[Cite as *N.W. v. M.W.*, 2019-Ohio-1775.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

N.W.,	:	
Plaintiff-Appellee/ Cross-Appellant	:	No. 107503
v.	:	
M.W.,	:	
Defendant-Appellant/ Cross-Appellee	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.
RELEASED AND JOURNALIZED: May 9, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. DR-11-338361

Appearances:

Kohrman, Jackson & Krantz, P.L.L., John D. Ramsey, *for appellant.*

Taft, Stettinius & Hollister, L.L.P., Jill Friedman Helfman, *for appellee*.

MICHELLE J. SHEEHAN, J.:

{¶ 1} M.W. (hereafter "Husband") appeals from the judgment of the Cuyahoga County Court of Common Pleas, Domestic Relations Division, modifying

his child support obligation. N.W. (hereafter "Wife") filed a cross appeal. After a review of the record and applicable law, we affirm the domestic relations court's judgment regarding the modification of Husband's child support obligation and the attorney fees awarded to Wife, but reverse the court's judgment regarding the amount of Husband's child support obligation during the nine-month period between an interim order issued by the court and its final order.

Procedural History

{¶ 2} Husband and Wife married in 1997. After 14 years, the marriage was dissolved in 2011. They have three children; at the time of the divorce, the children were 5 and 3 — the younger two children are twins. The parties negotiated a dissolution decree to dissolve their marriage. Under the dissolution decree, Husband was to pay $1,200 monthly in child support and $12,583 monthly in spousal support. The spousal support was to end at the end of 2015, the year the twins would start first grade. Over the period of four and one-half years, Wife received a total of $744,282 of support from Husband, including $679,482 in spousal support.

{¶ 3} Soon after the spousal support ended on December 31, 2015, Wife filed a motion on January 15, 2016, to modify child support from $1,200 per month to $13,800 per month. At the time Wife filed the motion, the children were ten and eight. She submitted an affidavit stating her monthly budget was now $11,323 (but did not submit documents regarding the children's increased expenses). Husband asked the court to modify his child support obligation to $3,500 and also stated his

commitment to pay all expenses for the children's activities and any uncovered medical expenses, which he estimated would bring his total payment to $4,500 per month.

{¶ 4} The trial court referred the case to a magistrate, who heard the matter over three days in October 2016 and issued a decision on December 9, 2016. The parties' testimony and various exhibits reflect the following:

Husband's Income

{¶ 5} In the year 2011, when the marriage was dissolved, Husband worked at GE Lighting and made approximately $414,656. After the divorce, his income increased substantially due to his success in two entrepreneurial ventures. He made a significant amount of money by starting the business, sold it, and then worked in the company at favorable terms. In 2012, he made $532,943; in 2013, $2.7 million, including the profit from the sale of the first venture. In 2014, he started the second venture, sold it, and then worked at the company. His income in 2014 was $522,401; in 2015, around $1 million.

Wife's Work History

{¶ 6} Wife has a degree in elementary education and a master's degree in reading. Before the children were born, she held various teaching positions. However, as Husband's career advanced and his new work opportunities required them to move frequently, she would break her teaching contracts to accommodate their relocation. After the children were born, the couple agreed that Wife would stay at home to care for the children until they entered school. The last year she had

a full-time teaching job was in 2005. When the twins began first grade in 2014, Wife worked sporadically as a substitute teacher.

{¶ 7} In preparation for the termination of spousal support, Wife explored the possibility of returning to work as a school teacher. She learned that in order to obtain a full-time certificate to teach elementary school, she needs 12 semester hours of college courses, which would take her two years to complete. Because of the uncertainty of obtaining a full time teaching position, Wife decided to start her own business. In 2015, she purchased a franchise in Mathnasium, a program that teaches students math skills. To finance the purchase of the franchise, Wife sold the marital residence that had been awarded to her in the dissolution decree and used a portion of the sale proceeds for the franchise. She opened the business in 2015. She estimated it would take 55 students for the business to break even. She currently has between 30 and 40 students and is expected to break even in 2017.

{¶ 8} To assess Wife's earnings potential, Husband submitted a report from a vocational expert, who also testified at the hearing. He testified that Wife could work full time either as a teacher upon her completion of the necessary credit hours, or as a franchisee of Mathnasium. However, the expert noted that 80% of all start-ups fail and, therefore, the more secure way for Wife to make a living was to obtain the necessary credentials and stay with teaching. The expert consequently testified Wife was underemployed. The expert reported the median salary for elementary school teachers in Ohio is $54,890. The expert did not provide data as to the

availability of teaching jobs in the local area, but opined that the schools are looking for teachers in reading, which Wife had a master's degree in.

