[Cite as *Baughman v. Baughman*, 2015-Ohio-864.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KERRY BAUGHMAN	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
DAWN BAUGHMAN	:	Case No. 14-CA-81
	:	
Defendant-Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 2003 DR 00366 DF
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	March 10, 2015

APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellant
DEBORAH L. KENNEY One South Park Place Newark, OH 43055	DAWN BAUGHMAN, Pro Se 8117 Arbor Rose Way Blacklick, OH 43004

Farmer, J.

{¶1} On February 29, 2000, appellant, Kerry Baughman, and appellee, Dawn Baughman, were married. Three children were born as issue of the relationship prior to the marriage, to wit: Mitchell born November 16, 1995, Jacob born July 4, 1997, and Gabriel born January 6, 2000. On March 20, 2003, appellant filed a complaint for divorce. A final decree of divorce and agreed shared parenting plan were filed on September 24, 2003. Appellant agreed to pay child support in the amount of $500.00 per month. This amount included a deviation of $111.72.

{¶2} On November 16, 2012, appellant was ordered to pay child support in the amount of $358.62 per month due to his unemployment, and $133.17 per month for arrearages.

{¶3} On November 16, 2013, the parties' eldest child turned eighteen and decided to live with appellant to complete his senior year in high school. On November 20, 2013, appellant filed a motion for modification of child support.

{¶4} On July 30, 2014, the Licking County Child Support Agency terminated support for the eldest child, reduced appellant's child support obligation to $239.08 per month, and increased his arrearage payment to $252.71 per month.

{¶5} On August 26, 2014, the trial court filed a judgment entry on appellant's motion for modification of child support. The trial court did not order appellee to pay child support for the eldest child, discontinued appellant's deviation in child support under the original child support order, and issued two support orders, one from the date the motion was filed (November 20, 2013) to the date the eldest child graduated from high school (May 26, 2014) in the amount of $291.95, and the second from May 27,

2014 onward for the remaining two children in the amount of $466.78 plus an arrearage amount of $93.36 per month. The first support order included a deviation of $145.97 per month which represented the eldest child's share of child support. Via a nunc pro tunc entry filed October 9, 2014, the trial court divided the income tax exemptions between the parties, granting the tax exemption for Mitchell and Jacob to appellant and the tax exemption for Gabriel to appellee.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶7} "THE COURT ERRED IN FAILING TO FIND THAT APPELLEE HAD A DUTY TO SUPPORT THE PARTIES' 18 YEAR-OLD SON WHO WAS ATTENDING AN ACCREDITED HIGH SCHOOL ON A FULL TIME BASIS AND WHO WAS RESIDING WITH HIM."

II

{¶8} "THE TRIAL COURT ERRED IN TREATING APPELLANT AS THE CHILD SUPPORT OBLIGOR IN THIS CASE WHEREIN THE PARTIES ENJOY 50% SHARED PARENTING, AND APPELLEE HAS THE GREATER INCOME."

III

{¶9} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FAILING TO CONTINUE THE DEVIATION IN CHILD SUPPORT GRANTED TO APELLANT IN THE ORIGINAL AGREED SHARED PARENTING ARRRANGEMENT."

IV

{¶10} "THE TRIAL COURT ERRED IN FAILING TO PROPERLY CONSIDER AND APPLY R.C. 3119.24 IN DETERMINING WHETHER A CHILD SUPPORT DEVIATION SHOULD BE GRANTED IN THIS SHARED PARENTING CASE."

V

{¶11} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FAILING TO PROPERLY CONSIDER ALL OF THE FACTORS IN R.C. 3119.23 AND TO PROVIDE ANY DEVIATION IN CHILD SUPPORT TO APPELLANT WHEN HE HAS THE CHILDREN IN HIS CARE AND PROVIDES FOR THEIR SUPPORT 50% OF THE TIME PURSUANT TO A SHARED PARENTING PLAN."

