

[Cite as *Peskind v. Peskind*, 2010-Ohio-5146.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94740

MARGARET M. PESKIND

PLAINTIFF-APPELLEE

VS.

MARK A. PESKIND

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-250697

BEFORE: Kilbane, J., Rocco, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: October 21, 2010

APPELLANT

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MARY EILEEN KILBANE, J.:

{¶ 1} Appellant, Mark Peskind (“Mark”), appeals the trial court’s January 27, 2010 judgment entry that increased his child support obligation and ordered him to pay appellee, Margaret Peskind (“Margaret”) \$750 per month when health insurance is provided and \$825 per month when health insurance is not provided. Mark argues that the trial court abused its discretion in increasing his child support obligations because he and Margaret share equal custody of their child. After a review of the record and applicable law, we affirm.

{¶ 2} The following facts give rise to the instant appeal.

{¶ 3} On November 14, 1996, after four years of marriage, Margaret filed for divorce. On November 22, 1996, Mark filed an answer and counterclaim for divorce. Both Margaret and Mark sought custody of their

child, K.P. (d.o.b. November 10, 1992).

{¶ 4} On June 12, 1998, the trial court granted the parties' divorce. The parties were awarded shared parenting, with each parent having equal time with their child. Further, Mark was ordered to pay Margaret child support in the amount of \$430 per month.

{¶ 5} On April 20, 2009, the Cuyahoga Support Enforcement Agency ("CSEA") held an administrative hearing and, based upon the child support worksheet, calculated Mark's monthly child support obligation to be \$912.89 per month.

{¶ 6} On August 31, 2009, the trial court held a hearing to review CSEA's recommendation. On September 29, 2009, the magistrate issued his decision and concluded that because the parties shared custody of their child a significant downward deviation in child support was warranted. Therefore, the magistrate ordered that Mark pay child support in the amount of \$352.95 when insurance is being provided, and \$280.23 when insurance is not provided.

{¶ 7} On October 13, 2009, Margaret filed objections to the magistrate's decision and requested that the trial court hold a formal hearing and increase Mark's child support obligations. Margaret also attached an affidavit stating that Mark was no longer sharing equal parenting time with his child as he spent the work week in Newark, Ohio, and only visited their child on

alternating weekends. On October 29, 2009, Mark filed his response to Margaret's objections and argued that the shared parenting agreement was not relevant in calculating child support.

{¶ 8} On January 27, 2010, the trial court issued its judgment entry, which modified the magistrate's decision and ordered that Mark pay child support in the amount of \$750 per month when health insurance is provided and \$825 per month when it is not provided. The trial court reasoned that even though the parties had a shared parenting plan there was a significant disparity in income; therefore, Mark's child support obligation should be increased from the \$430 per month that he had been paying when the parties were divorced.

{¶ 9} Mark appealed, raising three assignments of error for our review. As all three assignments of error address the trial court's adoption of the magistrate's decision, we will address them together.

ASSIGNMENT OF ERROR NUMBER ONE

“THE TRIAL COURT FAILED TO RECOGNIZE FINDINGS OF FACT ESTABLISHED BY THE MAGISTRATE WHICH OBLIGATED HIM TO ADHERE TO THE DEVIATION FROM THE PARENTING PLAN IN PLACE AT THE TIME OF THE HEARING.”

ASSIGNMENT OF ERROR NUMBER TWO

“THE TRIAL COURT FAILED TO LIMIT ITS REVIEW OF THE MAGISTRATE'S DECISION TO THE REMEDIES SOUGHT BY APPELLEE, I.E., A NEW HEARING BY THE

MAGISTRATE IN ACCORDANCE WITH O.R.C. 3119.66.”

ASSIGNMENT OF ERROR NUMBER THREE

“THE TRIAL COURT FAILED TO RECOGNIZE THE PARTIES’ SHARED PARENTING PLAN WHICH WARRANTED A DEVIATION FROM THE SHARED PARENTING WORKSHEET.”

{¶ 10} Mark argues that the trial court erred in failing to adopt the magistrate’s September 29, 2009 decision. Mark contends that the trial court was bound to significantly deviate from the calculation reached by the child support worksheet in light of the fact that the parties had a shared parenting plan. Mark also argues that because Margaret requested a full hearing, the trial court was bound to either hold the requested hearing or adopt the magistrate’s decision, but was not permitted to modify the decision. After a review of the record, we disagree.

{¶ 11} We review a trial court’s ruling on objections to a magistrate’s ruling for an abuse of discretion. *Lurz v. Lurz*, Cuyahoga App. No. 93175, 2010-Ohio-910, at ¶15, citing *In re M.S.*, Summit App. No. 24711, 2009-Ohio-5795. An abuse of discretion, “connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 404 N.E.2d 144.

{¶ 12} On September 29, 2009, the magistrate issued his decision and determined that Margaret earned approximately \$35,700 annually, while Mark earned approximately \$101,970 annually. Based upon the child support worksheet Mark should pay \$912.89 per month when he does not provide insurance, and \$840.20 if he does provide insurance. The magistrate determined that a deviation from these figures was warranted because the parties had a shared parenting plan where the parties each had equal time with their child. The magistrate's award of \$352.95 when insurance is being provided, and \$280.23 when insurance is not provided, deviates significantly from the child support worksheet.

{¶ 13} Margaret filed objections to the magistrate's decision, requesting a full hearing. Mark requested that the trial court adopt the magistrate's decision in its entirety.

{¶ 14} On January 27, 2010, the trial court issued its decision, modifying the magistrate's decision. The trial court concluded that even though the parties equally shared parenting time with their son, Mark's income significantly increased since the parties' divorce while Margaret's income stayed relatively the same. The trial court did deviate slightly downward from the child support worksheet and ordered that Mark is to pay \$825 per month if insurance is provided, and \$750 per month when insurance is not provided. Mark argues that the trial court erred in not adopting the

magistrate's decision.

{¶ 15} In light of the facts of this case, we cannot conclude that the trial court abused its discretion in modifying the magistrate's decision to require Mark to pay child support in the amount of \$750 per month. The trial court determined that while Margaret's income remained relatively the same, Mark's had increased by over \$30,000 per year. The trial court acknowledged that the parents shared equal parenting time, but concluded that because of the significant income disparity, only a slight deviation from the child support worksheet was warranted. Based on these facts, we cannot conclude that the trial court abused its discretion.

{¶ 16} Mark also argues that the trial court abused its discretion in modifying the magistrate's decision because the only relief Margaret requested was a formal hearing. However, Civ.R. 53 provides that "whether or not timely objections are filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification." Civ.R. 53(D)(4)(b). A trial court is not bound to either adopt the magistrate's decision or grant the specific relief requested in a party's objections. *Dorton v. Dorton* (June 15, 2001), Delaware App. No. 00CAF10029. A trial court has broad discretion to conduct its own analysis when entering judgment. *Id.*

{¶ 17} Therefore, even though Margaret requested a second hearing, the trial court was not required to hold one. The trial court had the discretion to

review the record and modify the magistrate's decision.

{¶ 18} Accordingly, Mark's three assignments of error are 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, JUDGE

KENNETH A. ROCCO, P.J., and
MARY J. BOYLE, J., CONCUR