[Cite as *Harhay v. Harhay*, 2010-Ohio-2241.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

PHILIP HARHAY	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 09-CA-194
JULIE L. HARHAY	:	
	:	
	:	
Defendant-Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Domestic Division Case Nos. 2006DR01491 & 2006DR01497
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	May 10, 2010

APPEARANCES:

For Plaintiff-Appellant:	For Defendant-Appellee:
RICHARD P. PINHARD 0019041 1140 Unizan Plaza Canton, Ohio 44702	ARNOLD F. GLANTZ 0033356 4883 Dressler Rd. N.W. Canton, Ohio 44718

Delaney, J.

{¶1} Plaintiff-Appellant, Philip Harhay, appeals the judgment of the Stark County Court of Common Pleas, Family Court Division, overruling his motion to set aside the magistrate's decision ordering Appellant to pay $700 a month in child support, in addition to 68 percent of all child care, extracurriculars and all other out-of-pocket costs.

{¶2} The parties were married on September 23, 2000, and had two children. On December 1, 2006, Appellant filed for divorce. On October 1, 2007, a decree of divorce was granted. Appellant was ordered to pay child support in the amount of $1,050.00 per month for both children. Appellee was to pay all child care expenses.

{¶3} On October 3, 2008, Appellee filed a motion to modify shared parenting with respect to child support, visitation, and the school district of the children. On October 24, 2008, Appellant also filed a motion for modification of the shared parenting plan and modification of child support and the tax exemptions.

{¶4} On April 30, 2009, the magistrate heard arguments of both parties concerning their motions. The parties agreed to the modification of parenting time; however, the court decided the issue of child support. Based upon a recommendation of the guardian ad litem, parenting time was altered so that Appellant would have custody of the children from Thursday after school until Monday morning on the weekends that he was scheduled to be with the children.

{¶5} The magistrate revised Appellant's child support obligation. Appellant was ordered to pay $700.00 a month for both children, as well as 68% of all child care

expenses, extracurricular and out-of-pocket expenses, finding this revision to be in the children's best interests.

{¶6} Appellant objected to the magistrate's order, arguing that it increased Appellant's monthly support obligation. Specifically, Appellant stated that his parenting time increased, and that therefore his financial obligation should decrease.

{¶7} On June 29, 2009, the trial court heard arguments on the magistrate's order. On June 30, 3009, the court overruled Appellant's objections.

{¶8} Appellant challenges the ruling of the trial court, raising three Assignments of Error:

{¶9} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW BY FAILING TO ATTACH A CHILD SUPPORT GUIDELINE WORKSHEET TO THE JUDGMENT ENTRY.

{¶10} "II. THE TRIAL COURT ERRED BY REQUIRING APPELLANT TO PAY, IN ADDITION TO CHILD SUPPORT, 68 PERCENT OF CHILD CARE, EXTRACURRICULAR, AND ALL OTHER "OUT-OF-POCKET" EXPENSES.

{¶11} "III. THE TRIAL COURT DID NOT SUFFICIENTLY DEVIATE FROM APPELLANT'S CHILD SUPPORT OBLIGATION BASED ON HIS EXTENDED PARENTING TIME."

I.

{¶12} Appellant claims the trial court erred in failing to attach a child support worksheet in ordering the amount of child support. We disagree.

{¶13} "A child support computation worksheet, required to be used by a trial court in calculating the amount of an obligor's child support obligation in accordance

with R.C. 3113.215, must actually be completed and made a part of the trial court's record." *Marker v. Grimm* (1992), 65 Ohio St.3d 139, 601 N.E.2d 496, paragraph one of the syllabus. Failure to complete and include the worksheet in the record constitutes reversible error. *McClain v. McClain* (1993), 87 Ohio App.3d 856, 623 N.E.2d 242. While *Marker* addressed the prior version of R.C. 3113.215, which the General Assembly repealed on March 22, 2001, "the modern version of the support guideline statute, R.C. 3119.022, continues to mandate that a court or agency calculating child support 'shall use a worksheet.' Therefore, we find the rule of *Marker* applicable to R.C. 3119.022." *Cutlip v. Cutlip*, 5th Dist. No. 02CA32, 2002-Ohio-5872, ¶ 8.

{¶14} In the present case, on April 30, 2009, the magistrate ordered that Appellant should pay child support in the amount of $700.00 a month, commencing on May 1, 2009. The magistrate also ordered that he should pay 68 percent of all "child care, extracurricular, and all other out of pocket costs."

