

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KIMBERLY L. (MALONE) LOW

Plaintiff-Appellee

-vs-

GERALD D. MALONE

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P. J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 08 CA 79

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Domestic Relations Division, Case
No. 05 DR 380

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 16, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

GERALD D. MALONE

PRO SE

459 Carpenter Ridge

Columbus, Ohio 43228

Wise, P. J.

{¶1} Appellant Gerald D. Malone appeals from his divorce in the Fairfield County Court of Common Pleas, Domestic Relations Division. Appellee Kimberly L. Malone nka Low is appellant's former spouse. The relevant facts leading to this appeal are as follows.

{¶2} Appellant and appellee were married in 1992. Two children were born of the marriage.

{¶3} On July 28, 2005, appellee filed a divorce complaint in the Fairfield County Court of Common Pleas, Domestic Relations Division. On August 25, 2005, appellant filed an answer and counterclaim. On September 22, 2005, the court issued temporary orders.

{¶4} The matter proceeded to a bench trial on March 7, 2008 and May 13, 2008. The trial court issued a written decision on October 29, 2008, which included a direction to plaintiff's counsel to prepare a final decree for approval.

{¶5} On February 8, 2009, the trial court issued a decree of divorce between the parties. Inter alia, appellee was named the residential parent and legal custodian of the parties' two children. The trial court further ordered appellant to pay child support as follows:

{¶6} "16. The court hereby orders the Defendant to pay Child Support of \$278.00 per child (2) per month plus processing charge for a total obligation of \$567.28 for any time Defendant is not providing medical insurance. When Defendant is not providing medical insurance, he shall also pay cash medical of \$1,670.00 per year plus processing charge of \$69.58 per month per child (2). Cash medical payments shall be

applied to uninsured medical expenses. During times the children are covered by private medical insurance, the Defendant shall owe child Support of \$303.28 per month per child (2) plus processing charge. The Child Support provision in this decision shall be effective September 30, 2005 and arrears from the Temporary Order shall be preserved.” Decree of Divorce at 4-5.

{¶17} Appellant timely filed a notice of appeal. He herein raises the following seven Assignments of Error:

{¶18} “I. ON AUGUST 2, 2007 THE COURT ORDERED COUNSELING FOR THE APPELLANT AND HIS CHILDREN TO COMMENCE IMMEDIATELY. AT THE TIME OF THIS FILING THE APPELLEE HAS NOT PERMITTED THE APPELLANT ANY COMMUNICATION OR VISITATION WITH HIS MINOR CHILDREN NOR HAS COURT ORDERED COUNSELING BETWEEN HIMSELF AND HIS CHILDREN TRANSPIRED.

{¶19} “II. IN CALCULATING THE APPELLANT’S INCOME THE COURT RELIED HEAVILY ON PLAINTIFF’S EXHIBIT 4 (ORIGINAL PLAINTIFF’S EXHIBIT A), AN INCOME AND EXPENSE STATEMENT OF ACCOUNT FROM P.B. EXPRESS, FOR THE YEAR 2004. THIS STATEMENT IS AN OVERVIEW OF COMPANY DEDUCTIONS TAKEN DIRECTLY FROM THE DRIVER’S PAYCHECK AND DOES NOT FULLY DEPICT THE OVERALL EXPENSES INCURRED DURING THE SPECIFIC TIME PERIOD DETAILED.

{¶10} “III. THE COURT’S DECISION DATED OCTOBER 29, 2008 SETS FORTH A FINANCIAL OBLIGATION UNDER FRANKLIN COUNTY COURT OF COMMON PLEAS INSTEAD OF THE FAIRFIELD COUNTY COURT OF COMMON

PLEAS FOR CHILD SUPPORT. ADDITIONALLY THE ORDER OBLIGATES THE APPELLANT TO PAY FOR UNREASONABLE HEALTH CARE COVERAGE EXPENSES, AS WELL AS, CASH PAYMENTS FOR ANY UNINSURED MEDICAL EXPENSES.

{¶11} “IV. COURT ERRED BY FAILING TO INCLUDE A CHILD SUPPORT GUIDELINE WORKSHEET IN THE FINAL JUDGMENT ENTRY DECREE OF DIVORCE RECORD TO SUPPORT ITS CALCULATION.

{¶12} “V. THE COURT’S DECISION, DATED AUGUST 29, 2008, DID NOT INCLUDE THE AGREEMENT ENTERED UPON DURING THE TRIAL (SIC) ON MAY 13, 2008 REGARDING POSSESSION OF CIVIL WAR AGE BLANKET CHEST GIVEN TO THE APPELLANT BY HIS GRANDFATHER.

