**[Cite as *Bodrock v. Bodrock*, 2016-Ohio-5852.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION
**No. 104177**

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## SARAH S. BODROCK

PLAINTIFF-APPELLEE

vs.

## DANIEL J. BODROCK

DEFENDANT-APPELLANT

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**JUDGMENT:**
AFFIRMED

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Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-15-355232

**BEFORE:** E.A. Gallagher, P.J., Kilbane, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** September 15, 2016

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EILEEN A. GALLAGHER, P.J.:

**{¶1}** Plaintiff-appellant Daniel Bodrock ("Daniel") appeals from the final judgment entry of divorce entered by the Cuyahoga Court of Common Pleas, Domestic Relations Division, in the divorce action filed by his ex-wife Sarah Bodrock ("Sarah"). Daniel contends that the trial court erred in failing to include $13,681.46 in employer-paid health insurance premiums in Sarah's gross income when calculating her child support obligation. For the reasons that follow, we affirm the trial court's judgment.

**Factual Background and Procedural History**

**{¶2}** Daniel and Sarah were married on August 27, 1999. During the marriage, they had two children. On January 5, 2015, Sarah filed a complaint for divorce. Prior to trial, Sarah and Daniel reached an agreement regarding the division of the parties' marital property and the allocation of parental rights and responsibilities between them. The parties stipulated to the actual income of each and further agreed that Sarah would be the child support obligor, that Daniel would be the child support obligee and that Sarah would provide health insurance coverage for the children through her employer. The only issues that remained for trial were Daniel's request for spousal support and the determination of the appropriate amount of child support for Sarah to pay Daniel. On September 22, 2015, these issues were tried before a magistrate.

**{¶3}** On November 30, 2015, the magistrate issued his decision, ordering Sarah to pay $450.00 in monthly spousal support (plus a processing fee) to Daniel for 36 months beginning December 1, 2015 and monthly child support of $467.74 (including the

processing fee) when health insurance is provided or $491.20 (including the processing fee) when health insurance is not provided. Once Sarah's 36-month spousal support obligation expired, her monthly child support obligation would increase to $530.11 (including the processing fee) when health insurance is provided and to $543.04 (including the processing fee) when health insurance is not provided.

**{¶4}** Daniel filed objections to the magistrate's decision, asserting that the evidence at trial indicated that Sarah's employer had paid $13,681.46 toward the family's health insurance coverage that should have been included in Sarah's gross income when calculating her child support obligation. He argued that if the employer-paid health insurance premiums had been included in Sarah's gross income, her gross income would have been $87,776, rather than $74,095, and that her monthly child support payment to Daniel would have been $610.71 rather than the $458.57 (excluding the processing fee). After filing his objections, Daniel submitted a partial transcript of the portions of the trial, i.e., Sarah's trial testimony, that he claimed supported his objections.

**{¶5}** The trial court overruled Daniel's objections to the magistrate's decision and adopted the magistrate's decision, without modification, in its entirety. On February 2, 2016, the trial court issued the final judgment entry of divorce.

**{¶6}** Daniel appealed the final judgment entry of divorce, raising the following sole assignment of error for review:

> The trial court erred in overruling appellant's objection and adopting the magistrate's decision excluding employer paid health insurance premiums on line 6, column II of the Ohio child support computation worksheet.

**Law and Analysis**

**{¶7}** A trial court's decision on matters of child support is reviewed for abuse of discretion. *Morrow v. Becker*, 138 Ohio St.3d 11, 2013-Ohio-4542, 3 N.E.3d 144, ¶ 9. We likewise review a trial court's ruling on objections to a magistrate's decision for abuse of discretion. *See, e.g., Allan v. Allan*, 8th Dist. Cuyahoga No. 101700, 2015-Ohio-2037, ¶ 8; *Hissa v. Hissa*, 8th Dist. Cuyahoga Nos. 99498 and 100229, 2014-Ohio-1508, ¶ 17. Under an abuse-of-discretion standard, the trial court's decision will be reversed only if it is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

**{¶8}** Daniel contends that, based on the definition of gross income set forth in R.C. 3119.01(C)(7) and the Ohio Supreme Court's decision in *Morrow v. Becker*, 138 Ohio St.3d 11, 2013-Ohio-4542, 3 N.E.3d 144, employer-paid health insurance premiums "are not excluded from the definition of gross income" and that the trial court abused its discretion in overruling his objection to the magistrate's decision and "unreasonably and arbitrarily" excluding $13,681.46 in health insurance premiums paid by Sarah's employer towards the family's insurance coverage from Sarah's "other annual income" on line 6, column II of the child support computation worksheet.

