[Cite as *Sanders v. Sanders*, 2012-Ohio-398.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

KACEE K. SANDERS,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2011-A-0026**
- vs -	:	
CHRISTOPHER RAY SANDERS,	:	
Defendant-Appellant.	:	

Civil Appeal from the Ashtabula County Court of Common Pleas, Case No. 2005 DR 458.

Judgment: Affirmed.

Kacee K. Sanders, pro se, 1712 East 36th Street, Ashtabula, OH 44004 (Plaintiff-Appellee).

Kenneth J. Cahill and *Laurie A. Koerner*, Dworken & Bernstein Co., 60 South Park Place, Painesville, OH 44077 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Christopher Ray Sanders, appeals two Judgment Entries of the Ashtabula County Court of Common Pleas, overruling his objections to a Magistrate's Decision and ordering him to pay child support. The issues to be determined by this court are whether the trial court properly calculated the amount of child support and whether the dispute over child support should have been resolved through mediation. For the following reasons, we affirm the decision of the court below.

{¶2} On December 31, 2000, Christopher and plaintiff-appellee, Kacee K. Sanders, were married in Albertsville, Alabama. One child was born of the marriage, Logan Ashley Sanders (dob 10/6/01).

{¶3} On June 23, 2005, the parties obtained a Decree of Divorce a Vinculo Matrimonii from the Circuit Court of the City of Virginia Beach, Virginia. According to the Decree, the parties shared joint legal custody of the child, and no provision was made for the payment of child support.

{¶4} On September 30, 2005, Kacee filed an Affidavit/Application for Registration for Out-of-State Custody/Visitation Order - UCCJEA, in the Ashtabula County Court of Common Pleas. At this time, Kacee was residing in Ashtabula, Ohio, and Christopher was residing in Guntersville, Alabama.

{¶5} Thereupon, the parties began to litigate regarding visitation with and support of the child.

{¶6} On August 23, 2007, an Agreed Judgment Entry was entered adopting the parties' Shared Parenting Plan.

{¶7} The Shared Parenting Plan contained, in relevant part, the following provisions. Each party "shall be the residential parent and legal custodian of the child at those times he or she has parenting time with the child." Kacee "shall be residential parent and legal custodian of the minor child for school enrollment purposes."

{¶8} Christopher was to have parenting time on any "long," i.e., three-day, weekends plus one additional weekend each month during the school year. Christopher would also have parenting time for all of Spring Break/Easter, half of Winter Break, Father's Day weekend, and Thanksgiving (Wednesday through Sunday). Additionally, Christopher would have parenting time during Summer Vacation, beginning

on the Sunday after the last day of school until the third Sunday prior to the beginning of school.

{¶9} The parties agreed that Christopher would "be responsible for transportation at the commencement of his parenting time," and Kacee would be "responsible for the transportation at the conclusion of Father's parenting time."

{¶10} Christopher was ordered to pay child support in the amount of $376.37 per month, and to maintain the child "on a medical, dental and optical insurance plan at his expense."

{¶11} The Shared Parenting Plan provides that disputes should be resolved "by direct communication" between the parties and/or direct communication "with the assistance of a neutral person(s) who is the mediator, which mediator has no authority to require any concession or agreements." However, "[a]ny claims or controversy arising under this Shared Parenting Agreement which cannot be resolved by the parents through direct communication without mediation as described above, shall be promptly submitted to mediation." In this case, "[t]he mediator shall have the duty and responsibility to assist the parties in resolving all issues submitted for mediation."

{¶12} On March 24, 2008, an Agreed Judgment Entry was entered, modifying the Shared Parenting Plan as follows: "effective February 29, 2008, [Christopher's] child support order shall terminate. * * * In exchange, [Christopher] shall be responsible for all transportation costs associated with parenting time."

{¶13} On August 28, 2009, the Ashtabula County Child Support Enforcement Agency conducted an Administrative Review Hearing and issued a Modified Order that Christopher pay child support in the amount of $338.43 per month plus a processing

charge. Christopher objected to the CSEA's Order and requested a hearing in the trial court.

{¶14} On February 11, 2010, a hearing was held before a magistrate. Kacee appeared at the hearing without her lawyer, although she had retained counsel. Kacee was also without documentation regarding her income and expenses.[1]

{¶15} Counsel for Christopher asked that the matter be submitted to mediation, as provided in the Shared Parenting Agreement. The magistrate noted that mediation is "helpful," but was concerned about "this thing dragging out like sometimes custody things drag out." The magistrate observed: "it may be appropriate for the Court to set a temporary order and then order to mediation; so I'm thinking perhaps * * * we should take some testimony, I should set it for a temporary order of some kind, and then order it to mediation, and then we'll have a review hearing. And if the parties can reach an agreement in the meantime, fine; if not, then we'll have a full and complete hearing."