{¶13} “VI. THE APPELLANT HAS UNDERGONE TREATMENT FOR DEGENERATIVE DISC DISEASE WHICH BEGAN MANIFESTING ITSELF DURING THE COURSE OF THE MARRIAGE IN NOVEMBER 1999 AT WHICH TIME LIGHT DUTY WAS RECOMMENDED. SINCE THAT DATE THE APPELLANT HAS EXPERIENCED CHRONIC, PAINFUL AND ONGOING SYMPTOMS RESULTING FROM THIS CONDITION. MEDICAL AND CREDIBLE PROOF OF EXISTING PHYSICAL DISABILITIES, ALTHOUGH AVAILABLE INCLUDING MRI IMAGES TAKEN IN 2005 AND AGAIN IN 2008, WERE NOT PRESENTED DURING THE MAY 13, 2008 TRIAL DUE TO THE FACT THAT IT WAS UNDERSTOOD, BY AGREEMENT BETWEEN BOTH REPRESENTING ATTORNEYS, THAT FINANCIAL CONCERNS WERE THE ONLY ISSUES TO BE BROUGHT TO JUDGE MOWRY’S ATTENTION AND CONSIDERATION. ADDITIONALLY, AN OPPORTUNITY OR REQUEST FOR

ADDITIONAL PRODUCTION OF DOCUMENTS WAS NOT AFFORDED TO THE APPELLANT ON THE DATE OF TRIAL OR ANY TIME THERE AFTER (SIC).

{¶14} “VII. THE COURT ERRED IN FINDING THE APPELLANT IN CONTEMPT AS ALLEGED BY THE APPELLEE IN HER MOTION OF FEBRUARY 3, 2006 FOR NON-PAYMENT OF SPOUSAL SUPPORT, CHILD SUPPORT AND ATTORNEY FEES.”

I.

{¶15} In his First Assignment of Error, appellant appears to allege that appellee has not allowed court-ordered visitation or counseling.

{¶16} Ohio Constitution Art. IV, § 3(B)(2), reads in pertinent part: “Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district * * *.” Appellant herein fails to articulate a claimed error from the judgment entry under appeal; he instead is apparently seeking a contempt remedy from this Court.

{¶17} We find we lack jurisdiction to address appellant’s First Assignment of Error.

IV.

{¶18} In his Fourth Assignment of Error, appellant contends the trial court erred in failing to attach a support guideline worksheet to the final decree.

{¶19} Appellant correctly recites that a child support guideline computation worksheet must be completed and made a part of the trial court's record. See *Cutlip v. Cutlip*, Richland App.No. 02CA32, 2002-Ohio-5872, citing *Marker v. Grimm* (1992), 65

Ohio St.3d 139, 139, 601 N.E.2d 496, at paragraph one of the syllabus; R.C. 3119.022. However, in the case sub judice, the final decree of February 9, 2009 reiterated the child support order in the court's judgment entry of October 29, 2008, which did incorporate a guideline worksheet. We therefore find sufficient compliance under these circumstances with the rule set forth in *Cutlip*.

{¶20} Appellant's Fourth Assignment of Error is overruled.

II., III., V., VI., VII.

{¶21} In his Second, Third, Fifth, Sixth and Seventh Assignments of Error, appellant challenges various aspects of the trial court's orders pertaining to child support, health insurance, and property division, as well as the contempt finding rendered against him in the final decree.

{¶22} We note a trial court is provided with broad discretion in deciding what is equitable in domestic relations matters, including issues of child support, upon the facts and circumstances of each case. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 541 N.E.2d 1028. Furthermore, our standard of review regarding a finding of contempt is limited to a determination of whether the trial court abused its discretion. *Wadian v. Wadian*, Stark App.No. 2007 CA 00125, 2008-Ohio-5009, ¶ 12, citing *In re Mittas* (Aug. 6, 1994), Stark App.No.1994 CA 00053. Moreover, a review of the file in the case sub judice reveals that appellant has failed to provide us with a transcript of the relevant trial court proceedings pursuant to App.R. 9(B) and App.R. 10(A). Therefore, this Court has no choice but to presume the validity of the lower court's proceedings, and affirm as to these issues. See *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197,199.

{¶23} Accordingly, appellant's Second, Third, Fifth, Sixth, and Seventh Assignments of Error are overruled.

{¶24} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, Fairfield County, Ohio, is affirmed.

By: Wise, P. J.

Edwards, J., and

Delaney, J., concur.

/S/ JOHN W. WISE_____

/S/ JULIE A. EDWARDS_____

/S/ PATRICIA A. DELANEY_____

JUDGES

JWW/d 617

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO
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KIMBERLY L. (MALONE) LOW

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-vs-

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JUDGMENT ENTRY

Case No. 08 CA 79

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, Fairfield County, Ohio, is affirmed.

Costs assessed to appellant.

/S/ JOHN W. WISE_____

/S/ JULIE A. EDWARDS_____

/S/ PATRICIA A. DELANEY_____

JUDGES