[Cite as *Boersma v. Brancatto*, 2013-Ohio-3052.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Loraine Brancatto	Court of Appeals No. L-12-1271
Appellee	Trial Court No. DR2007-0658
v.	
Jeffrey W. Boersma	**DECISION AND JUDGMENT**
Appellant	Decided: July 10, 2013

* * * * *

Richard H. Carr, for appellant.

Jay E. Feldstein and Edward J. Stechschulte, for appellee.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from an order of the Lucas County Common Pleas Court, Domestic Relations Division, denying a motion to modify child support. Because we conclude that the trial court properly overruled appellant's objections to a magistrate's decision, we affirm.

{¶ 2} Appellant, Jeffrey William Boersma, and appellee, Loraine Brancatto, were divorced in 2009 after a 12-year marriage. Appellee was named residential parent and legal custodian of the parties' two children. Appellant was ordered to pay $2,500 per month spousal support for four years and $2,550 per month in child support.

{¶ 3} On April 28, 2011, appellant moved to reduce his child support obligation, arguing that appellee, unemployed at the time of the divorce decree, was now employed and earned approximately $19,000 in 2010. Moreover, appellant noted, he was making substantially less than the $180,000 annual income imputed to him when the child support obligation was computed. This, appellant suggested, constituted a change of circumstances sufficient to allow a modification of the support order.

{¶ 4} A hearing on the motion was held before a magistrate. Following the hearing, the magistrate issued a decision in which she concluded appellant's present salary was of no significance because appellant had initially been found to be "voluntarily unemployed." The $180,000 income imputed to him was based on his prior earning history. The magistrate found no significance in the fact that the company from which appellant was voluntarily unemployed was no longer in business. Indeed, the magistrate noted, the lower salary appellant now claims is the amount he elects to pay himself from a company he is now buying.

{¶ 5} With respect to appellee's current income, the magistrate concluded that appellee's "future employment was contemplated at the time of the parties' divorce

therefore it is not a change of circumstance sufficient to modify [appellant's] child support obligation." The magistrate found appellant's motion not well-taken.

{¶ 6} Appellant objected to the magistrate's decision. In August 22 and August 29, 2012 entries, the court overruled appellant's objections and adopted the magistrate's decision. Appellant now brings this appeal.

{¶ 7} Appellant sets forth the following two assignments of error:

> I. The trial court erred and abused its discretion when it adopted the magistrate's decision dismissing appellant's motion to modify child support holding the appellee's future employment (subsequent to the judgment entry of divorce) was contemplated at the time of the parties [sic] divorce therefore it is not a change of circumstances sufficient to modify appellant's child support obligation.
>
> II. The trial court erred and abused its discretion when it adopted the magistrate's decision that appellant was voluntarily underemployed as a result of voluntarily resigning from employment with a company that subsequent to the judgment entry of divorce went completely out of business.

{¶ 8} When a trial court reviews objections to a magistrate's decision, review is de novo. Not only is the court not bound by the magistrate's decision, the court has an obligation to conduct an independent review as to the objected matters to ascertain

whether the magistrate has properly determined the facts and appropriately applied the law. Civ.R. 53(D)(4)(d); *Kovacs v. Kovacs*, 6th Dist. No. E-03-051, 2004-Ohio-2777, ¶ 6.

{¶ 9} When a court of appeals reviews the decision of a trial court overruling objections to a magistrate's decision, the standard of review is abuse of discretion. The trial court's ruling will not be disturbed absent an abuse of discretion. *Dulaney v. Taylor*, 10th Dist. No. 12AP–365, 2013-Ohio-1147, ¶ 7. An abuse of discretion is more than an error of law or lapse of judgment, the term connotes that the court's attitude was arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

I. Contemplation of Employment

{¶ 10} In his first assignment of error, appellant maintains that the trial court abused its discretion when it adopted the magistrate's finding that appellee's post-decree employment was contemplated at the time of the original support order.

{¶ 11} Either an obligor or obligee under a child support order may request a modification of the amount of that order. Modification may be ordered if there is a change of circumstance substantial enough to require modification. Such a change exists when a recalculated support amount is ten percent greater or lesser that the original award, R.C. 3119.79(A), and the change of circumstances "was not contemplated at the time of the issuance of the original child support order or the last modification * * *."

R.C. 3113.79(C). Both antecedents must be found before modification of the order is appropriate. *Bonner v. Bonner*, 3d Dist. No. 14-05-26, 2005-Ohio-6173, ¶ 11.

{¶ 12} In this matter, both the magistrate and the court referenced a statement in the spousal support section of the original divorce decision that appellee "acknowledged she will have to reenter the work force at some point 'when the children can ride their bikes.'" The statement, the magistrate and the court concluded, evidences contemplation by the court at the time of the original order that appellee would resume working. Since appellee working was in the contemplation of the court at the time of the original child support order, the fruition of this event is not sufficient to require a modification of the order.

{¶ 13} Appellant complains that the referenced statement is not even in the child support section of the order and generally complains that a suggestion of such contemplation is unsupported.

{¶ 14} We should note that a court has inherent authority to interpret its own orders. *Quisenberry v. Quisenberry*, 91 Ohio App.3d 341, 348, 632 N.E.2d 916 (2d Dist.1993). Thus, even if the language in the divorce decision did not make manifest the court's contemplation of appellee's employment, we would be hard pressed to find the court's interpretation of its own order erroneous. This is the same court and the same judge as issued the original decree. Accordingly, we conclude that the trial court acted within its discretion when in approved and adopted the magistrate's determination that

appellee's employment was in the contemplation of the court when the original child support order was entered. Appellant's first assignment of error is not well-taken.

II. Voluntary Unemployment

{¶ 15} In his second assignment of error, appellant complains that the magistrate's finding that he was "voluntarily underemployed" [sic] after the company from which he resigned went out of business was erroneous and the trial court's approval of this finding was an abuse of discretion.

{¶ 16} As the trial court noted, the magistrate made no finding that appellant was either voluntarily unemployed or voluntary underemployed. The magistrate observed that the $180,000 income imputed to him was because he had been found voluntarily unemployed in the original 2009 divorce decision. Appellant's argument that this finding should have been altered because the business he quit failed and he would have become unemployed anyway, the trial court characterized as "a nonsequitur." Rejection of such an argument, in our view, was well within the trial court's discretion. Accordingly, appellant's remaining assignment of error is not well-taken.

{¶ 17} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J. _____
JUDGE

Stephen A. Yarbrough, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE