

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

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| SCOTT ALLEN BROWN, | : | CASE NO. CA2014-09-184 |
| Plaintiff-Appellant, | : | <u>O P I N I O N</u> |
| | : | 5/18/2015 |
| - VS - | : | |
| JAMIE LYNN BROWN, | : | |
| Defendant-Appellee. | : | |

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR09060685

Fred S. Miller, Baden & Jones Building, 246 High Street, Hamilton, Ohio 45011, for plaintiff-appellant

Muhammad Hamidullah, P.O. Box 1166, 616 Dayton Street, Hamilton, Ohio 45011, for defendant-appellee

S. POWELL, J.

{¶ 1} Plaintiff-appellant, Scott Allen Brown (Father), appeals from the decision of the Butler County Court of Common Pleas, Domestic Relations Division, modifying his monthly child support obligations to exclude a previously awarded downward deviation following his divorce from defendant-appellee, Jaime Lynn Brown (Mother). For the reasons outlined below, we affirm.

{¶ 2} Father and Mother, who were married on February 19, 2005, subsequently divorced on September 2, 2010. As part of the divorce decree, Mother was awarded custody of the parties' three minor children, whereas Father received parenting time. Father was also ordered to pay guideline child support in the amount of \$953.36 per month. However, finding the amount of guideline child support was unjust or inappropriate and not in the best interest of the children, the domestic relations court awarded Father a downward deviation of approximately 30%, reducing his child support obligation to \$663.00 per month.

{¶ 3} Several years later, on July 30, 2013, Father filed a pro se motion to modify his child support obligations due to his increased daycare and health insurance costs. After taking Father's motion under advisement, a domestic relations court magistrate issued a decision granting Father's motion to include these costs in calculating his child support obligation. However, upon finding previously awarded downward deviation was no longer warranted, the magistrate modified Father's child support obligation to \$916.34 per month. Father filed objections to the magistrate's decision, upon which the domestic relations court issued a decision remanding the matter to the magistrate with instructions to:

hear foundational testimony regarding the parties' income and expenses, to consider the evidence admitted of record and enter any additional evidence of record, to recalculate guideline support with the appropriate income figures if necessary, and then consider whether a deviation is appropriate.

{¶ 4} Upon remand, the magistrate conducted a two-day hearing that ultimately concluded March 25, 2014. Following this hearing, the magistrate issued a decision finding Father had failed to overcome the presumption of correctness as to the guideline child support amount and that any downward deviation from that amount would "be based upon some unproven and arbitrary application of an amount or percent." As a result, based upon Father's adjusted gross annual income of approximately \$61,000 and Mother's adjusted gross annual income of nearly \$30,000, the magistrate modified Father's child support

obligation to \$940.09 per month, or \$313.36 per child. Father again filed objections to the magistrate's decision, which the domestic relations court overruled, thereby affirming and adopting the magistrate's decision in its entirety.

{¶ 5} Father now appeals from the domestic relations court's decision modifying his monthly child support obligation to exclude the previously awarded downward deviation, raising one assignment of error for review.

¶ 6 THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF-APPELLANT WHEN IT REFUSED TO ALLOW A DEVIATION IN HIS CHILD SUPPORT OBLIGATION.

{¶ 7} Pursuant to R.C. 3119.22, a trial court may deviate from the standard child support order if, after considering the factors and criteria set forth in R.C. 3119.23, such an order would be unjust or inappropriate and would not be in the best interest of the children. *Ornelas v. Ornelas*, 12th Dist. Warren No. CA2011-08-094, 2012-Ohio-4106, ¶ 62, citing *Marker v. Grimm*, 65 Ohio St.3d 139, 143 (1992). In determining if a deviation is in the best interest of the children, R.C. 3119.23 sets forth a number of factors that the court may consider. *Vreeland v. Vreeland*, 12th Dist. Butler No. CA2011-12-238, 2012-Ohio-4222, ¶ 9. These factors include, but are not limited to, (1) extended parenting time or extraordinary costs associated with parenting time; (2) disparity in income between parties or households; (3) benefits that either parent receives from remarriage or sharing living expenses with another person; (4) significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing; (5) the relative financial resources, other assets and resources, and needs of each parent; (6) the standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued or had the parents been married; as well as, (7) any other relevant factor. See R.C. 3119.23(D), (G), (H), (J) thru (L), and (P).

{¶ 8} It is well-established that the purpose of the child support system is to protect the children and their best interests. *Mannerino v. Mannerino*, 12th Dist. Butler No. CA2010-08-210, 2012-Ohio-1592, ¶ 9; *Richardson v. Ballard*, 113 Ohio App.3d 552, 555 (12th Dist.1996). To that end, the trial court possesses considerable discretion in child support matters. *Pahls v. Pahls*, 12th Dist. Butler No. CA2009-01-005, 2009-Ohio-6923, ¶ 10. Therefore, matters involving child support are reviewed under an abuse of discretion standard. *Van Osdell v. Van Osdell*, 12th Dist. Warren No. CA2007-10-123, 2008-Ohio-5843, ¶ 20. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "A decision is unreasonable if there is no sound reasoning process that would support that decision." *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990).

{¶ 9} In his single assignment of error, Father argues the domestic relations court erred by modifying his child support obligation to exclude the previously awarded downward deviation. In support of this claim, Father asserts that such a modification was improper and the downward deviation should continue given (1) the slight reduction in his parenting time since the original divorce decree was issued; (2) the minimal monthly increase to his salary when compared to the substantial increase in Mother's salary; (3) the increased cost of medical insurance for the children; (4) his significant in-kind contributions to the children; and, (5) Mother's shared living expenses with her fiancé. We disagree.

{¶ 10} In finding the previously awarded downward deviation was no longer warranted, the magistrate found that even when accepting Father's claim that he and Mother had roughly equal parenting time, the record was devoid of any evidence that Father, who was entitled to two of the three dependency exemptions, incurred any extra expenses not also incurred by Mother. The magistrate also found Father's \$61,000 in gross annual income

more than doubled that of Mother's approximately \$30,000 in gross annual income. Expounding on this finding, the magistrate determined that even when considering the exchange of guideline child support, Father's gross annual income was still nearly \$12,000 more than Mother's, something which the magistrate found "[h]ardly equivalent."

{¶ 11} In addition, as it relates to the increased cost of medical insurance for the children, the magistrate found that this expense was marginal at approximately \$1,600 annually. Furthermore, as it relates to Father's claim that he provides significant in-kind contributions to the children, the magistrate found that there was nothing that compelled Father to pay anything over and above his monthly child support payments for the care of the children. Rather, the magistrate found "[h]is payments towards any of the other expenses are voluntary and discretionary." Finally, in regards to Father's claim that Mother receives a great benefit due to shared living expenses with her fiancé, the magistrate found "there is no evidence of this savings." As the magistrate stated, there was no evidence indicating "Mother has received significant in-kind contributions from her fiancé other than him covering costs for himself or his son that should be considered as income for child support purposes."

{¶ 12} In overruling Father's objections to the magistrate's decision, the domestic relations court also found that even though Father's parenting time had been reduced from roughly six overnight stays to five overnight stays every 14 days, the parties' incomes continue to be disparate. The domestic relations court further found that while Mother may receive some assistance in her living expenses from her fiancé, "the fiancé has a child in the household who also incurs living expenses." The domestic relations court also found that Mother pays most of the children's school lunches and fees, as well as transportation and dues relating to their extracurricular activities, although Father had paid "for one season of soccer fees and bought a pair of cleats."

{¶ 13} Continuing, the domestic relations court stated, in pertinent part, the following:

[Father] also asserts that he makes significant in-kind contributions to the children's expenses. The Court has reviewed the evidence and the record, and finds that his claim is not supported by the evidence. [Father's] contribution to the children's soccer fees and purchase of cleats is important; the children know that he is interested in their activities, and he likely has expertise in the sport as a coach.

However, these payments are not so significant as to justify a deviation when compared to the other expenses paid by the residential parent. The current child support formula permits for basic living expenses. It does not consider extracurricular expenses, and the statutory calculation has not been revised since 2001.

{¶ 14} Concluding, the domestic relations court found:

Relying most heavily on the disparity of income between the parties' households, the relative financial resources and needs of each parent based on the evidence provided, the absence of financial resources and earning ability of the children, the standard of living that they would enjoy had the parties remained married, a deviation from guideline support is no longer in the best interest of the minor children.

The Court has considered the in kind contributions of [Father]. While this is necessary and commendable, the in kind contributions are not of the extent to necessitate a deviation.

{¶ 15} After a thorough review of the record, we find no abuse of discretion in the domestic relations court's decision modifying Father's monthly child support obligation to exclude the previously awarded downward deviation. Again, as the record indicates, Father's gross annual income of over \$61,000 is double that of Mother's approximately \$30,000 gross annual income. Even when considering the exchange of guideline child support, Father's gross annual income was still nearly \$12,000 more than Mother's. Father did not dispute this finding as part of his objections to the magistrate's decision. As the magistrate found, and with which we agree, the differences between the parties' income is "[h]ardly equivalent."

{¶ 16} In addition, as it relates to Father's claim that a downward deviation is appropriate given Mother's shared living expenses with her fiancé, the magistrate found there

was no evidence to support this claim. In fact, Father did not provide any evidence regarding Mother's fiancé's annual income. Yet, even then, assuming Mother did receive some assistance from her fiancé, the domestic relations court found "the fiancé has a child in the household who also incurs living expenses." The domestic relations court also found that Mother pays for most of the children's school lunches and fees, as well as transportation and dues relating to their extracurricular activities. Although Father claims otherwise, "it is the role of the trier of fact to weigh the testimony and credibility of witnesses, and to resolve any disputes of fact." *Kranz v. Kranz*, 12th Dist. Warren No. CA2008-04-054, 2009-Ohio-2451, ¶ 11.

{¶ 17} Finally, while the record does support Father's claim that he made some in-kind contributions to the children, we agree with the domestic relations court's decision finding these voluntary contributions did not necessitate the continuation of the downward deviation. The same is true regarding the marginal increase in the children's health insurance costs. As this court has stated previously, "although the trial court is permitted to deviate from the standard child support worksheet upon finding one or more of the factors listed in R.C. 3119.23 are present, 'one is not automatically entitled to a downward deviation merely because a factor is present.'" *Keith v. Keith*, 12th Dist. Butler CA2010-12-335, 2011-Ohio-6532, ¶ 18, quoting *Mitchell v. Mitchell*, 11th Dist. Lake No. 2009-L124, 2010-Ohio-2680, ¶ 28. Therefore, because the domestic relations court possesses considerable discretion in determining child support issues, having found no abuse of that discretion in the domestic relations court's decision, Father's single assignment of error is without merit and overruled.

{¶ 18} Judgment affirmed.

PIPER, P.J., and M. POWELL, J., concur.