit pursuant to Civ.R. 13(A), no matter which party initiates the action." *Rettig Enterprises, Inc. v. Koehler*, 68 Ohio St.3d 274 (1994), paragraph one of the syllabus.

{¶48} To determine whether a counterclaim is compulsory, the Supreme Court of Ohio has adopted the "logical relation" test, which provides that "a compulsory counterclaim is one which is logically related to the opposing party's claim where

separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts.” *Id.* at paragraph two of the syllabus. Thus, “multiple claims are compulsory counterclaims where they ‘involve many of the same factual issues, or the same factual and legal issues, or where they are offshoots of the same basic controversy between the parties.’” *Id.* at 279 quoting *Lakes Rubber Corp. v. Herbert Cooper Co.* 268 F.2d 631, 634 (3d Cir.1961).

{¶49} Husband’s complaint for divorce and all claims raised therein was, without question, logically related to wife’s complaint for divorce. He was therefore required to assert any claim associated with the divorce in a compulsory counterclaim to wife’s initial action.

{¶50} We recognize that the trial court involuntarily dismissed wife’s complaint for divorce without prejudice on October 28, 2009. However, wife subsequently filed a motion to stay execution of the judgment pending appeal which the trial court granted on November 11, 2009. The stay entered by the trial court prevented the dismissal from having any immediate legal impact. The stay, therefore, had the effect of placing the case on hold, rendering the matter essentially “inactive” pending the outcome of the appeal in *Rymers. Brunst v. Alltel Corp.*, 9th Dist. No. 04CA008591, 2005-Ohio-3350, ¶9; See also *Community First Bank & Trust v. Dafoe*, 108 Ohio St.3d 472, 2006-Ohio-1503, ¶26 (noting a stay is merely a postponement of an action).

{¶51} “When a court of competent jurisdiction acquires jurisdiction of the subject matter of an action, its authority continues until the matter is completely and finally disposed of, and no court of coordinate jurisdiction is at liberty to interfere with its proceedings.” *John Weenink & Sons Co. v. Cuyahoga Cty. Court of Common Pleas*,

150 Ohio St. 349, (1948), paragraph three of the syllabus. Because the dismissal entry was stayed, the underlying matter had not been finally closed, disposed of, or terminated. Husband was consequently not entitled to file a second, redundant divorce action. Pursuant to this reasoning, the action filed by husband in Case No. 10DR000035 must be dismissed for lack of subject matter jurisdiction. *See Holmes Co. Bd. of Commrs v. McDowell*, 169 Ohio App.3d 120, 2006-Ohio-5017, ¶27 (5th Dist.). As such, the trial court did not err in failing to consolidate the two actions.

{¶52} Husband nevertheless argues the trial court erred in failing to give him the opportunity to present all necessary evidence for the resolution of all matters at issue. As discussed under wife's sole assignment of error, the trial court erred in failing to obtain verified information regarding the parties' current and past gross income for purposes of child support computation. Husband, however, does not place significant focus upon the lack of such information. Rather, he primarily argues the trial court erred in failing to resume the proceedings so that he could present evidence of, inter alia, his entitlement to spousal support. We disagree with husband.

{¶53} As discussed in *Rymers, supra*, wife's counsel stated on record that the matter was *not* a spousal support case. And wife ultimately rested anticipating husband would place the parties' personal income tax information into the record. Husband's counsel induced this expectation by stating, on record, that he would do so. Instead of putting on evidence, however, counsel for husband moved to dismiss the matter arguing he did not have an obligation, as a defendant with no counterclaim pending, to introduce any evidence. Although, prior to the hearing, counsel for husband conceded that he had the burden of establishing any entitlement to spousal support, he still, in the course

of seeking a dismissal, represented he had no intention of putting on any evidence. In relation to this point, this court in *Rymers* made the following comments:

{¶54} [S]pousal support was an issue only to the extent [husband] made it an issue. Amazingly, however, counsel for [husband] supported his motion to dismiss by repeatedly emphasizing that he had no obligation, as the defendant, to put on any evidence. * * *

{¶55} * * *

{¶56} The record clearly reflects that [husband] had the burden to establish the propriety of spousal support. When counsel for appellee refused to go forward, *the issue of spousal support was no longer before the court.* (Emphasis added.) *Id.* ¶36-38.