Standard of Living

{¶ 9} Husband and Wife characterize their lifestyle before the divorce very differently. Husband testified that the family lived a relatively modest lifestyle, well below their means. He described it as a lifestyle based on a $150,000 income, where savings and investment came first. He would save between 25 and 40 percent of his income and has fully funded the children's 529 college education accounts in excess of $250,000. Husband reported he currently lives on an $8,400 monthly budget.

{¶ 10} Wife, on the other hand, characterized their lifestyle during their marriage as lavish. They lived in a 4,000 square foot, four-bedroom home, employed a full-time nanny, a once-a-week housekeeper, and a gardener. They would purchase expensive birthday gifts and shopped at designer clothing stores. They took regular vacations, often in conjunction with Husband's work, travelling to Napa Valley, London, Paris, and Hawaii. She also described the couple as "foodies," eating out frequently at high-end restaurants. They belonged to the Cleveland Yacht Club.

{¶ 11} Wife testified that the children, ten and eight now, participate in many activities, including summer camps, gymnastics, piano lessons, and basketball. She would also like to have the children participate in horseback riding, riding summer camp, swimming activities in an aquatic center, art classes and art camp, Young Chef's Academy, yoga classes, and golf lessons. Wife currently lives

with the children in a condominium. She however would like to live in a house with a backyard for the children to play in. To meet the children's needs, including the mortgage for such a house, Wife estimated the monthly budget to be around $13,000.

The Decision and Appeal

{¶ 12} After the hearing, the magistrate modified Husband's child support obligation from $1,200 to $8,399 per month. Both parties filed an objection to the magistrate's decision. The briefing on the objections was completed in March, 2017. On September 29, 2017, the trial court issued an interim order setting a temporary support amount of $9,000. The trial court requested updated financial information and scheduled the matter for a hearing on May 31, 2018. On July 6, 2018, the court issued its decision, modifying Husband's child support amount from $1,200 to $7,000 per month, decreasing the amount ordered by the magistrate.

{¶ 13} Husband now appeals. Wife also filed a cross-appeal. Husband assigned the following errors for our review:

> I. Whether the Trial Court erred as a matter of law and abused its discretion by awarding Wife an increase in child support in the sum of $7,000 per month based upon a misapplication of Ohio's child support statutes and relevant case law.
>
> II. Whether the Trial Court erred as a matter of law and abused its discretion by awarding a child support obligation that effectively amounts to a "de facto spousal support" obligation.
>
> III. Whether the Trial Court erred as a matter of law and abused its discretion by entering an Interim Order which effectively

left the case stagnant for nine (9) months and precluded Husband from seeking a modification of support despite his significantly reduced income.

Wife assigns the following errors in her cross-appeal:

I. The Trial Court erred when it awarded Wife only $7,000 per month in child support, despite previously finding that a higher amount was appropriate.

II. The Trial Court erred when it imputed income to Wife that was not supported by the evidence presented at trial.

III. The Trial Court erred in ordering that Husband pay the arrearage at a statutory rate of 20%, even though evidence establishes that Husband was capable of paying the full amount of arrears in a lump sum payment.

IV. The Trial Court erred in reducing the award of attorney fees to Wife without analyzing whether the reduction was equitable.

{¶ 14} These assignments raise five issues: (1) the amount of child support; (2) Wife's imputed income; (3) the interim order; (4) the rate of payment for arrearage; and (5) the award of attorney fees. We discuss these issues in turn.

Modification of Child Support

{¶ 15} Husband's first assignment of error and Wife's first assignment of error in her cross appeal concern the trial court's order increasing Husband's child support obligation to $7,000. Husband asks for a lesser amount and Wife asks for a larger amount, both arguing the trial court erroneously assessed the standard of living of the children and the parents. In Husband's second assignment of error, he

also argues the $7,000 child support ordered by the court amounts to a de facto spousal support. We address all these claims together.

Standard of Review and Law

{¶ 16} A trial court's decision regarding child support obligations falls within its discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). A trial court abuses its discretion only when it acts unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 17} As an initial matter, we note that "Ohio has adopted what is known as the 'income shares' model for child support — a model that presumes that a child should receive the same proportion of parental income as he or she would have received if the parents lived together." *Phelps v. Saffian*, 8th Dist. Cuyahoga No. 103549, 2016-Ohio-5514, ¶ 7. The "income shares" approach is based on expected child rearing costs and on the parents' incomes. *Id*. To aid the court in calculating child support under this model, the legislature provides numerical guidelines to the court through the enactment of R.C. 3119.021 ("Basic child support schedule"). Under the statute, the amount of child support is based on the income of the parents and the number of children.