{¶16} Christopher and Kacee testified at the hearing regarding their current incomes and expenses relating to the child's care.

{¶17} On April 15, 2010, a Mediation Report was filed in the trial court, indicating that the "Parties appeared for mediation" and listing five dates between February 25 and March 11, 2010. A box was checked on the form, indicating "Mediation will continue if necessary."

{¶18} On April 20, 2010, the Magistrate's Decision was issued, ordering Christopher to pay child support in the amount of $306 per month, representing $255 for

1. It is not clear why Kacee's attorney was not present. Kacee testified: "Because my lawyer, she didn't feel that a lawyer was needed to be present because it was a determination. She felt comfortable that I could go unrepresented."

current support ($250 plus processing) and $51 for arrearage ($50 plus processing). In support of her decision, the magistrate made the following findings:

{¶19} 6. Father works at Mastin's, Inc. and grosses base pay of $14 per hour. With overtime, he grossed $34,350.25 in 2009. He paid $1163 for the child's air flights in 2008 and $1246.01 for the child's air flights in 2009. He has some uninsured medical costs and clothing expense when the child is with him. Health insurance for the child costs $1814 per year. Copayments are $20 and $15. The child's summer T-ball costs $65.

{¶20} 7. Mother pays a $25 co-pay biweekly to a social worker for the child's counseling, for a total of $50 per month. Her health insurance costs $108 per biweekly pay for family coverage and $80.67 per pay for single coverage. The total cost to cover the child, therefore, is $710.58 per year. * * * Mother's health insurance copayments for doctor appointments and prescriptions are $25. Mother paid $480 this past year for the child's school clothes. Mother has to use vacation time for picking up/taking the child to the airport. It costs her $75 per week to do this.

{¶21} * * *

{¶22} 9. Mother grosses $34,907 per year. * * *

{¶23} 11. Since the child does reside a portion of the year with Father in another state, the Magistrate finds that he should continue to provide health insurance for the child, even though the Mother's plan costs less. Since ACCSEA already included Father's health insurance cost in the current calculation, the Magistrate finds that the court should recalculate these guideline order[s] and include Mother's health insurance cost in the calculation.

{¶24} 12. Once Mother's health insurance cost is included in the calculation, guideline child support is $310.03 per month when health insurance is being provided, and $313.73 per month when health insurance is not being provided. The Magistrate finds that both parents are incurring costs which are necessary for the best interests of the child. The Magistrate finds that plane fare is a necessary cost in the best interests of the child, since it is in her best interest to spend time with the Father and the Mother. That cost is about $1200 per year. On the other hand, the Mother is incurring costs that are also in the child's best interests: $50 per month for counseling, $65 per month for reading tutor, and $32 per month to participate in dance. Thus, Mother is regularly paying out extraordinary costs of about $147 per month, or $1764 per year. Father is paying out regularly about $100 per month for plane fare,

for a total of about $1200 per year. When those costs are added into the calculation and apportioned between the parties according to their incomes, child support should rise by deviation to $331.80 when health insurance is being provided.

{¶25} 13. The Magistrate finds Father is not providing sufficient support for the child through his current contributions. The Magistrate finds that the starting point, before consideration for extraordinary parenting time exercised by the Father under the current Shared Parenting Agreement, is $331.80 per month, which already includes consideration for the parties' costs of airfare, counseling, tutoring, and dance, that benefit the child. The Magistrate also finds that the Father most likely does incur some minimal clothing expense when the child is with him, since she is with him a large block of time in the summer, even though he wasn't able to provide specific sums that he has spent. Obviously, Mother incurs the bulk of clothing expense.

{¶26} 14. The Magistrate finds that it is fair, appropriate, and in the best interests of the child, considering all of the factors stated in the paragraph above, for the Father to pay current child support of $250 per month [effective 7/1/09].

{¶27} On May 4, 2010, Christopher filed Objections to 04/20/2010 Magistrate's Decision and Request for Oral Hearing.

{¶28} On March 28, 2011, the trial court entered a Judgment Entry, overruling Christopher's Objections.

{¶29} On the same date, the trial court entered a Judgment Entry, adopting the Magistrate's Decision as the judgment of the court.

{¶30} On April 26, 2011, Christopher filed his Notice of Appeal. On appeal, Christopher raises the following assignments of error:

{¶31} "[1.] The trial court erred and/or abused its discretion in its calculation of child support."

{¶32} "[2.] The trial court erred and/or abused its discretion by finding that the parties should not attempt to resolve their issues through mediation prior to commencing the administrative review process and/or taking action through the court."

{¶33} "[3.] The trial court erred and/or abused its discretion by taking into consideration Appellee's claim of coercion in connection with the signing of the March 28, 2008 Agreed Judgment Entry."

