

[Cite as *Macke v. Macke*, 2004-Ohio-2074.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

LISA M. MACKE, :
 : CASE NO. CA2003-08-070
 Plaintiff-Appellant, : (Accelerated Calendar)
 :
 -vs- : O P I N I O N
 : 4/26/2004
 :
 SCOTT A. MACKE, :
 :
 Defendant-Appellee. :

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS,
DOMESTIC RELATIONS DIVISION
Case No. 2001 DRA 00698

Thomas J. Ruwe, 211 Columbia Wooster Building, 5710 Wooster
Road, Cincinnati, OH 45227, for plaintiff-appellant

Marsha R. Meyer, 8070 Beechmont Avenue, Cincinnati, OH 45255,
for defendant-appellee

YOUNG, P.J.

{¶1} Plaintiff-appellant, Lisa Macke, appeals the decision
of the Clermont County Court of Common Pleas, Domestic
Relations Division, granting her former husband a deviation
from the statutory child support guidelines. We reverse and
remand the case for further consideration and the proper
calculation of child support.

{¶2} Appellant and Scott Macke were married on May 6, 1989. Brandon was born issue of the marriage on November 18, 1989. Tyler was born out of wedlock on February 14, 1988. However, Scott adopted Tyler after the parties married.

{¶3} On May 23, 2001, appellant filed a complaint for divorce. The parties entered into stipulations regarding all the facts required for the child support worksheet through line 23. The decision of the magistrate on divorce was entered on March 28, 2003. However, each of the parties filed objections to the magistrate's decision. On June 5, 2003, the trial judge entered a decision overruling all objections, but modifying the magistrate's decision to correct an arithmetic mistake in the child support calculations.

{¶4} On July 21, 2003, the court entered a decree of divorce. The trial court granted a downward deviation in Scott's child support to Brandon because appellant and Scott have equal time with Brandon. Appellant appeals from this decision raising a single assignment of error:

"THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF-APPELLANT BY CALCULATING CHILD SUPPORT WITHOUT USING A WORKSHEET IDENTICAL IN CONTENT AND FORM TO THAT SET FORTH IN O.R.C. 3119.022, AND THEREBY FAILING TO ORDER CHILD SUPPORT IN THE AMOUNT OF \$554.92 PER MONTH FOR TWO CHILDREN."

{¶5} Appellant argues that "when a court calculates the amount of child support to be paid pursuant to a child support

order in a proceeding in which one parent is the residential parent and legal custodian of all of the children who are subject of the child support order, the court shall use a worksheet identical in content and form to that set forth in O.R.C. 3119.022. If the court deviates from the sole residential parent support amount shown on line 23c because that amount would be unjust or inappropriate, the court (1) must enter findings of fact supporting its determination that the worksheet amount is not in the best interest of the children; and (2) must state specific facts and monetary values on Line 24 of the worksheet."

{¶6} Generally, courts use the Ohio Child Support Guidelines in ascertaining the appropriate level of child support. Coleman v. Campbell, Geauga App. No. 2001-G-2401, 2002-Ohio-3841, at ¶12, citing Hurdelbrink v. Hurdelbrink (1989), 45 Ohio App.3d 5. However, a court may deviate from these guidelines at its discretion, upon consideration of the statutory factors listed in R.C. 3119.23, and upon a determination that the amount calculated would be unjust or inappropriate and would not be in the best interest of the child. R.C. 3109.22 and Coleman, citing Carpenter v. Reis (1996), 109 Ohio App.3d 499, 504.

{¶7} Absent an abuse of discretion, a trial court's determination in this regard will not be disturbed on appeal. Pauly v. Pauly, 80 Ohio St.3d 386, 390, 1997-Ohio-105. An abuse of discretion implies that the trial court's attitude was

unreasonable, arbitrary, or unconscionable. Blakemore v. Blakemore (1983), 5 Ohio St.3d 217, 219. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. Pons v. Ohio State Med. Bd., 66 Ohio St.3d 619, 621, 1993-Ohio-122.

{¶8} R.C. 3119.022 governs procedures for awarding and calculating child support. Its provisions are mandatory in nature and must be followed literally and technically in all material respects because the overriding concern is the best interest of the child for whom the support is being awarded. Coleman, ¶13, citing Marker v. Grimm (1992), 65 Ohio St.3d 139, 141-142. If the trial court makes the proper calculations on the applicable worksheet, the amount shown is "rebuttably presumed" to be the correct amount of child support due. R.C. 3119.03. Furthermore, a party who attempts to rebut the basic child support guideline amount has the burden of presenting evidence which proves that the calculated award is unjust, inappropriate or not in the best interest of the child. Coleman, ¶13.

{¶9} R.C. 3119.23 enumerates the factors to be considered by a court, prior to deviating from the amount of support that would otherwise result from the use of the schedule, where such amount would be unjust or inappropriate and would not be in the best interest of the child. These factors include any special and unusual needs of the children; extraordinary obligations relative to other children not of the marriage; other court-

ordered payments; extended times of visitation or extraordinary costs associated with visitation; additional employment undertaken to support another family; financial resources and earning ability of the children; disparity in incomes of the parties; benefits conferred by living arrangements of the parties; taxes to be paid by each parent; in-kind contributions; the financial resources of each parent; the standard of living the children would have enjoyed but for the separation of the parties; physical and emotional needs of the children; educational needs and opportunities of the children; responsibility of each parent for support of another person; and any other relevant factor. R.C. 3119.23(A)-(P).

{¶10} After determining the initial calculation on the worksheet, the court may consider factors that lean toward deviation from this amount. In doing so, "the court must first set forth the presumed amount as set forth in Ohio's Child Support Guidelines. Then, the court must find and state that this amount would be unjust or inappropriate and that this amount would not be in the child's best interests. In addition, the court must set forth findings of fact supporting this determination and the basis for the deviation. R.C. 3119.22 and 3119.23. The worksheet contains a line, presently line 24.a., on which the court must specifically enter the amount of the deviation. The worksheet then has a line where the court must input the final figure of child support, which is the presumed amount minus or plus the deviation amount."

Tarr v. Walter, Jefferson App. No. 01 JE 7, 2002-Ohio-3188,

¶12. (Emphasis added.)

{¶11} In the case at bar, the trial court created three different child support worksheets. One worksheet was created with Scott as the obligor for both children. The second worksheet was created with Scott as the obligor for one child.

The third worksheet was created with appellant as the obligor for one child. On each of the three child support worksheets, \$0.00 was entered on line 24. The court then subtracted the amount that appellant "owed" Scott from the amount Scott "owed" appellant according to the single child worksheets. The trial court then granted a downward deviation in Scott's child support.

{¶12} R.C. 3119.022 requires the trial court to calculate, on line 24, the amount of child support deviation, once it determines that it should deviate from the amount shown on the worksheet. Without completing a line 24 calculation, the magistrate declared that the amount of child support was unjust and not in the best interest of the children. Although there is no bright-line test for determining the amount of a child support deviation, we conclude that, based on the facts of this case, the trial court abused its discretion when it deviated the amount of child support without completing the mandatory child support worksheet. See Walker v. Walker, Delaware App. No. 02CAF04019, 2002-Ohio-5293, at ¶29; Blakemore, 5 Ohio St.3d at 219. See Pauly, 80 Ohio St.3d at 390.

{¶13} Accordingly, appellant's sole assignment of error is sustained. The judgment of the trial court is reversed and remanded for further consideration and the proper calculation of child support.

{¶14} The judgment is reversed and the cause is remanded.

Judgment reversed
and cause remanded.

POWELL and WALSH, JJ., concur.