[Cite as *MacFarlane v. MacFarlane*, 2010-Ohio-4900.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94758

WILLIAM N. MACFARLANE

PLAINTIFF-APPELLEE

vs.

MARIE CHRISTINE MACFARLANE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-294327

BEFORE: Kilbane, P.J., Celebrezze, J., and Sweeney, J.

RELEASED AND JOURNALIZED: October 7, 2010

APPELLANT

Marie Christine MacFarlane, Pro Se
29737 Schwartz Road
Westlake, Ohio 44145

ATTORNEY FOR APPELLEE

Thomas J. LaFond
Schneider, Smeltz, Ranney & LaFond
1111 Superior Avenue
Suite 1000
Cleveland, Ohio 44114

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, Marie Christine MacFarlane ("Marie"), pro se, appeals the trial court's February 22, 2010 journal entry that ordered her to pay child support to appellee, William MacFarlane ("William"), in the amount of $352.43 per month. Marie argues that the trial court disregarded this court's directive in *MacFarlane v. MacFarlane* ("*MacFarlane III*"), Cuyahoga App. No. 93012, 2009-Ohio-6647, and that the trial court abused its discretion when it failed to order William to pay her child support. After a review of the pertinent law and facts, we affirm.

{¶ 2} On August 12, 2003, after 13 years of marriage, both Marie and William filed for divorce.[1] Beginning on May 16, 2005, the matter proceeded

[1]While both parties filed their complaints on the same day, William first

to a ten-day trial. On July 11, 2005, the trial court issued its findings of fact and conclusions of law. The trial court granted William's complaint for a divorce, named William the legal custodian and residential parent of the couple's four children, and ordered Marie to pay William $50 per month in child support until January 1, 2007, at which time William was to file a motion for child support.

{¶ 3} Marie subsequently appealed the July 11, 2005 journal entry. The judgment of the trial court was affirmed in *MacFarlane v. MacFarlane*, Cuyahoga App. No. 86835, 2006-Ohio-3155 ("*MacFarlane I*").

{¶ 4} On January 10, 2007, William filed a motion to modify child support with the trial court. On July 9, 2007, the magistrate held a hearing on the motion.

{¶ 5} On August 2, 2007, the magistrate filed his decision. The magistrate concluded that William's annual income was $103,500, but that Marie was voluntarily unemployed. The magistrate imputed income to Marie in the amount of $54,500.[2] Based on these figures and the basic child support computation worksheet, the magistrate determined that Marie's

---

obtained service on Marie; therefore, Marie's action was later consolidated into the action filed by William.

[2]The trial court imputed income to Marie in the amount of $50,000 per year, based upon the fact that she had a bachelor's degree in engineering. In addition, the trial court concluded that Marie received book royalties from her husband's book of approximately $4,500 per year, for a total imputed income of $54,500.

actual child support obligation was $836.48 per month. However, the magistrate determined that the disparity in income warranted a downward deviation in Marie's child support obligation and ordered that she pay $323.85 per month.

{¶ 6} Both parties filed objections to the magistrate's decision. On September 14, 2007, the trial court adopted the magistrate's decision in its entirety.

{¶ 7} On May 14, 2008, Marie filed a motion to modify child support.

{¶ 8} On October 1, 2008, the magistrate issued his decision, granting Marie's motion and modifying her child support obligations. The magistrate ordered that Marie's child support obligation would be lowered to $51 per month. Both parties filed objections.

{¶ 9} On February 9, 2009, the trial court overruled Marie's objections, sustained William's objections, and ordered the magistrate to issue an amended decision.

{¶ 10} On February 19, 2009, the magistrate issued an amended decision increasing Marie's child support obligations to $460.70 per month. Both parties filed objections. The magistrate relied heavily on the significant expense of the couple's four children attending private school.

{¶ 11} On March 18, 2009, the trial court adopted the magistrate's amended decision. Marie subsequently filed a notice of appeal, arguing that

the amount of her child support obligation was inequitable in light of the disparity between the parties' incomes and the fact that she prefers her children to be home-schooled rather than attend private school.