{¶57} Prior to the 2009 trial, counsel for wife set forth the issues for the court to resolve. To wit: (1) the child custody arrangement; (2) the appropriateness and amount of child support; (3) the division of marital debt; and (4) the date for determining the marital portion of the parties' pensions. *Id.* at ¶5. Spousal support was not an issue wife wished to pursue. Furthermore, husband's failure to file a compulsory counterclaim for spousal support or offer evidence such that the issue could have been deemed to be "tried by consent" under Civ.R. 15(B) were omissions sufficient to preclude litigation on the issue. The trial court therefore did not err in declining to reconvene so that additional evidence could be heard on husband's entitlement to spousal support.

{¶58} With respect to the issues that were properly before the court, this court held in *Rymers, supra*, that wife "put forth sufficient evidence to establish a prima facie case that she was entitled to sole custody of the couple's children" at the October 2009

hearing. *Id.* at ¶26. In light of this point, the trial court, in its April 2011 judgment entry, ordered wife to be deemed residential parent and legal custodian of the children. Husband does not specifically challenge this ruling and, therefore, we hold the trial court did not err in drawing this conclusion.

{¶59} As to the division of marital debts, the trial court concluded that there was no marital debt. Husband does not specifically argue that this conclusion was erroneous or allege that any particular outstanding debt ascribed to him personally was actually marital. As there is no contested debt, we cannot conclude the trial court erred in concluding that the parties had no marital debt when the final judgment was entered.

{¶60} Regarding the issue of the parties' relative pensions and/or retirement accounts, the trial court concluded that "[t]he parties shall divide equally the marital portion of their pension/retirement plans * * * as of July 1, 2007." Although husband asserts the trial court erred in not obtaining specific valuations of the pensions, the specific values of these accounts were not at issue during the hearing. To wit, in *Rymers, supra*, this court observed: "the court was asked to determine the date at which the parties' respective pensions should be divided. The record indicates the parties agreed that their retirement benefits should be divided equally and, as a result, proof of the values of these plans was not directly before the court." *Id.* at ¶32. As the date and manner of division was established in the trial court's judgment, we hold the trial court adequately addressed the issue it was asked to resolve.

{¶61} Given the foregoing points, the only remaining substantive issue to which the trial court must attend is a proper computation of child support. This can only be achieved by requiring the parties to produce accurate and verifiable documentation

relating to their current and past gross income. Such verification does not require testimony. We therefore hold the trial court did not err in declining to reconvene to take additional testimony.¹ Husband's arguments to the contrary are therefore not well taken.

{¶62} Husband finally argues the trial court erred by failing to address two pre-remand motions; namely, his emergency motion to modify the court's temporary support order, which included an accompanying motion for attorney fees, and his motion to show cause for wife's purported failure to comply with specific orders, which also included a motion for attorney fees. We do not agree.

{¶63} During the pendency of *Rymers, supra*, on September 17, 2010, husband filed the motion to modify and motion for attorney fees. Wife subsequently filed a motion to stay any potential hearing on the motion because, she alleged, any modification would be inconsistent with the appellate court's jurisdiction. Husband then filed a brief in opposition to wife's motion to stay a hearing on his motion to modify. No further action was specifically taken on the foregoing pleadings until after the release of *Rymers* when, on January 10, 2011, husband's counsel sent a correspondence to the court, which was filed in the record and sent to wife's counsel. In the letter, counsel represented that, during a telephonic conference on November 15, 2010, "the issue of the pending appeal and the child support order was discussed." And, "[b]ased upon the circumstances which existed at that time, we scheduled a hearing to be held on January 14, 2011 at 2:30 p.m." Counsel continued: "Since that time, * * * the Court of Appeals

