

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

Cynthia T. Basista

Court of Appeals No. WD-13-081

Appellant

Trial Court No. 2011 DR 0103

v.

Michael H. Basista

DECISION AND JUDGMENT

Appellee

Decided: June 27, 2014

* * * * *

Martin J. Holmes, Sr. and Matthew O. Hutchinson, for appellant.

George E. Gerken, for appellee.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from the Wood County Court of Common Pleas, Domestic Relations Division, in which the trial court granted appellant, Cynthia Basista, and appellee, Michael Basista, a divorce from each other. Because we find that the trial court used outdated financial information in calculating child and spousal support, we vacate that portion of the decree and remand the matter for further proceedings.

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

I. The trial court erred in determining Michael's child support obligation based upon employment income of \$355,890 when his employment income at time of the filing of the Decree was \$765,849.

II. The trial court erred in determining Michael's spousal support obligation based upon employment income of \$355,890 when his employment at the time of the filing of the Decree was \$765,849.

III. The trial court erred in determining the child support and spousal support based upon Cynthia's imputed income of \$108,531 as a physician; the trial court did not find the requisite change of circumstances for an automatic reduction.

{¶ 3} The parties were married in 1989. They are parents of four minor children. Appellant filed for divorce from appellee in 2011. The trial court adopted the magistrate's conclusions regarding child support and spousal support.

{¶ 4} In appellant's first assignment of error, she contends that the trial court erred in computing child support. Specifically, appellant contends that the trial court failed to consider appellee's increased income between the time of the magistrate's decision and the final decree of divorce.

{¶ 5} A trial court in a domestic relations case "must have discretion to do what is equitable upon the facts and circumstances of each case," including on issues of child support. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). A trial

court's decision with respect to child support is reviewed on appeal under an abuse of discretion standard. *Id.*; *Miller v. Miller*, 6th Dist. Sandusky No. S-12-035, 2013-Ohio-5071, ¶ 37. The trial court, as the trier of fact, is in the best position to weigh the evidence and determine the credibility of the witnesses at trial. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

{¶ 6} R.C. 3119.02 requires that, “[i]n any action in which a child support order is issued or modified, * * * the court [] shall calculate the amount of the obligor's child support obligation in accordance with the basic child support schedule [and] the applicable worksheet[.]” In such circumstances a child support worksheet must be completed and made a part of the record. *Marker v. Grimm*, 65 Ohio St.3d 139, 141-142, 601 N.E.2d 496 (1992).

{¶ 7} On January 25, 2013, the magistrate calculated appellee's child support amount based on child support worksheets showing appellee's income to be \$358,897. Appellant filed timely objections to the decision. On March 27, 2013, appellant filed a motion asking the court to consider additional evidence. Specifically, appellant asked the court to consider the fact that since the issuance of the magistrate's decision, appellee's income had increased by approximately \$400,000. Over appellee's objections, the judge granted appellant's request.

{¶ 8} However, in the final decree of divorce, the trial judge relied on the child support worksheet used by the magistrate, which did not reflect appellee's increase in salary. Given the fact that the judge agreed to consider appellee's increase in income, a

new worksheet should have been completed and made a part of the record. “Without completing a new worksheet with current information, it [is] impossible for the court to know what amount was presumptively in the child’s best interest.” *Lawrence v. McCraw*, 11th Dist. Medina No. 10CA0079-M, 2011-Ohio-6334, ¶ 9. Accordingly, appellant’s first assignment of error is found well-taken.

{¶ 9} As appellant’s second and third assignments of error also address the trial court’s error in calculating spousal and child support based on outdated information regarding appellee’s income, we too find these assignments of error well-taken.

{¶ 10} The judgment of the Wood County Court of Common Pleas, Domestic Relations Division, is affirmed in part and reversed in part, and is remanded for proceedings consistent with this decision. Appellant and appellee are each ordered to pay one-half of the costs of this appeal pursuant to App.R. 24.

Judgment affirmed, in part
and reversed, in part.

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, J.

Thomas J. Osowik, J.

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

JUDGE

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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