{¶ 12} On December 17, 2009, this court issued its decision, remanding the issue of child support to the trial court in order to issue a child support order consistent with R.C. 3119.04, and to not factor in the cost of private school tuition.

{¶ 13} On February 22, 2010, the trial court issued a judgment entry lowering Marie's child support obligations. The trial court determined that, according to the basic child support worksheet, Marie's child support obligation would be $451.67 per month. However, the trial court concluded that because of the disparity between the parties' incomes, Marie's child support obligation should be lowered to $352.43 per month.

{¶ 14} Marie now appeals the February 22, 2010 journal entry, asserting three assignments of error for our review.

{¶ 15} ASSIGNMENT OF ERROR NUMBER ONE

> **"The trial court failed to execute the December 28, 2009 Eighth District Court of Appeals Judgment and erred as a matter of law when it increased child support without showing any change in circumstances meriting said increase (2/22/10 Judgment Entry p. 3)."**

{¶ 16} Marie argues that the trial court erred in failing to follow this court's mandate in *MacFarlane III* by increasing, rather than decreasing, her child support obligations. We disagree.

{¶ 17} Marie argues that as of May 2008, when she initially filed her motion to modify child support, she was paying William $323.85 per month. Ultimately, after the magistrate's decision, the amended magistrate's decision, and the third appeal, she is now paying $352.43, slightly more than she was paying before she filed the motion to modify child support. Therefore, Marie contends that the trial court failed to follow the directive of this court in *MacFarlane III*.

{¶ 18} This reasoning misconstrues our mandate in *MacFarlane III*. In *MacFarlane III*, this court concluded that the trial court erred in adopting the magistrate's decision with respect to child support because the magistrate's decision was inconsistent with the purpose of R.C. 3119.04, which is to protect the best interests of the children and the parents. Specifically, this court concluded that it was not in the best interests of the parties for the trial court to consider the cost of private school in determining Marie's child support obligation.

{¶ 19} On February 22, 2010, the trial court issued a judgment addressing our decision in *MacFarlane III*. By this time, Marie had secured a job. Therefore, the trial court was able to calculate child support based on

the parties' actual incomes, rather than imputing income to Marie as it had done in its August 2007 journal entry.

{¶ 20} The trial court concluded that the parties' gross incomes exceeded $150,000. Pursuant to R.C. 3119.04, when parties' gross incomes exceed $150,000, child support is to be determined on a case-by-case basis, considering the needs and the standard of living of the children. If the trial court awards child support in an amount that is less than that computed pursuant to R.C. 3119.02 (the basic child support worksheet), the trial court is required to explain its rationale.

{¶ 21} The trial court first computed Marie's child support obligation utilizing the basic child support worksheet, which resulted in a monthly payment of $451.67 per month. The trial court then deviated from that determination, reasoning that such payment would not be in the best interest of the parties due to the significant disparity in income. The trial court ultimately ordered Marie to pay William $352.43 per month in child support. The trial court did not consider private school tuition pursuant to this court's directive in *MacFarlane III*.

{¶ 22} Because the trial court complied with the remand issued in *MacFarlane III*, we review the child support award for an abuse of discretion. This court had previously acknowledged that a trial court has significant discretion in calculating child support awards. *Pesek v. Berkopec-Pesek*,

Cuyahoga App. No. 87840, 2007-Ohio-2630, at ¶30, citing *Magee v. Robinson* (Sept. 16, 1998), Summit App. No. 18896. We will not disturb a child support award absent an abuse of discretion. Id. An abuse of discretion "connotes more than an error of law or judgment; it implies that the court's attitude was unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 23} In the instant case, the trial court was required to explain its findings when issuing its child support award because the parties had a combined income in excess of $150,000 a year, and the trial court deviated from the basic child support worksheet. *Wright v. Wright*, Cuyahoga App. No. 91026, 2009-Ohio-128, citing *Keating v. Keating*, Cuyahoga App. No. 90611, 2008-Ohio-5345.