VI

{¶12} "THE TRIAL COURT ERRED IN FAILING TO IMPUTE INCOME TO APPELLEE AND/OR IN REFUSING TO DEVIATE FROM THE GUIDELINES CHILD SUPPORT AMOUNT WHEN APPELLEE'S LIVING EXPENSES ARE PAID IN PART BY HER LIVE-IN BOYFRIEND."

VII

{¶13} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MODIFYING THE ALLOCATION OF INCOME TAX EXEMPTIONS AND IN AWARDING EXEMPTIONS TO APPELLEE."

I

{¶14} Appellant claims the trial court erred in failing to award him child support for the time the parties' eighteen year old son lived with him while he was finishing high school in violation of R.C. 3119.86. We disagree.

{¶15} Determinations on child support are within a trial court's sound discretion. *Booth v. Booth,* 44 Ohio St.3d 142 (1989). In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore,* 5 Ohio St.3d 217 (1983).

{¶16} R.C. 3119.86 states in part: "(A)(1) The duty of support to a child imposed pursuant to a court child support order shall continue beyond the child's eighteenth birthday only under the following circumstances: (c) The child continuously attends a recognized and accredited high school on a full-time basis on and after the child's eighteenth birthday."

{¶17} In its judgment entry filed August 26, 2014, the trial court determined the following:

> Mitchell Baughmen, the parties' eldest son, testified that after his eighteenth birthday that he moved in with the plaintiff and ceased his parenting time with the defendant. Mitchell Baughman acknowledged that it was his decision to terminate parenting time with his mother. This was consistent with the defendant's testimony that after her son turned eighteen (18), she was not able to compel him to spend time in her home. After terminating defendant's parenting time, the plaintiff was the primary person providing the care and support for this child until his emancipation.
>
> As a result, the Court finds it would not be appropriate for the plaintiff to pay child support for this child. However, the Court finds it

would also not be appropriate to offset the amounts of child support since the defendant continues to pay for the children's health insurance, uninsured medical expenses and extracurricular activities. *Hubin v. Hubin* (2000), 90 Ohio St.3d 1482; see also *Walker v. Walker,* 2002-Ohio-5293; *Mussleman v. Muscleman* (Nov. 20, 2001), 5th Dist. No. CT2001-0006.

The Court finds the appropriate amount for the deviation is the amount of child support otherwise required for the eldest child. The child support deviation shall be $145.97, when health insurance is being provided, and $115.62, when health insurance is not being provided.

The deviation is found to be just, appropriate and in the children's best interest and the reason for the deviation is the extended parenting time and support provided by the plaintiff. Further, without this deviation, the child support amount would be unjust, inappropriate and not in the children's best interest. The deviation will terminate with the emancipation of Mitchell Baughman, which occurred on May 27, 2014.

{¶18} The trial court's analysis of the parties' incomes and obligations was very specific. The underlying basis of the decision is predicated on two separate time periods: one from November 20, 2013 (filing of motion) to May 26, 2014 (the eldest child's graduation from high school) and the second from May 27, 2014 forward for the remaining two children.

{¶19} Child support for the eldest child was not ordered because although the child now lived with appellant, appellee was paying for the child's health insurance and

all of the uninsured medical expenses ever since appellant stopped paying in September 2011, in contravention of the original decree of divorce. T. at 24-25, 33-34, 140, 143, 153. Appellee paid $101.76 per month for health insurance for all the children, including the eldest child while he was living with appellant. T. at 24-25, 152. She also had a healthcare savings account through her employer amounting to $1,800.00 per year which could only be used for healthcare expenses. T. at 21, 179-180. Healthcare expenses for one child receiving monthly treatments were not covered by any insurance or the healthcare savings account and appellee was paying all of the expense out-of-pocket (approximately $162.00 per month). T. at 32-34, 79, 158-159, 181.

{¶20} Further, we note prior to filing his motion for modification of child support, appellant had an outstanding arrearage of $4,000.00, and the trial court reduced his monthly arrearage payment from $252.71 per month to $93.36 per month. T. at 129-130.

{¶21} Based upon the specific extensive reasons enumerated and discussed by the trial court, we find the trial court did not abuse its discretion in not ordering appellee to pay child support for the eldest son or in not ordering a set-off.

