

[Cite as *Saylor v. Saylor*, 2009-Ohio-3109.]

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

MARY E. SAYLOR

Plaintiff-Appellee

-vs-

RICHARD L. SAYLOR, JR.

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. CT2008-0039

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common  
Pleas, Domestic Relations Division, Case  
No. DA2007-0978

JUDGMENT:

Affirmed in Part; Reversed in Part and  
Remanded

DATE OF JUDGMENT ENTRY:

June 24, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

THOMAS M. MILLS  
1105 Maple Avenue  
Zanesville, Ohio 43701

*Wise, J.*

{¶1} Appellant Richard L. Saylor, Jr. appeals from his divorce in the Muskingum County Court of Common Pleas, Domestic Relations Division. Appellee Mary E. Saylor is appellant's former spouse. The relevant facts leading to this appeal are as follows.

{¶2} Appellant and appellee were married on November 10, 2003 in Tennessee. One minor child was born to the parties prior to the marriage; two more minor children were born during the marriage.

{¶3} On November 19, 2007, appellee filed a divorce complaint in the Muskingum County Court of Common Pleas, Domestic Relations Division. On January 25, 2008, appellant, with leave of court, filed an answer and counterclaim instanter. On February 13, 2008, the court issued temporary orders, which, inter alia, designated appellee the temporary residential parent and calculated appellant's child support obligation as \$211.82 per month per child.

{¶4} The matter then proceeded to a bench trial on May 29, 2008. On July 29, 2008, the trial court issued an amended decree of divorce between the parties. Inter alia, appellee was named the residential parent and legal custodian of the three children. The trial court further found the amount of child support set forth in the temporary orders, to-wit \$211.82 per month per child, to be the order of child support effective June 1, 2008.

{¶5} On August 8, 2008, appellant filed a notice of appeal. He herein raises the following two Assignments of Error:

{¶6} “I. THE TRIAL COURT ABUSE (SIC) ITS DISCRETION (SIC) BY ADOPTING AS THE COURT’S FINAL CHILD SUPPORT ORDER THE TEMPORARY CHILD SUPPORT ORDER WHICH WAS BASED ON THE CHILD SUPPORT COMPUTATION WORKSHEET ATTACHED TO PLAINTIFF’S COMPLAINT THAT INCORRECTLY STATED THE ANNUAL AMOUNT OF CHILD CARE PAID BY PLAINTIFF.”

{¶7} “II. THE TRIAL COURT ABUSE (SIC) ITS DISCRETION (SIC) BY ADOPTING AS THE COURT’S FINAL CHILD SUPPORT ORDER THE TEMPORARY CHILD SUPPORT ORDER WHICH WAS BASED ON THE CHILD SUPPORT COMPUTATION WORKSHEET ATTACHED TO PLAINTIFF’S COMPLAINT THAT INCORRECTLY STATED THE ANNUAL MARGINAL COST PAID BY PLAINTIFF FOR HEALTH INSURANCE COVERAGE FOR THE PARTIES’ CHILDREN.”

I.

{¶8} In his First Assignment of Error, appellant challenges the trial court’s computation of child support to be paid by appellant, specifically on the basis of day care costs.

{¶9} Line 19 of the guideline worksheet set out in R.C. 3119.022 addresses annual child care expenses. A percentage of this amount is factored into the obligor’s annual support obligation on line 21.

{¶10} In the case sub judice, the trial court utilized a figure of \$12,840.00 on line 19. Appellant points out that appellee testified on cross-examination that she had paid just \$1,000.00 out-of-pocket for day care as of the trial date (about \$2,450.00

annualized). See Tr. at 42. The remainder has apparently been subsidized by her parents. Id.

{¶11} 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, the trier of fact is in a far better position to observe the witnesses' demeanor and weigh their credibility. *Kraft v. Regan*, Stark App.No. 2006CA00362, 2007-Ohio-6113, ¶20, citing *State v. DeHass* (1967), 10 Ohio St .2d 230, 227 N.E.2d 212.

{¶12} Under the circumstances of this case, we hold the trial court may have properly reasoned, within its discretion, that the grandparent day care “subsidy” was not guaranteed in the future, and that such burden would be borne by both parents as per the statutory worksheet.

{¶13} Accordingly, appellant’s First Assignment of Error is overruled.

## II.

{¶14} In his Second Assignment of Error, appellant challenges the trial court’s computation of child support to be paid by appellant, specifically as to the children’s health insurance costs.

{¶15} Line 20 of the guideline worksheet set out in R.C. 3119.022 addresses annual marginal costs to provide health insurance for the children under the support order. A percentage of this amount is again factored into the obligor’s annual support obligation on line 21.

{¶16} We note appellee herein has not filed a response brief in this appeal. App.R. 18(C) states in pertinent part: “If an appellee fails to file her brief within the time provided by this rule, or within the time as extended, the appellee will not be heard at oral argument except by permission \* \* \*; and in determining the appeal, the court may accept the appellant’s statement of the facts and issues as correct and reverse the judgment if appellant’s brief reasonably appears to sustain such action.”

{¶17} As appellant notes, appellee testified that her annual marginal cost to insure the children (medical, dental, and vision) is \$1,534.00, not \$3,600.00 as factored by the trial court. See Tr. at 44. Furthermore, we note the record contains a written pre-trial stipulation to the \$1,534.00 figure. See Stipulation and Joint Exhibits, February 15, 2008.

{¶18} Pursuant to App.R. 18(C), we are inclined to find merit in appellant’s argument on this issue. Appellant’s Second Assignment of Error is therefore sustained.

{¶19} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, Muskingum County, Ohio, is affirmed in part, reversed in part, and remanded with directions to recalculate child support using the figure of \$1,534.00 as the marginal cost for the provision of the children’s health insurance.

By: Wise, J.  
Hoffman, P. J., and  
Edwards, J., concur.

/S/ JOHN W. WISE

/S/ WILLIAM B. HOFFMAN

/S/ JULIE A. EDWARDS

JUDGES

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

MARY E. SAYLOR

Plaintiff-Appellee

-vs-

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JUDGMENT ENTRY

Case No. CT2008-0039

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, Muskingum County, Ohio, is affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion.

Costs to be split evenly between appellee and appellant.

/S/ JOHN W. WISE

/S/ WILLIAM B. HOFFMAN

/S/ JULIE A. EDWARDS

JUDGES