{¶34} "In any action in which a court child support order is issued or modified, in any other proceeding in which the court determines the amount of child support that will be ordered to be paid pursuant to a child support order, or when a child support enforcement agency determines the amount of child support that will be paid pursuant to an administrative child support order, 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." R.C. 3119.02.

{¶35} "The court may order an amount of child support that deviates from the amount of child support that would otherwise result from the use of the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, if, after considering the factors and criteria set forth in section 3119.23 of the Revised Code, the court determines that the amount calculated pursuant to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, would be unjust or inappropriate and would not be in the best interest of the child." R.C. 3119.22.[2] "Any court-ordered deviation from the applicable worksheet and the basic child support schedule must be entered by the court in its journal and must include findings of fact to support such determination."

2. A similar provision exists at R.C. 3119.24(A)(1), and applies where a court "issues a shared parenting order in accordance with section 3109.04 of the Revised Code." In connection with the issuance of a shared parenting order, the court is required to further justify the deviation based on "the extraordinary circumstances of the parents."

Marker v. Grimm, 65 Ohio St.3d 139, 601 N.E.2d 496 (1992), paragraph three of the syllabus.

{¶36} "[A] trial court's decision regarding child support obligations falls within the discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion." *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 686 N.E.2d 1108 (1997), citing *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989); *Smith v. Treadwell*, 11th Dist. No. 2009-L-150, 2010-Ohio-2682, ¶ 19 ("it is within the discretion of the trial court to deviate from the child support guidelines"). However, "when a trial court fails to include a child support worksheet or list reasons for a deviation, the court has committed reversible error since the statutory requirements mandate that '[a] child support computation worksheet must *actually be completed and made a part of the trial court's record*.'" *In re Marriage of Henson*, 11th Dist. No. 2006-T-0065, 2007-Ohio-4376, ¶ 25 (emphasis added), quoting *DePalmo v. DePalmo*, 78 Ohio St.3d 535, 538, 679 N.E.2d 266 (1997) (further citation omitted).

{¶37} In his first assignment, Christopher raises various arguments as to why the trial court/magistrate abused its discretion.

{¶38} Christopher argues that Kacee should not have been given credit in the child support worksheet for providing health insurance coverage, since, at the time of the February 2010 hearing, she did not provide any documentary evidence of coverage. Kacee testified that she was eligible for insurance coverage through her employer as of her last paycheck, although she had not received an insurance card. Counsel for Christopher asked her why, when subpoenaed, her employer denied that she was covered. Kacee affirmed before the magistrate that she was, in fact, covered as of her last paycheck. Kacee testified that she had spoken with her employer and was able to

identify the insurance provider as well as the amount she would have to contribute toward the premium and copayments.

{¶39} We find no abuse of discretion. Kacee's testimony was evidence that she had insurance through her employer and what was the cost of the insurance. As the trier of fact, the magistrate was entitled to credit this testimony. Moreover, if Kacee's testimony proved false, the Magistrate's Decision provided for redress. The Decision provided that, "[p]ursuant to Ohio Revised Code §3119.30 the parent(s) ordered to provide private health insurance for the child shall, not later than thirty (30) days after the issuance of the order, supply the other parent with information regarding the benefits, limitations and exclusions of the health insurance coverage, copies of any insurance forms necessary to receive reimbursement, payment, or other benefits under the health insurance coverage and a copy of any necessary insurance cards." If the insurance coverage, as contemplated by the Decision, were not available, "cash medical support shall be paid in the amount as determined by the child support computation worksheets." In this case, CSEA is authorized to "change the financial obligations of the parties" without hearing or further notice.

{¶40} Christopher argues that Kacee received excessive credit for "extraordinary costs" on the child's behalf. The magistrate credited Kacee with $1,764 per year, comprised of $50 per month for counseling, $65 per month for tutoring, and $32 per month for dance classes. Given the considerable amount of parenting time that he has with the child, including a nine-week period during the summer, Christopher maintains Kacee should not receive a full years' credit for these costs. Moreover, the magistrate did not credit him for similar expenditures, despite acknowledging that he incurred them.

{¶41} We find no abuse of discretion. This specific argument was not raised in Christopher's objections to the Magistrate's Decision, and so may be deemed waived for the purpose of appeal. Civ.R. 53(D)(3)(b)(ii) ("[a]n objection to a magistrate's decision shall be specific and state with particularity all grounds for objection") and (iv) ("a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Civ. R. 53(D)(3)(b)"); *Triozzi-Hartman v. Hartman*, 11th Dist. No. 2006-G-2701, 2007-Ohio-5781, ¶ 14 (citations omitted). Moreover, the difference in Christopher's actual support obligation would be minimal. If the calculations are adjusted so that Kacee is only credited with 10 months of "extraordinary costs," Christopher's yearly support obligation would decrease by approximately $145, yielding a monthly obligation of $319.72 instead of the $331.80 determined by the magistrate. The effect of the relatively minor difference is ultimately nullified by the magistrate's decision to deviate downward on account of Christopher's extraordinary parenting time.

