[Cite as *Dressler v. Dressler*, 2004-Ohio-2072.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

LAURA J. DRESSLER nka BEASLEY,	:	
Plaintiff-Appellee,	:	CASE NO. CA2003-05-062
	:	O P I N I O N
-vs-		4/26/2004
	:	
DAVID S. DRESSLER,	:	
Defendant-Appellant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS,
DOMESTIC RELATIONS DIVISION
Case No. 94DR20107

Laura J. Dressler nka Beasley, 3388 Chestnut Landing Drive, Maineville, OH 45039, pro se

David S. Dressler, P.O. Box 11, Loveland, OH 45140, pro se

POWELL, J.

{¶1} Appellant, David Dressler, appeals the decision of the Warren County Court of Common Pleas, Domestic Relations Division, denying his motion for a reduction in child support. We affirm the domestic relations court's decision.

{¶2} Appellant's marriage to appellee, Laura Beasley (formerly Laura Dressler), was dissolved in 1995. Pursuant to a

shared parenting plan, custody of the parties' two children was granted to appellant with visitation rights to appellee.

{¶3} In February 2002, the domestic relations court found appellant in contempt for failure to pay medical bills. The court modified the parties' shared parenting plan, granting custody of the children to appellee, and ordering appellant to pay child support. Appellant was later found in contempt for failure to pay child support. That decision was upheld by this court.

{¶4} In February 2003, appellant filed a motion for a reduction in child support. After a hearing, a magistrate denied appellant's motion. After a hearing on appellant's objections to the magistrate's decision, the domestic relations court overruled appellant's objections and adopted the magistrate's decision. Appellant now appeals, assigning one error as follows:

> "THE COURT DID ERR BY DENYING APPELLANT'S BUSINESS DEDUCTIONS CLAIMED ON APPELLANT'S FEDERAL TAX RETURN FOR THE PURPOSE OF CALCULATING CHILD SUPPORT."

{¶5} In this assignment of error, appellant argues that the domestic relations court erred in refusing to reduce the amount of his child support obligation. Specifically, appellant argues that the court should have taken into account certain business losses in calculating his income for child support purposes.

{¶6} It is well-settled that a trial court's decision on a motion to modify child support will not be reversed absent an abuse of discretion. Booth v. Booth (1989), 44 Ohio St.3d 142, 144. An abuse of discretion is more than an error of law or judgment; rather, it implies that the decision was unreasonable, arbitrary, or unconscionable. Blakemore v. Blakemore (1983), 5 Ohio St.3d 217, 219.

{¶7} R.C. 3119.01 defines "income" for the purpose of calculating child support as "either of the following: (a) For a parent who is employed to full capacity, the gross income of the parent; (b) For a parent who is unemployed or underemployed, the sum of the gross income of the parent and any potential income of the parent." R.C. 3119.01(C)(5).

{¶8} "Gross income" is defined as "the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable[.]" R.C. 3119.01(C)(7). "'Gross income' includes *** self-generated income; and potential cash flow from any source." Id.

{¶9} When determining the gross income of a self-employed parent, the trial court is to deduct ordinary and necessary expenses from the parent's gross receipts. Foster v. Foster, 150 Ohio App.3d 298, 2002-Ohio-6390, at ¶19. R.C. 3119.01(C)-(9)(a) provides as follows: "'Ordinary and necessary expenses incurred in generating gross receipts' means actual cash items expended by the parent or the parent's business[.]"

{¶10} A trial court is not required to "blindly accept all of the expenses *** deducted in previous [tax] returns as ordinary and necessary expenses incurred in generating gross receipts." Flege v. Flege, Butler App. No. CA2001-09-225, 2002-Ohio-6105, ¶20, quoting Cutter v. Cutter (Jan. 31, 1994), Butler App. No. CA93-05-091. Federal and state tax documents provide a proper starting point for calculating a parent's income, but they are not the sole factor for the trial court to consider. Foster, 150 Ohio App.3d 298, 2002-Ohio-6390, at ¶12, citing Houts v. Houts (1995), 99 Ohio App.3d 701, 706. In many cases, income for child support purposes is not equivalent to the parent's taxable income. Foster at ¶13.

{¶11} Appellant's primary source of income is his employment as a security systems installer. Appellant also owns a "boat storage facility." At the April 23, 2003 hearing on his objections to the magistrate's decision, appellant testified that the facility was located on a lake in Tennessee. Appellant initially described the facility as an "endeavor." He later stated that owning the facility was not a hobby, but a business. He further testified that "things *** [were] not looking well" for the facility, and that it did not look like the facility would produce income "for quite sometime in the future." Appellant did express hope that he could expand the facility to include more units, and that the facility would eventually produce a profit. However, due to his low level of income, appellant stated that "there's not really *** much I

can do with it." Appellant provided the domestic relations court with past tax returns indicating that he sustained net losses on the facility of $10,846 in 2000, $11,253 in 2001, and $13,253 in 2002.

{¶12} The record shows that the domestic relations court considered appellant's claim of legitimate business deductions. The court specifically noted the losses appellant claimed on his federal and state tax returns. However, the court found that appellant should not be allowed to offset his income with those losses "to the detriment of his child support obligation." The court found that appellant's boat storage "endeavor" was "more of a hobby" than a business, and that the losses were "not properly deducted from his income." The court used appellant's income without the deductions to calculate his child support obligation. Pursuant to R.C. 3119.79, the court denied appellant's motion after determining that the new child support amount was not ten percent less than the current order.

{¶13} Appellant argues that the domestic relations court should have deducted the losses from his boat storage facility in calculating his income for child support purposes. Appellant argues that the court lacked "[s]ubject [m]atter [j]urisdiction as to what constitutes a business for federal tax purposes," that the court "stepped outside the bounds of its authority," and that "primary jurisdiction lies [with] the Commissioner of the Internal Revenue Service."

{¶14} Contrary to appellant's contention, the domestic relations court did not "step outside" the bounds of its authority. The court was not determining income for federal tax purposes, but for child support purposes. The court was not required to deduct appellant's losses from his income simply because they were claimed on his federal tax returns. While a tax return is obviously helpful in figuring income, the court was within its authority to independently determine appellant's income in accordance with Ohio child support law. See Foster, 150 Ohio App.3d 298, 2002-Ohio-6390, at ¶13; Helfrich v. Helfrich (Sept. 17, 1996), Franklin App. No. 95APF12-1599.

{¶15} We find no abuse of discretion in the court's determination that appellant's operation of the boat storage facility was not a business whose losses should be deducted from income for child support purposes. "While business losses are one of the items included in the [child support] worksheet, the [trial] court has the right to determine whether a venture is a business or a hobby." Zuppardo v. Zuppardo (Mar. 7, 1997), Allen App. No. 1-96-58, 1997 WL 101773, at *3, citing Clarridge v. Clarridge (Sept. 23, 1994), Union App. No. 14-94-10. Given appellant's testimony at the April 23, 2003 hearing, we do not find unreasonable the court's conclusion that appellant's operation of the boat storage facility was "more of a hobby" than a business. We find it reasonable not to allow a child support obligor to reduce his child support by deducting losses from a consistently unprofitable endeavor that is not

the obligor's primary source of income. See Clarridge, Union App. No. 14-94-10. Allowing such deductions would clearly be contrary to the best interest of the children being supported.

{¶16} Calculating appellant's income without deducting the losses from the boat storage facility, the domestic relations court properly determined that appellant's child support would not be ten percent less than the current order. Therefore, appellant could not show the change of circumstances required for a modification. See R.C. 3119.79. Accordingly, the court properly denied appellant's motion to reduce his child support. Appellant's sole assignment of error is overruled.

{¶17} The judgment is affirmed.

Judgment affirmed.

YOUNG, P.J., and WALSH, J., concur.