[Cite as *Dario v. Colliver*, 2010-Ohio-5310.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

LISA B. DARIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-03-047
	:	O P I N I O N
- vs -		11/1/2010
	:	
THOMAS L. COLLIVER,	:	
Defendant-Appellant.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR05-01-0025

Lisa B. Dario, 4245 Pheasant Trail Ct., Hamilton, Ohio 45011, plaintiff-appellee, pro se

Thomas L. Colliver, 7186 Lakota Ridge Drive, Hamilton, Ohio 45011, defendant-appellant, pro se

BRESSLER, J.

{¶1} Defendant-appellant, Thomas L. Colliver, appeals pro se from the decision of the Butler County Court of Common Pleas, Domestic Relations Division, modifying his child support obligations following his divorce from defendant-appellee, Lisa B. Dario. For the reasons outlined below, we reverse and remand for further proceedings.

{¶2} Colliver (Husband) and Dario (Wife) were married on September 21, 1996. The marriage produced two children, Cali, born June 7, 1999, and Nathan, born January 9, 2001. After agreeing to a shared parenting plan outlining Husband's child

support obligations, the parties divorced on March 7, 2005.

{¶3} As pertinent to this appeal, Between May 8, 2009 and August 14, 2009, Husband and Wife filed a total of 24 motions requesting, among a litany of other things, a modification of Husband's child support obligations. Due to the voluminous filings from both parties, the magistrate held a three-day motion hearing that concluded on September 15, 2009. Relevant during the motion hearings was the parties' annual child care expenses.

{¶4} On October 14, 2009, the magistrate filed a decision granting Husband's request to be "responsible for payment of all work-related day care costs for the children." The magistrate then found the parties' "annual day care costs for the children are $206 per week during the school and $625 for the summer for a total of $8,865 per year." [sic] After adjusting the annual day care costs, the magistrate modified Husband's child support payments from $969 per month to $663 per month.

{¶5} On October 28, 2009, Husband filed a lengthy objection to the magistrate's decision arguing that the magistrate "incorrectly calculated annual childcare costs," and therefore, improperly modified his child support obligations. In a decision filed February 1, 2010, the trial court overruled Husband's objection to the magistrate's decision.

{¶6} Husband now appeals, raising four assignments of error. For ease of discussion, Husband's assignments of error will be addressed out of order and his first and second assignments of error will be addressed together.

{¶7} Assignment of Error No. 3:

{¶8} "THE TRIAL COURT LATER MODIFIED ITS ORDER SUCH THAT PLAINTIFF ALSO PAY PART OF THE WORK RELATED CHILDCARE COSTS."

{¶9} In his third assignment of error, although not presenting any real contention for our review, Husband discusses matters that occurred in the trial court

after he filed his notice of appeal. While we may agree with Husband that the trial court's actions occurring after his notice of appeal was filed shed some light on the matters presently before this court, we find it necessary to inform him that this court is only permitted to "[r]eview and affirm, modify, or reverse *the judgment or final order appealed*." (Emphasis added.) See App.R. 12(A)(1)(a). In turn, because Husband appealed from the trial court's February 1, 2010 order overruling his objections to the magistrate's October 14, 2009 decision, our review of this matter is thus similarly limited. Therefore, without providing any opinion regarding the trial court's actions subsequent to the filing of his notice of appeal, Husband's third assignment of error is overruled.

{¶10} Assignment of Error No. 4:

{¶11} "THE TRIAL COURT FURTHER ERRED IN ORDERING DEFENDANT TO CONTINUE TO SHARE THE COSTS OF CHILD CARE OR ANY OTHER EXPENSES WITH THE PLAINTIFF."

{¶12} In his fourth assignment of error, appellant asks "this court" to "terminate the child support order" so that "he may pay 100% of the children's child care and medical/dental/psychological expenses." Appellant's claim apparently stems from his continued misconception of the role of an appellate court. As noted above, this court has limited jurisdiction that allows us only to "[r]eview and affirm, modify, or reverse the judgment or final order appealed." Accordingly, Husband's fourth assignment of error is overruled.