1. As an ancillary point, husband alleges, under his second assignment of error, that the trial court erred in failing to consider his motion for reconsideration, presumably of the March 25, 2011 order. The court's final order operated to overrule that motion and, given our analysis *supra*, the court's decision not to hold an additional hearing or take additional testimony was not unreasonable. Husband's passing argument on this issue therefore lacks merit.

reversed this Court's October 28, 2008 order. Given these changes, *all issues* can be set for a trial date, and the hearing scheduled for January 14, 2011, *is no longer necessary.*" (Emphasis added.)

{¶64} The foregoing statements indicate that the issue of child support, which was the primary subject of the pending motion, had been addressed during a November 2010 teleconference and, according to counsel's representations, any further action on child support would be taken during a January 2011 hearing. Counsel concluded that such a hearing would be unnecessary as any remaining issue regarding child support could be addressed at a final hearing. Husband's assertion that the court erred when it failed to address his motion to modify is consequently inconsistent with his counsel's previous representations to the court. The correspondence demonstrates that the parties convened with the court regarding the issue of child support and, by implication, the matters set forth in husband's motion to modify were apparently considered.

{¶65} We recognize that the trial court did not hold an additional hearing on remand; nevertheless, it did enter a final child support order, which was significantly less than the original temporary order in accordance with husband's original motion to modify and counsel's January 10, 2011 letter. The record therefore indicates the court gave due consideration to husband's motion and, even though the issue must be revisited on remand, husband's argument that the trial court dismissed the issue without considering the merits of the motion is without merit. Moreover, counsel's representations in the January correspondence indicate he was satisfied with the manner in which the issue of support was being managed and addressed by all

involved. Thus, the court's implicit denial of husband's motion for attorney fees was not unreasonable.

{¶66} Next, on December 7, 2010, husband filed a combined motion to show cause and for attorney fees for wife's alleged failure to maintain husband on her health insurance. In response, wife observed she had brought the matter to the attention of her employer, who concluded that an internal clerical error had occurred regarding the insurance benefits. The matter was resolved without inconvenience to either party. Wife stated that any error relating to the insurance coverage was accidental and, in any event, not a result of her actions. In fact, wife observed, the "misunderstanding could have been cleared up with a simple telephone call", rather than filing a show-cause motion. Husband filed no additional memoranda vis-à-vis this issue.

{¶67} Given the sequence of events, it appears the court did not have any reason to further consider the matter after wife's response was filed. Husband suffered no prejudice and his concerns were promptly addressed. And, accepting wife's uncontested observation that the insurance issue could have been resolved without recourse to legal filings, the court's implicit denial of husband's motion for attorney fees was reasonable. We therefore hold there was no error in the manner in which the court handled husband's various motions.

{¶68} Husband's assignments of error on cross-appeal are not well-taken.

{¶69} For the reasons discussed in this opinion, wife's sole assignment of error has merit. Alternatively, husband's two assignments of error on cross-appeal are without merit. It is therefore the order of this court that the appealed judgment is reversed and remanded for the limited purposes of: (1) the trial court properly

calculating the parties' gross income, pursuant to statute, utilizing all necessary, updated financial information as of the date the trial court makes the recalculation, for purposes of obtaining an accurate amount of child support, pursuant to the basic child support schedule and applicable child support worksheet; if after conducting this analysis the court finds a deviation from the schedule or worksheet is appropriate, R.C. 3119.22 and 3119.23 gives the court such authority; and (2) considering the applicable statutory analysis for allocating tax dependency credit of the parties' children.

SEAN C. GALLAGHER, J., Eighth Appellate District, sitting by assignment,
PATRICIA A. DELANEY, J., Fifth Appellate District, sitting by assignment,
concur.