**{¶9}** Sarah responds that the parties stipulated to each other's incomes prior to trial, that the income figure used by the magistrate in calculating Sarah's child support obligation was the income figure to which the parties had stipulated and that, even if the parties had not stipulated to the income figures to be used in calculating Sarah's support

obligation, it was not unreasonable for the trial court to exclude the employer-paid health insurance premiums in calculating Sarah's gross income because the employer-paid health insurance premiums were not "solely" for Sarah's benefit.

**{¶10}** The starting point in calculating a parent's child support obligation is parental income, i.e., "gross income" for those who are employed to full capacity or gross income plus potential income for those who are not employed to full capacity. *Morrow* at ¶ 11; *Serra v. Serra*, 10th Dist. Franklin No. 15AP-528, 2016-Ohio-950, ¶ 9.

**{¶11}** For purposes of calculating child support, "gross income" is defined in R.C. 3119.01(C)(7) as follows:

> "Gross income" means, except as excluded in division (C)(7) of this section, the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable, and includes income from salaries, wages, overtime pay, and bonuses to the extent described in division (D) of section 3119.05 of the Revised Code; commissions; royalties; tips; rents; dividends; severance pay; pensions; interest; trust income; annuities; social security benefits, including retirement, disability, and survivor benefits that are not means-tested; workers' compensation benefits; unemployment insurance benefits; disability insurance benefits; benefits that are not means-tested and that are received by and in the possession of the veteran who is the beneficiary for any service-connected disability under a program or law administered by the United States department of veterans' affairs or veterans' administration; spousal support actually received; and all other sources of income. "Gross income" includes income of members of any branch of the United States armed services or national guard, including, amounts representing base pay, basic allowance for quarters, basic allowance for subsistence, supplemental subsistence allowance, cost of living adjustment, specialty pay, variable housing allowance, and pay for training or other types of required drills; self-generated income; and potential cash flow from any source.
>
> "Gross income" does not include any of the following:
> (a) Benefits received from means-tested government administered programs, including Ohio works first; prevention, retention, and

> contingency; means-tested veterans' benefits; supplemental security income; supplemental nutrition assistance program; disability financial assistance; or other assistance for which eligibility is determined on the basis of income or assets;
> (b) Benefits for any service-connected disability under a program or law administered by the United States department of veterans' affairs or veterans' administration that are not means-tested, that have not been distributed to the veteran who is the beneficiary of the benefits, and that are in the possession of the United States department of veterans' affairs or veterans' administration;
> (c) Child support received for children who were not born or adopted during the marriage at issue;
> (d) Amounts paid for mandatory deductions from wages such as union dues but not taxes, social security, or retirement in lieu of social security;
> (e) Nonrecurring or unsustainable income or cash flow items;
> (f) Adoption assistance and foster care maintenance payments made pursuant to Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C.A. 670 (1980), as amended.

**{¶12}** The determination of gross income is a factual finding, which is normally reviewed using the "some competent, credible evidence" standard. *See, e.g., Serra* at ¶ 10; *Jajola v. Jajola*, 8th Dist. No. 83131, 2004-Ohio-370, ¶ 8.

**{¶13}** In *Morrow*, the Ohio Supreme Court held that the trial court did not abuse its discretion in including certain employer-paid benefits in gross income when determining whether to modify a father's child support obligation. In *Morrow*, the employer-paid benefits at issue were a car, car insurance, a cell phone and Ohio State University football tickets. *Id.* at ¶ 7, 15. With respect to the employer-paid car, car insurance and cell phone, the court concluded that it was reasonable for the trial court to include the value of those benefits in the father's gross income because if the employer did not provide those items, the father would have had to pay for those items using his own funds, such that, by receiving the benefit, the father "effectively has a high income." *Id.* at ¶ 15. The court concluded, however, that the football tickets were "different."

*Id.* at ¶ 16. The tickets were not given to the father "primarily for his own use," but rather, for him to give to employees or business associates as "perks." *Id.* As such, the father "did not receive the full benefit of the tickets' value." *Id.* However, because the tickets' value constituted "only about 1 percent" of the gross income calculated by the trial court, the court held that even if the trial court had erred in including the value of the tickets in the father's gross income, the error was harmless. *Id.* Thus, under *Morrow*, if employment benefits received by a parent can be shown to reduce the parent's personal living expenses, those benefits may be properly considered "income" to that parent for the purpose of determining the amount of child support.

**{¶14}** Employer-paid health insurance benefits are neither expressly included or excluded from the definition of "gross income" under R.C. 3119.01(C)(7). We are not aware of any appellate court in Ohio that has decided whether an employer's contributions to health insurance premiums are properly included in a parent's gross income for purposes of calculating the parent's child support obligation. The parties have cited only two conflicting cases from Louisiana — *Widman v. Widman*, 619 So.2d 632, 634-635 (La.App.1993) (trial court erred in including health insurance premiums paid by father's employer for father's personal health insurance in his actual gross income for purposes of calculating basic child support obligation), and *Ola v. Ola*, 985 So.2d 786, 788-790 (La.App.2008)[1] (trial court correctly included premiums paid by father's employer for health insurance coverage in father's income when calculating child support

[1]Daniel refers to this case as *Duet v. Duet* in his reply brief.

obligation) — in support of their respective positions. Courts from other jurisdictions that have considered this issue have reached varying conclusions. *See, e.g., Caskey v. Caskey*, 206 N.C. App. 710, 719-720, 698 S.E.2d 712 (N.C.App.2010) (Employer contributions to a parent's insurance premiums "may not be included as income for the purposes of the employee's child support obligations unless the trial court, after making the relevant findings, determines that the employer's contributions immediately support the employee in a way that is akin to income."); *In re Marriage of Davis*, 252 P.3d 530, 535 (Colo. App. 2010) ("employer contributions on an employee's behalf to insurance plans are not income for child support purposes" because employee "did not have the option to take these contributions as wages and use them for general living expenses"); *Bellinger v. Bellinger*, 46 A.D.3d 1200, 847 N.Y.S.2d 783, 785 (App. Div. 3d Dept.2007) (in calculating parent's income for purposes of child support, trial court properly included parent's "before-tax health insurance deductions" that were a "fringe benefit" provided by his employer); *Shipley v. Shipley*, 509 N.W.2d 49, 53 (N.D. 1993) (employer-paid family health insurance premiums constituted "income from any source" under the broad definition of "gross income" for purposes of calculating child support); *Chiovaro v. Tilton-Chiovaro*, 247 Mont. 185, 190-191, 805 P.2d 575 (1991) (trial court did not err in imputing income to father based on the value of employer-provided health insurance benefits but indicated that it was within the discretion of the trial court to allow the parent's net cost of child's share of the premium as a deduction from gross income); *Jones v. Jones*, 920 So.2d 563, 564-565 (Ala.Civ.App.2005) (whether employer-paid

health insurance premiums were properly included as income to the employee parent for purposes of child support calculation depended on whether the parent "would be paid the same wages regardless of whether the parent decided to accept or to decline employer-paid health-insurance coverage").

**{¶15}** In this case, we cannot say that the trial court abused its discretion in adopting the magistrate's decision and failing to include $13,681.46 in employer-paid health insurance premiums in Sarah's gross income when calculating her child support obligation. Although Daniel disputes that the parties entered into any stipulation regarding Sarah's income for purposes of trial,[2] the magistrate found that the parties stipulated that Sarah's "gross income is $74,095 per year" for purposes of calculating her child support obligation in joint exhibit No. 2 — one of the parties' joint trial exhibits. Daniel did not object to this factual finding in his objections to the magistrate's decision. *See* Civ.R. 53(D)(3)(b)(ii) ("An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection."). Civ.R. 53(D)(3)(b)(iv) provides: "Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Based on the record before us, we cannot say that the trial court erred — much less committed plain error —

[2]Daniel claims that the only stipulation the parties entered into regarding Sarah's income was the stipulation attached as exhibit A to the magistrate's order for temporary support, entitled "Stipulations for Temporary Support." However, joint exhibit No. 2 also sets forth various "stipulations," including a stipulation as to the amount of Sarah's income.

in adopting the magistrate's finding that the parties stipulated, for purposes of trial and the calculation of Sarah's child support obligation, that Sarah's income was $74,095.

**{¶16}** Joint exhibit No. 2, entitled "Stipulations," lists nearly a dozen stipulations and includes a stipulation of Sarah's "income" as $74,095.00 and a stipulation that "medical insurance: Sarah" is $2,959.84 annually. The stipulations are undated, handwritten and signed by counsel for the parties. On its face, consistent with the finding by the magistrate, joint exhibit No. 2 appears to be a list of the facts to which the parties stipulated for purposes of trial.

**{¶17}** There is nothing in the record that indicates that Daniel ever argued, prior to filing his objections to the magistrate's decision, that $13,681.46 in employer-paid health insurance premiums should have been included in Sarah's gross income for purposes of calculating her child support obligation. In his trial brief, Daniel stated that, "[i]n addition to her yearly income[,] [Sarah's employer] contributes in excess of $13,500 towards the cost of family health coverage"; however, he did not list that sum as "[o]ther annual income" for Sarah on the proposed child support computation worksheet he attached to his trial brief. Rather, he listed Sarah's "[t]otal annual gross income" as $74,095. During her direct examination of Sarah at the hearing, Sarah's counsel made several references to the fact that the parties had stipulated to Sarah's income. Daniel's counsel did not object to these statements or otherwise dispute the assertion that the parties had stipulated to Sarah's income.

**{¶18}** Only a partial trial transcript, consisting of Sarah's trial testimony, is included in the record on appeal. The portion of the transcript provided does not include any discussions by the parties regarding joint exhibit No. 2, the joint trial exhibits generally or the purpose(s) for which the stipulations or joint trial exhibits were to be used. Without a complete transcript of the matters relevant to an appeal, we must presume the regularity of the trial court's proceedings. *See, e.g., Tabbaa v. Raslan*, 8th Dist. Cuyahoga No. 97055, 2012-Ohio-367, ¶ 10.

**{¶19}** A stipulation is "a voluntary agreement entered into between opposing parties concerning the disposition of some relevant point in order to avoid the necessity for proof on an issue" or to "narrow the range of issues to be litigated." *Wilson v. Harvey*, 164 Ohio App.3d 278, 2005-Ohio-5722, 842 N.E.2d 83, ¶ 12 (8th Dist.). A stipulation of a fact "remove[s] [the] issue from the litigation," *McLeod v. McLeod*, 11th Dist. Ashtabula No. 2012-A-0030, 2013-Ohio-4546, ¶ 32, and "renders proof unnecessary," *Rice v. Rice*, 8th Dist. Cuyahoga No. 78682, 2001 Ohio App. LEXIS 4983, *11 (Nov. 8, 2001). Once entered into by the parties and accepted by the court, a stipulation is binding upon the parties as "a fact deemed adjudicated for purposes of determining the remaining issues in the case." *Dejoseph v. Dejoseph*, 7th Dist. Mahoning No. 10 MA 156, 2011-Ohio-3173, ¶ 35. Where parties choose to stipulate facts in lieu of presenting evidence, they "waive any error that may have occurred with respect to the fact that the trial court decided [the] case without hearing evidence presented by the parties" on the issue to which the parties stipulated. *Rice* at *11. "[I]t is 'fundamentally unfair' for a

party to enter into a stipulation, fail to object to an alleged inaccuracy, and then argue that a stipulation is against the weight of the evidence on appeal." *Tisci v. Smith*, 3d Dist. Hancock No. 5-15-30, 2016-Ohio-635, ¶ 25, citing *Havens v. Havens*, 10th Dist. Franklin No. 11AP-708, 2012-Ohio-2867, ¶ 22. There is nothing in the record that suggests that Daniel ever asked to withdraw from the stipulation.

**{¶20}** Courts have allowed parties to stipulate to the amount of child support one parent must pay to another. *See, e.g., Tisci* at ¶ 25 (citing cases). Although parties cannot, by stipulation, limit a court's consideration of evidence regarding their incomes where those stipulations provide an "incomplete picture of the parties' financial situation" and "'interfere with the court's discharge of its duty to consider the best interest of the child,'" *Boraggina v. Boraggina*, 6th Dist. Lucas Nos. L-99-1272 and L-99-1409, 2001 Ohio App. LEXIS 1503, *26-27, (Mar. 30, 2001) quoting *Willis v. Willis*, 8th Dist. Cuyahoga No. 70937, 1997 Ohio App. LEXIS 2206 (May 22, 1997), Daniel does not contend — and there is nothing in the record to suggest — that that is the situation here. *See also Rarden v. Rarden*, 12th Dist. Warren No. CA2013-06-054, 2013-Ohio-4985, ¶ 21 ("'If the parties wish to agree or to stipulate to various facts or procedures, * * * courts should be permitted to accept freely entered into agreements or stipulations unless such agreements or stipulations are not in the child's best interest.'"), quoting *Melvin v. Martin*, 4th Dist. Lawrence No. 05CA44, 2006-Ohio-5473, ¶ 13.

**{¶21}** Even if we were to disregard the parties' stipulation that Sarah's gross annual income was $74,095 for purposes of calculating her support obligations and

consider the merits of Daniel's argument, we still could not say, based on the record here, that the trial court abused its discretion in overruling Daniel's objections and excluding the $13,681.46 in employer-paid health insurance premiums from Sarah's gross income when calculating her child support obligation.

**{¶22}** Based on the portion of the transcript that is in the record, very limited information was offered at trial regarding the $13,681.46 Daniel contends should have been included in Sarah's gross income. During his cross-examination of Sarah, Daniel's counsel inquired about the $13,681.46 figure, coded "DD," that was listed on Sarah's 2014 W-2. At first, Sarah testified that she didn't "know what it is." Sarah then proceeded, at the request of David's counsel, to read the W-2. Upon further questioning, Sarah indicated that, according to what was stated on the W-2, the code "DD" referred to the "[c]ost of employer-sponsored health coverage" and that "[t]he amount reported with Code DD is not taxable." During Sarah's counsel's redirect examination of Sarah, Daniel's counsel stipulated that the $13,681.46 was not money that was "ever put into [Sarah's] paycheck or [her] pocket."

**{¶23}** There is no evidence in the record regarding how the $13,681.46 attributable to the "cost of employer-sponsored health coverage" in 2014 was calculated, what percentage of that sum was attributable to insurance coverage for Sarah as opposed to insurance coverage for the children or Daniel (who was covered under the family health insurance policy Sarah obtained through her employer in 2014), or whether, if Sarah had chosen not to obtain health insurance coverage through her employer, she would have

received additional cash or other employment benefits. Sarah, therefore, may not have received the "full benefit * * * of the value" of the $13,681.46 in health insurance premiums her employer paid in 2014, *Morrow,* 138 Ohio St.3d 11, 2013-Ohio-4542, 3 N.E.3d 144, at ¶ 16, and it is not clear from the record to what extent Sarah's employer's contributions to health insurance premiums may have reduced Sarah's living expenses.

**{¶24}** Following a thorough review of the record, we cannot say that the trial court's decision was unreasonable, arbitrary or unconscionable. Accordingly, we overruled Daniel's assignment of error.

**{¶25}** Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court 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.

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EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
ANITA LASTER MAYS, J., CONCUR