{¶13} Assignment of Error No. 1:

{¶14} "THE TRIAL COURT DID NOT USE THE EVIDENCE PROVIDED TO CALCULATE THE ANNUAL COST OF THE WORK-RELATED CHILDCARE."

{¶15} Assignment of Error No. 2:

{¶16} "THE TRIAL COURT DID NOT LOWER DEFENDANT'S MONTHLY

CHILD SUPPORT BY AN AMOUNT SUFFICIENT TO COVER PLAINTIFF'S 50% RESPONSIBILITY OF THESE COSTS."

{¶17} In his first and second assignments of error, although not particularly clear, Husband claims that the trial court failed to properly account for the parties' annual child care expenses, and therefore, improperly calculated his child support obligation. In other words, Husband argues that the trial court's decision finding the parties' total annual child care expenses amounted to $8,865 was against the manifest weight of the evidence. We agree.

{¶18} It is well-established that "[t]he purpose of the child support system is to protect the child and his best interest." *Kauza v. Kauza,* Clermont App. No. CA2008-02-014, 2008-Ohio-5668, ¶10, quoting *Richardson v. Ballard* (1996), 113 Ohio App.3d 552, 555. A trial court's determinations with regard to child support obligations will not be reversed on appeal absent a showing of an abuse of discretion. *Van Osdell v. Van Osdell,* Warren App. No. CA2007-10-123, 2008-Ohio-5843, ¶20. However, while the standard of review for a trial court's child support determination is an abuse of discretion, challenges to factual determinations upon which the child support order is based, such as the case here, "are reviewed using the 'some competent credible evidence' standard." *Heywood v. Heywood*, Clermont App. No. CA2010-02-013, 2010-Ohio-3565, ¶12; *Faulkner v. Faulkner* (1996), 144 Ohio App.3d 216, 219. A judgment supported by some competent credible evidence will not be reversed by a reviewing court as against the manifest weight of the evidence. *Leeth v. Leeth*, Preble App. No. CA2009-02-024, 2009-Ohio-4260, ¶6; *Zornes v. Zornes*, Clermont App. No. CA2005-05-042, 2006-Ohio-877, ¶12.

{¶19} At the three-day motion hearing, Valarie Mason, the business director for the parties' day care provider, testified that one week of "before and after care" during

the school year costs $224.20, and that one week of "summer camp" costs $351. These figures, which Wife did not dispute, are confirmed in an invoice Husband received from the day care provider. No other evidence was presented regarding child care expenses, nor was there any evidence indicating the number of weeks the children would be attending their day care provider during the school year and summer break.

{¶20} In its October 14, 2009 decision, the magistrate found the parties' "annual day care costs for the children are $206 per week during the school and $625 for the summer for a total of $8,865 per year." ['sic] The magistrate then used these figures to calculate Husband's child support obligation. The trial court subsequently affirmed the magistrate's decision by overruling Husband's objection to the magistrate's calculations.

{¶21} After a thorough review of the record, we find the trial court erred in its calculations regarding the parties' annual child care expenses. As noted above, the evidence clearly indicates the parties' child care expenses totaled $224.20 per week during the school year and $351 per week when their children attend summer camp.[1] In turn, because there was no evidence presented to contradict these figures, nor was there any evidence presented indicating the number of weeks the children would be attending "before and after care" or "summer camp," we find the magistrate's decision finding the parties' child care expenses amounted to $8,865 per year was not supported by competent credible evidence, and therefore, was against the manifest weight of the evidence. Accordingly, Husband's first and second assignments of error are sustained, the trial court's decision affirming the magistrate's calculations relating to the parties' annual child care expenses is reversed, and this matter is remanded for further

1. While the invoice does indicate that "before/after" care during the school year costs $206, such figure fails to account for the $30 charge for "busing" and a $11.80 "family discount." Furthermore, while the

proceedings.

{¶22} Judgment reversed and remanded.

YOUNG, P.J., and POWELL, J., concur.

invoice does include a $50 "processing fee," there is no indication that such fee is charged for each week of care.