

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

WENDY DORAN,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-04-027
	:	<u>OPINION</u>
- vs -	:	2/23/2015
	:	
ERIC DORAN,	:	
Defendant-Appellant.	:	

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 2012 DRA 1294

M. Erin Wilkins, 510 Washington Avenue, Newport, KY 41071, for plaintiff-appellee
Donald W. White, 237 Main Street, Batavia, Ohio 45103, for defendant-appellant

HENDRICKSON, J.

{¶ 1} Defendant-appellant, Eric Doran (Father), appeals from a decision of the Clermont County Court of Common Pleas, Domestic Relations Division, establishing his child support obligation to plaintiff-appellee, Wendy Doran (Mother), following the parties' divorce.

{¶ 2} Mother and Father were married in 2001, and two children were born during the marriage. In September 2012, Mother filed a complaint for divorce, and in October 2012, Father counterclaimed for divorce. The parties stipulated to numerous issues pertaining to

the division of marital property and assets. The parties also stipulated to shared parenting, but did not agree on a parenting schedule or financial matters such as child support or spousal support. As a result, the trial court held a hearing on September 19, 2013. Mother and Father were the only two witnesses to testify at the hearing.

{¶ 3} Mother testified she obtained a bachelor's degree in sociology in 2000, and had completed some course work towards a master's degree. For the past eight years, Mother has been employed as a child-care provider at the Goddard School, where she earns \$12.75 an hour. Mother testified that this is the most money she has made during the parties' marriage. Mother also testified that her children attended preschool at the Goddard School when they were younger. Though the children currently attend another school, both children still attend the Goddard School's before-school and after-school day-care program during the school year and attend the Goddard School's summer camp during summer break. Because of her employment, Mother receives a 75 percent discount on child-care costs. The child-care cost is automatically deducted from her paychecks before taxes are withdrawn. Mother testified that the yearly child-care expense for the Goddard School is \$3,740, which reflects her 75 percent discount. Mother also testified that she provides dental insurance for the children at a cost of \$374.04 per year. Copies of Mother's paychecks from the Goddard School, as well as her tax information for 2010, 2011, and 2012 were entered into evidence. According to Mother's 2012 W-2 Wage and Tax Statement, Mother's annual salary was \$24,988.18, before taxes and her pretax deductions for dental care, child care, and her 401K. Mother estimated that her monthly expenses are approximately \$4,145, and she sought spousal support in the amount of \$1,000 per month for four years.

{¶ 4} Father testified he has worked for his family business, Doran Transfer & Rigging Co., LLC, for over 20 years. Father drives tractor-trailers and operates heavy equipment, such as cranes, and earns \$22.19 per hour. Father's company provides him with

a vehicle to drive and pays for his gas, insurance (including health insurance for the children), and cell phone. Father estimates the value of these items is approximately \$670 a month. Copies of Father's paychecks from Doran Transfer & Rigging as well as his tax information for 2010, 2011, and 2012 were entered into evidence. Father's W-2s indicate he earned approximately \$72,250 in 2010, \$77,500 in 2011, and \$73,000 in 2012. With respect to his 2013 income, Father indicated he earned less money as he had shoulder surgery and drew disability income for approximately four-to-six months. Father also indicated his 2013 income was less because President Obama had "really put a hurting on the construction industry."

{¶ 5} After hearing the aforementioned testimony, the trial court issued a decision which denied Mother's request for spousal support. The court further found that Mother and Father were both the residential parents and legal custodians of the minor children, and it ordered that the children divide their time equally between the parties under a "2/2/3" schedule where, on alternating weeks, the children are with Father from Monday at 8 a.m. through Wednesday at 8 a.m., and from Friday at 8 a.m. through Monday at 8 a.m. From Wednesday at 8 a.m. through Friday at 8 a.m., the children reside with Mother. The following week, the schedule swaps and the children are with Father from Monday at 8 a.m. through Wednesday at 8 a.m. and are with Mother from Wednesday 8 a.m. through Friday 8 a.m. and from Friday 8 a.m. through Monday 8 a.m.

{¶ 6} As to the calculation of child support, the trial court found that Mother's total gross income, including taxable and nontaxable income, was \$37,780 per year and Father's gross income was \$78,087.11. With respect to Mother's gross income, the trial court noted that Mother earns an income of \$26,520 from her employment (of which \$6,222.62 is sheltered from income tax for her 401K, dental insurance, and child-care expenses) and an additional nontaxable income of \$11,260 related to child-care costs. The court further noted that Mother provides dental insurance at a marginal cost of \$374.04 per year and pays her

employer a related child-care expense of \$3,740 per year. With respect to Father's gross income, the trial court found that Father earns \$46,155 per year, plus an additional \$26,810.72 in earnings from overtime and bonuses, and an additional nontaxable income of \$8,040 related to the expenses his company covers for insurance, a cell phone, and gas.

{¶ 7} Using the above figures and two worksheets, one with Mother as the sole residential parent and legal custodian and one with Father as the sole residential parent and legal custodian, the trial court calculated the parties' respective child support obligations. In calculating child support, the trial court noted:

Each party is required to pay child support in accordance with the child support schedule; neither party is entitled to an automatic credit. Either party's child support obligation may be deviated if child support in accordance with the worksheet would be unjust or inappropriate to either party or to the children or if the child support in accordance with the worksheet would not be in the children's best interest.

Mother's income was found to be 33 percent of the family's total income while Father's income was 67 percent of the family's income. Father's support obligation, including a two percent processing fee, was found to be either \$1,220.67 or \$1,134.85 per month, depending on whether or not Father provided private health coverage. If private health insurance was no longer provided for the children, Father was responsible for an additional \$197.45 per month in cash medical support. Mother's support obligation was calculated as \$3,910.42 per year, but the trial court ultimately found it was in the children's best interest to reduce her support obligation to zero. Specifically, the court found as follows:

Based upon the evidence presented and considering the disparity in income between the parents, the allocation of parenting time, and the allocation of school and extracurricular activities and fees, the child support obligation calculated for Mother would be unjust, inappropriate and not in the children's best interest. It is in the children's best interest to reduce Mother's child support obligation to zero. Father's child support obligation is not deviated.

The court, therefore, ordered Father to pay Mother child support in the amount of \$1,220.67

a month, plus \$244.13 a month in arrearages, for a total monthly order of \$1,464.80.¹ The court then ordered that "other expenses," such as the children's public school fees, school supplies, field trip expenses, and extracurricular fees and expenses, be paid "in accordance with each party's percentage of income," with Mother paying 33 percent and Father paying 67 percent of the expense.

{¶ 8} Thereafter, on March 14, 2014, the trial court issued a Decree of Divorce and the Final Decree of Shared Parenting, which incorporated the court's previous decision on divorce. Father timely appealed, raising as his sole assignment of error the following:

{¶ 9} THE TRIAL COURT ERRED BY REDUCING MOTHER'S CHILD SUPPORT OBLIGATION TO ZERO.

{¶ 10} Within his assignment of error, Father argues that the trial court abused its discretion by reducing Mother's child support obligation to zero based upon the parties' disparity of income, the allocation of parenting time, and the allocation of school and extracurricular activities and fees. Father contends that by reducing Mother's support obligation to zero, the trial court has effectively increased Mother's annual income to \$52,140, which represents 45 percent of the family's income, while Father's income has decreased to \$63,726, which represents 55 percent of the family's income. Father contends that such a result is unreasonable given that he and Mother have equal parenting time under the shared parenting plan. Father also contends that the deviation was unreasonable given that Mother has been ordered to pay only 33 percent of the "other expenses" relating to the children's extracurricular and schooling.

{¶ 11} A trial court's determinations regarding child support obligations will not be reversed on appeal absent a showing of an abuse of discretion. *Rotte v. Rotte*, 12th Dist.

1. If private insurance is no longer provided Father was ordered to pay \$1,134.85 a month, plus \$226.97 in arrearages and \$197.45 in cash medical support, for a total monthly order of \$1,559.27.