{¶42} With respect to Christopher's incidental expenditures, the magistrate noted that he did not provide "specific sums" that he had spent. Thus, there is no abuse of discretion in not crediting him for these sums.

{¶43} Christopher argues that Kacee should not have received credit for $50 per month for counseling with a social worker, since, pursuant to the August 2007 Shared Parenting Plan, Christopher is responsible for half of the uncovered medical expenses.

{¶44} We find no abuse of discretion. Assuming that counseling with a social worker is a medical expense, Kacee's testimony was that Christopher has not contributed to the expense.

{¶45} Christopher argues that Kacee's testimony regarding the $75 it costs her to pick the child up from the airport is not credible, and that the magistrate erroneously described this cost as a weekly expense.

{¶46} We find no abuse of discretion inasmuch as the magistrate did not consider this expense in her calculation of Christopher's support obligation as determined by the worksheet or cite it as a factor in her decision to deviate downward.

{¶47} Finally, Christopher argues that the amount of the downward deviation is not sufficient based upon the facts of this case, i.e., the parties' roughly equal incomes, Christopher's extensive parenting time, and Christopher's payment of all transportation costs since August 2007.

{¶48} We find no abuse of discretion. The magistrate deviated from the $331.80 support figure as determined by the worksheet by reducing the monthly obligation by $81.80, a difference of $981.60 over the course of a year, or approximately one-fourth of the original support figure. This deviation is a reasonable offset for Christopher's extended parenting time during the summer. Throughout most of the year, Christopher has the minor child on alternating weekends, which is consistent with the standard order of visitation when both parents live in close proximity to each other. We further note that the magistrate credited Christopher with the cost of airfare as an "extraordinary cost" when determining the amount of support according to the worksheet. Thus, there is nothing unfair in the magistrate's decision not to further compensate Christopher for this expense in the downward deviation.

{¶49} The first assignment of error is without merit.

{¶50} In his second assignment of error, Christopher argues the trial court erred by failing to require the parties to submit the dispute to mediation, as provided for in the

Shared Parenting Plan, prior to the commencement of the administrative review process and/or court action.

{¶51} In the present case, the magistrate acknowledged in her Decision that the Shared Parenting Plan provides that "claims or controversy arising under this * * * Agreement * * * shall be promptly submitted to mediation." The magistrate concluded, nonetheless, that she had jurisdiction to address the support issue: "the history of the case tells this Magistrate that these parties are probably not proper parties for mediation, at least regarding the child support issues."

{¶52} The magistrate's conclusion is correct. The Ohio Supreme Court has held: "In a domestic relations case, matters of child custody and parental visitation are not subject to arbitration." *Kelm v. Kelm*, 92 Ohio St.3d 223, 749 N.E.2d 299 (2001), syllabus. The Court explained that "[t]he authority to resolve disputes over custody and visitation rests exclusively with the courts," and "[a]ny agreement to the contrary is void and unenforceable." *Id.* at 228.

{¶53} The Shared Parenting Plan does not actually provide for binding or mandatory mediation, which would be void under *Kelm*. Rather, the Plan describes mediation as "a voluntary process" and the mediator's role as "assist[ing] the parties in resolving all issues submitted for mediation." As a practical matter, the parties did engage in mediation subsequent to the February 2010 hearing and the issuance of the Magistrate's Decision in April 2010, apparently without result. Finally, we note that Christopher has not abided by the mediation provision, inasmuch as he filed a Motion to Show Cause against Kacee within months of executing the Shared Parenting Plan.

{¶54} The second assignment of error is without merit.

{¶55} In the third assignment of error, Christopher argues the trial court erred by taking into consideration Kacee's claim that she was coerced into accepting the Shared Parenting Plan, including the waiver of child support, in order to avoid a citation for contempt. Christopher maintains that, by acknowledging that the claim was made in her Decision, the magistrate took it into consideration and allowed it to impact her judgment.

{¶56} We disagree. The magistrate acknowledged Kacee's claim of coercion in a single sentence. The magistrate neither approved nor rejected the claim and does not mention the claim again in the Decision. There is no reason to believe that Kacee's claim had any effect on the Magistrate's Decision.

{¶57} The third assignment of error is without merit.

{¶58} For the foregoing reasons, the Judgments of the Ashtabula County Court of Common Pleas, adopting the Magistrate's Decision and overruling Christopher's Objections thereto, are affirmed. Costs to be taxed against the appellant.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.