{¶15} The magistrate did not attach the child support computation worksheet as required by R.C. 3119.022.

{¶16} The trial court, in adopting the magistrate's findings and overruling Appellant's objections, however, did attach the worksheet, which was filed on June 30, 2009, along with the trial court's judgment entry.

{¶17} We find that the trial court's attachment of the child support computation worksheet to its judgment entry satisfied the requirements of R.C. 3119.022, as the magistrate's order was not finalized until the trial court entered a judgment entry adopting the magistrate's order.

{¶18} Appellant's first assignment of error is overruled.

II.

{¶19} In Appellant's second and third assignments of error, he argues that the trial court erred in deviating from Appellant's child support obligation and by modifying the shared parenting agreement by requiring him to pay, in addition to $700.00 per month in child support, 68 percent of child care, extracurricular, and all other "out-of-pocket" expenses.

{¶20} Trial courts are given broad discretion in determining whether to modify child support orders and determining child support. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144, 541 N.E.2d 1028, 1030. Therefore, a trial court's decision regarding a motion to modify a child support order will not be overturned absent an abuse of discretion. *Pauly v. Pauly* (1997), 80 Ohio St.3d 386, 390, citing *Booth*, supra.

{¶21} Typically, child support 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." R.C. 3119.24(A)(1).

{¶22} When deviating from the amount of child support determined by the worksheet, a court may consider numerous factors, including the disparity in income between parties or households; the need and capacity of the child for an education and the educational opportunities that would have been available to the child had the

circumstances requiring a court order for support not arisen; and any other factor the court deems relevant. R.C. 3119.23(G), (N), and (P).

{¶23} The parties had previously negotiated in their original shared parenting plan that Appellee would be responsible for the costs of "child care" and that Appellant would pay child support in the amount of $1050.00 per month. Both parties, however, filed motions for modification of the shared parenting plan and child support.

{¶24} R.C. 3109.04(E)(2)(b), which governs the modification of shared parenting agreements, provides:

{¶25} "(b) The court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time if the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree. Modifications under this division may be made at any time. The court shall not make any modification to the plan under this division, unless the modification is in the best interest of the children."

{¶26} This Court has previously held that "child support is subject to modification under the guidelines despite negotiated child support obligations in a separation agreement." *Weisgerber v. Weisgerber*, 5th Dist. No. 05CAF110074, 2006-Ohio-5628, ¶96, citing *Forest v. Forest* (1993), 82 Ohio App.3d 572, 612 N.E.2d 815.

{¶27} While the magistrate's order and the trial court's judgment entry in the present case are both lacking in specificity as to why they determined it was in the best interests of the children to deviate from the worksheet and to increase the overall

amount that Appellant pays monthly, we find support in the record for the trial court's decision.

{¶28} In 2008, Appellant's gross income was $64,819.82 and Appellee's was only $21,252.00. This disparity, coupled with the steadily increasing costs of child care and educational costs, including sending one of the parties' children to kindergarten, provided a sufficient basis for the trial court's decision. In addition, extracurricular and out-of-pocket expenses are necessarily included within the nature of child care expenses or can be considered relevant by the trial court, particularly as children develop interests and participate in activities beyond school and day care.

{¶29} Moreover, Appellant cites to no case law to support his argument that because his time with his children was extended approximately seventy-two hours a month, that the amount of his financial support of his children should be diminished. A trial court should balance all the factors in R.C. 3119.24 when a shared parenting plan is involved, and the fact alone Appellant enjoyed more parenting time with his children is not determinative. *Sexton v. Sexton*, 10th Dist. App. 07AP-396, 2007-Ohio-6539, ¶13.

{¶30} Accordingly, we find that the trial court did not abuse its discretion and the second and third assignments of error are overruled.

{¶31} The judgment of the Stark County Court of Common Pleas, Family Court Division is affirmed.

By: Delaney, J.

Gwin, P.J. and

Farmer, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

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

PHILIP HARHAY	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JULIE L. HARHAY	:	
	:	
Defendant-Appellee	:	Case No. 09-CA-194
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas, Family Court Division is affirmed. Costs assessed to Appellant.

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HON. PATRICIA A. DELANEY

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HON. W. SCOTT GWIN

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HON. SHEILA G. FARMER