Butler No. CA2004-10-249, 2005-Ohio-6269, ¶ 20, citing *Booth v. Booth*, 44 Ohio St.3d 142, 144 (1989). An abuse of discretion is more than an error of law or judgment; it requires a finding that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "A trial court's judgment is unreasonable when it lacks a rational basis * * * or there is no sound reasoning process to support it." *York v. York*, 12th Dist. Clermont No. CA2011-03-016, 2011-Ohio-5872, ¶ 8. However, "[i]t is not enough that the reviewing court, were it deciding the issue de novo, would not have found that reasoning process to be persuasive." *AAA Enterprises, Inc. v. River Place Comm. Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Id.*

{¶ 12} R.C. 3119.24, which governs an award of child support when a trial court issues a shared parenting order, provides in relevant part:

(A)(1) A court that issues a shared parenting order in accordance with section 3109.04 of the Revised Code shall order an amount of child support to be paid under the child support order that is calculated in accordance with the schedule and with the worksheet set forth in section 3119.022 of the Revised Code, through the line establishing the actual annual obligation, *except that, if that amount would be unjust or inappropriate to the children or either parent and would not be in the best interest of the child because of the extraordinary circumstances of the parents or because of any other factors or criteria set forth in section 3119.23 of the Revised Code, the court may deviate from that amount.*

(2) The court *shall consider extraordinary circumstances and other factors or criteria if it deviates from the amount described in division (A)(1) of this section* and shall enter in the journal the amount described in division (A)(1) of this section its determination that the amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting its determination.

(Emphasis added.) The "extraordinary circumstances of the parents" contemplated by R.C. 3119.24 include (1) the amount of time the children spend with each parent, (2) the ability of

each parent to maintain adequate housing, (3) each parent's expenses, including child-care expenses, school tuition, medical expenses, dental expenses, and any other expenses the court finds relevant, and (4) "any other circumstances the court deems relevant." R.C. 3119.24(B)(1)-(5).

{¶ 13} Accordingly, pursuant to the above statute, while a deviation from the amount of child support calculated using the R.C. 3119.022 worksheet is not mandatory, the court may deviate a parent's child support obligation where the court finds that the amount of child support would be unjust or inappropriate and not in the best interest of the children. See *Hubin v. Hubin*, 92 Ohio St.3d 240 (2001); *Pauly v. Pauly*, 80 Ohio St.3d 386 (1997); *McNabb v. McNabb*, 12th Dist. Warren Nos. CA2012-06-056 and CA2012-06-057, 2013-Ohio-2158. Here, the record reflects that the trial court acted within its discretion when it deviated Mother's child support obligation to zero. The trial court deviated Mother's child support only after concluding that the scheduled amount "would be unjust, inappropriate and not in the children's best interest." In reaching this determination, the court considered the extraordinary circumstances of the parents, including the disparity in income between the parents, the allocation of parenting time, and the allocation of school and extracurricular activities and fees.

{¶ 14} We find that the trial court's decision to deviate Mother's child support obligation to zero is rational and supported by a sound reasoning process. Though Father takes issue with the trial court's reference to the "allocation of parenting time" as a basis for the deviation, it is clear that the court considered this factor in combination with the parties' disparity in income and respective obligations to pay school and extracurricular expenses. When viewing these considerations as a whole, we find that the trial court did not err in deviating Mother's child support obligation. The record demonstrates that Mother's income is significantly less than Father's income and includes over \$11,000 in imputed income based

upon the child-care discount that she receives as a result of her employment. The record further demonstrates that Mother retains custody of the children for half of the year and is responsible for providing dental insurance for the children as well as paying for daycare expenses. Additionally, Mother is responsible for paying 33 percent of the children's school and extracurricular fees and expenses. These expenses, along with Mother's comparatively smaller yearly income and the costs associated with having custody of the children 50 percent of the time, provide a rational basis for the trial court to conclude that it was in the children's best interest to deviate Mother's support obligation to zero.

{¶ 15} Father's assignment of error is, therefore, overruled.

{¶ 16} Judgment affirmed.

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