{¶ 24} Prior to the appeal in *MacFarlane III*, Marie was ordered to pay $460.70 per month in child support. The trial court concluded that, although there was a significant disparity in income, a deviation was inappropriate in light of the expense of private school tuition. After the remand, the trial court did not consider the private school tuition and, consequently, it lowered Marie's child support obligation by over one hundred dollars per month.

{¶ 25} Therefore, this assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER TWO

"The trial court failed to execute the December 28, 2009 Eighth District Court of Appeals Judgment, erred as a matter of law, and abused its discretion when it ordered child support of over $50.00 month, disregarding the October 1, 2008, Magistrate's conclusion of law that the disparity should be minimized and support should be no more than $50.00 (10/1/08 Magistrate's Decision p. 1-2; 2/22/10 Judgment Entry p. 2-3.)"

{¶ 26} Marie argues that the trial court erred when, on February 22, 2010, it ordered her to pay child support to William in the amount of $352.43 per month, in violation of the magistrate's decision that was filed on October 1, 2008. The magistrate granted Marie's motion to modify child support payments, ordering her to pay $51 per month, rather than the $447.98 per month as calculated pursuant to R.C. 3119.022 and R.C. 3119.023. The magistrate determined that the deviation was warranted in light of the significant income disparities between the parties.

{¶ 27} However, the magistrate's October 1, 2008 decision is not controlling because both parties subsequently appealed that decision to the trial court. Pursuant to Civ.R. 53(D)(4)(a), a magistrate's decision is not effective until it is adopted by the trial court.

{¶ 28} Marie filed objections to the decision, arguing that she should not be required to pay any child support and that William should be ordered to pay her child support. William argued that the decision was inequitable in light of the fact that the couple's four children attended private Catholic schools, a significant expense, and because Marie was voluntarily unemployed.

{¶ 29} On February 9, 2009, the trial court overruled Marie's objections, sustained William's objections, and ordered the magistrate to file an amended decision. The magistrate ultimately filed an amended decision that ordered Marie to pay William the sum of $460.70 each month. Both parties filed objections to the magistrate's decision. However, the trial court overruled both parties' objections and adopted the amended magistrate's decision. As the October 1, 2008 magistrate's decision was never adopted by the trial court, it was never binding upon the parties. Consequently, this assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER THREE

> **"The trial court erred as a matter of law and abused its discretion when it did not order the high-income-earning custodial parent to pay the low-income-earning non-custodial parent in accord with statutory provisions for deviating from basic child support schedule considering disparity of income, the amount of time non-custodial parent spends with children, their needs, the parents' relative financial resources, and the importance of maintaining for the children circumstances**

and a standard of living similar to that experienced before the Appellee filed for divorce (2/22/10 Judgment Entry p. 2)."

{¶ 30} Essentially, Marie argues that she should be receiving child support from William, rather than paying him child support. In support of her contention, Marie cites to this court's decision in *Kanel v. Kanel* (Oct. 19, 1989), Cuyahoga App. No. 56013.

{¶ 31} In *Kanel*, this court affirmed the judgment of the trial court that ordered the custodial parent to pay the noncustodial parent child support. In *Kanel*, the father was awarded custody of the children, but the mother was given liberal visitation. The children lived with each parent on alternating weeks.

{¶ 32} *Kanel* is factually distinguishable from the instant case because William has custody of the children for the majority of the time, as opposed to alternating weeks. The children have visitation with Marie every other weekend and every Wednesday evening. This is not the same fifty-fifty custody arrangement that this court analyzed in *Kanel*. In addition, the parties in *Kanel* had previously agreed on the child support obligation, and the mother was still in school with no means of support.

{¶ 33} We have already determined in Marie's first assignment of error that the trial court did not abuse its discretion in calculating her child support obligation. Therefore, this assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

It is ordered that a special mandate be sent to the Court of Common Pleas, Domestic Relations Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
JAMES J. SWEENEY, J., CONCUR