{¶22} Assignment of Error I is denied.

II, III, IV, V, VI

{¶23} Under these assignments, appellant challenges the trial court's decision to keep him as the child support obligor under the shared parenting plan, and to not properly address his request for a deviation pursuant to R.C. 3119.23 and 3119.24. We disagree.

{¶24} R.C. 3119.24 governs child support under shared parenting orders and states the following:

> (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.
>
> (B) For the purposes of this section, "extraordinary circumstances of the parents" includes all of the following:
>
> (1) The amount of time the children spend with each parent;

(2) The ability of each parent to maintain adequate housing for the children;

(3) Each parent's expenses, including child care expenses, school tuition, medical expenses, dental expenses, and any other expenses the court considers relevant;

(4) Any other circumstances the court considers relevant.

{¶25} R.C. 3119.23 governs factors considered for deviation and states the following:

The court may consider any of the following factors in determining whether to grant a deviation pursuant to section 3119.22 of the Revised Code:

(A) Special and unusual needs of the children;

(B) Extraordinary obligations for minor children or obligations for handicapped children who are not stepchildren and who are not offspring from the marriage or relationship that is the basis of the immediate child support determination;

(C) Other court-ordered payments;

(D) Extended parenting time or extraordinary costs associated with parenting time, provided that this division does not authorize and shall not be construed as authorizing any deviation from the schedule and the applicable worksheet, through the line establishing the actual annual

obligation, or any escrowing, impoundment, or withholding of child support because of a denial of or interference with a right of parenting time granted by court order;

(E) The obligor obtaining additional employment after a child support order is issued in order to support a second family;

(F) The financial resources and the earning ability of the child;

(G) Disparity in income between parties or households;

(H) Benefits that either parent receives from remarriage or sharing living expenses with another person;

(I) The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both of the parents;

(J) Significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing;

(K) The relative financial resources, other assets and resources, and needs of each parent;

(L) 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;

(M) The physical and emotional condition and needs of the child;

(N) 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;

(O) The responsibility of each parent for the support of others;

(P) Any other relevant factor.

{¶26} As we referenced in Assignment of Error I, the trial court engaged in an extensive discussion relative to the issue of child support obligor and the requested deviation from the child support guidelines.

{¶27} In is judgment entry filed August 26, 2014, the trial court denied the reinstatement of the deviation included in the original decree of divorce ($111.72), finding appellant failed to provide medical insurance since September 2011 in contravention of the decree of divorce causing appellee to pay $101.96 per month for medical insurance for the children, failed to reimburse appellee "for his share of the children's uninsured medical expenses and further refused to contribute to their extracurricular activities."

{¶28} We conclude these findings are sufficient valid factors not to reinstate the original deviation. As noted above, appellant is $4,000.00 in arrears on his child support obligation.

{¶29} As cited under Assignment of Error I, the trial court awarded a new child support deviation for the eldest child now living with appellant in the amount of $145.97 which "is the amount of child support otherwise required for the eldest child." The trial court found the deviation was "just, appropriate and in the children's best interest and the reason for the deviation is the extended parenting time and support provided by" appellant. *See,* Judgment Entry filed August 26, 2014. We find this deviation to be consistent with the trial court's reasoning and is appropriate.

{¶30} Appellant also argues a deviation is necessary because appellee lives with an unrelated male; however, the testimony was that they shared expenses. T. at 66-69.

{¶31} The trial court determined the new deviation with and without medical insurance ($145.97 with, $115.62 without). Appellant's child support obligation from November 20, 2013 until May 26, 2014 with the deviation was set at $291.95 with or $231.25 without per month. On May 27, 2014 and thereafter, appellant was ordered to pay $466.78 with or $361.71 without per month. The deviation was dropped after the eldest child's graduation from high school.

{¶32} As noted, the issue centers on who provides the medical insurance for the children. Appellee was forced to totally cover the healthcare costs for the children after appellant became unemployed in September 2011. Given the minimal income of each party, we find the trial court's decision is not inconsistent with the specifics of R.C. 3119.23 and 3119.24.

{¶33} Lastly, appellant argues he should not have been kept as the child support obligor under the shared parenting plan because of his diminished income and his assumption of custody of the eldest child for six months prior to his graduation/emancipation.

{¶34} Appellant has an income from Kroger's of approximately $16,848.00. T. at 113-116. The trial court took into consideration money appellant receives monthly from his mother ($850.00) as additional income, even though appellant characterized the money as a gift. T. at 115-116. Appellant agreed it was fair to add the $850.00 as

income. T. at 116. The differential in the parties' income is less than $8,000.00, and appellee is now solely responsible for the children's healthcare expenses.

{¶35} Upon review, we do not find the trial court's decisions on child support obligor, child support amount, and deviation to be an abuse of discretion. We find the trial court's decision is uniquely drafted to address the parties' ongoing and evolving situation.

{¶36} Assignments of Error II through VI are denied.

VII

{¶37} Appellant claims the trial court erred in failing to award him the income tax exemption for all three children, and claims the trial court erred in equalizing the income tax exemptions between the parties. We disagree.

{¶38} R.C. 3119.82 governs designation of parent who may claim children as dependents for federal income tax purposes and states the following:

> Whenever a court issues, or whenever it modifies, reviews, or otherwise reconsiders a court child support order, it shall designate which parent may claim the children who are the subject of the court child support order as dependents for federal income tax purposes as set forth in section 151 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. If the parties agree on which parent should claim the children as dependents, the court shall designate that parent as the parent who may claim the children. If the parties do not agree, the court, in its order, may permit the parent who is not the residential parent and

> legal custodian to claim the children as dependents for federal income tax purposes only if the court determines that this furthers the best interest of the children and, with respect to orders the court modifies, reviews, or reconsiders, the payments for child support are substantially current as ordered by the court for the year in which the children will be claimed as dependents. In cases in which the parties do not agree which parent may claim the children as dependents, the court shall consider, in making its determination, any net tax savings, the relative financial circumstances and needs of the parents and children, the amount of time the children spend with each parent, the eligibility of either or both parents for the federal earned income tax credit or other state or federal tax credit, and any other relevant factor concerning the best interest of the children.

{¶39} In its nunc pro tunc judgment entry filed October 9, 2014, the trial court stated the following:

> The plaintiff shall be entitled to claim any tax exemption for Mitchell Baughman.
>
> So long as there are two un-emancipated children who are subject to being claimed, other than Mitchell Baughman, the plaintiff is permitted to claim Jacob Baughman, provided that he is substantially in compliance with his child support order. Substantially in compliance is defined as having paid 90% of the child support obligation in the year in which the

> child will be claimed. The defendant is permitted to claim any child(ren) not eligible to be claimed by the plaintiff.
>
> So long as there is only one un-emancipated child subject to being claimed, other than Mitchell Baughman, the parties will alternate in claiming the tax exemption for this child. The plaintiff will be entitle to claim the child in the odd tax years and the defendant in the even tax years. In the event the plaintiff is not substantially in compliance with the child support order, he forfeits his right to claim a tax exemption for this child, during that year, and the defendant will be permitted to claim the exemption.

{¶40} Appellant received the tax exemption for the eldest child even though his custody of said child was only for six months. Although the child support guideline worksheet factored in monies from appellant's mother in determining appellant's income, his true income is $16,848.00 as opposed to appellee's income of $34,560.00 (which included the $1,800.00 for the health savings account which could only be accessed for qualifying healthcare expenses). With appellant receiving the tax exemption for the eldest child plus each party receiving an exemption for one child, appellant's taxable income is negligible (subtracting $3,950.00 per deduction times three: himself, Mitchell, and Jacob).

{¶41} Upon review, we find the trial court properly proportioned the income tax exemptions given the tax implications and the effects on each party.

{¶42} Assignment of Error VII is denied.

{¶43} The judgment of the Court of Common Pleas of Licking County, Ohio, Domestic Relations Division is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

SGF/sg 219