{¶ 18} However, when the parents' income are considered "high income" — defined as income over $150,000 — the determination is different. Prior to the enactment of R.C. 3119.04 ("Determination of support obligation where combined income is less than $6,600 or greater than $150,000"), the court was required to

extrapolate the support amount based on the guidelines under R.C. 3119.021 but was free to deviate from the extrapolated amount as long as it provided reasons for the deviation after considering the standard of living of the family. *See generally Cyr v. Cyr*, 8th Dist. Cuyahoga No. 84255, 2005-Ohio-504, ¶ 53.

{¶ 19} With the enactment of R.C. 3119.04, the court is no longer required to extrapolate to determine the proper amount of support when the parents' income exceeds $150,000. Instead, R.C. 3119.04 requires the trial court to determine the child support amount on a case-by-case basis in these cases, considering "the needs and the standard of living of the children who are the subject of the child support order and of the parents." R.C. 3119.04.[1]

{¶ 20} Furthermore, the trial court's decision in determining child support amount is afforded more deference when the parents' income exceeds $150,000. *Bodell v. Brown*, 8th Dist. Cuyahoga No. 101632, 2015-Ohio-526, ¶ 16. In fact, under R.C. 3119.04, the amount of child support in these cases is left entirely to the court's discretion. *Brownlee v. Brownlee*, 8th Dist. Cuyahoga Nos. 97037 and 97105, 2012-Ohio-1539, ¶ 26; *Cyr* at ¶ 54. When applying R.C. 3119.04 in high income cases, the trial court is not even required to make any findings or give any explanation for the child support awarded (unless the amount awarded is less than

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[1] We note that R.C. 3119.04 was recently amended. Effective March 28, 2019, instead of $150,000, a case-by-case determination is now triggered by "the maximum annual income listed on the basic child support schedule established pursuant to section 3119.021 of the Revised Code."

the amount for an income of $150,000). *In re J.M.G.*, 8th Dist. Cuyahoga No. 98990, 2013-Ohio-2693, ¶ 29.

{¶ 21} For purposes of R.C. 3119.04, the children's "needs" include food, clothing, shelter, medical care, and education. *Phelps*, 8th Dist. Cuyahoga No. 103549, 2016-Ohio-5514 at ¶ 9. *See also Basista v. Basista*, 8th Dist. Cuyahoga No. 83532, 2004-Ohio-4078, ¶ 16. The "lifestyle" of a child, on the other hand, goes beyond mere needs; it reflects the level of comfort that the child would have enjoyed beyond basic necessaries had the parents remained living together. *Phelps* at ¶ 10, citing *Wells v. Wells*, 9th Dist. Summit No. 27097, 2014-Ohio-5646, ¶ 14. *See also Berthelot v. Berthelot*, 154 Ohio App.3d 101, 2003-Ohio-4519, 796 N.E.2d 541, ¶ 24 (9th Dist.) (the appropriate amount in a high-income family is the amount necessary to maintain the standard of living the child would have enjoyed had the marriage continued). It is sometimes referred to as the child's "qualitative" needs. *Phelps* at ¶ 10.

> A qualitative analysis focuses on observation and descriptions of a child's lifestyle. Although the word "qualitative" does not necessarily provide for precise determinations, its use recognizes that circumstances between children can vary based on their parents' income, and that the court has discretion to fashion a support order accordingly and on a case-by-case basis.

Id.

{¶ 22} Here, Wife requested the court to modify the amount of child support after her spousal support terminated in December 2016. The court has continuing jurisdiction to modify a child support order, but only when it is warranted by a

substantial change in circumstances from the original support order. *Phelps* at ¶ 11, citing R.C. 3119.71 and 3119.79(C).

{¶ 23} Where the parents' income is less than $150,000, if the recalculated child support amount exceeds the existing order by ten percent, the ten percent difference constitutes a substantial change in circumstances warranting a modification. *Phelps* at ¶ 12, citing R.C. 3119.79(A). However, when the parents' income exceeds $150,000, R.C. 3119.04 is silent as to what constitutes a substantial change of circumstances. This court, however, has enumerated certain considerations in *Phelps*:

> First, consistent with R.C. 3119.04(B) from which an original child support order would issue, the court must consider the needs and the standard of living of the child and the parents. With the exception of extraordinary individual medical or developmental issues, as previously noted, the "needs" of a child are necessaries like food, clothing, shelter, medical care, and education. Needs are not income based — they apply in similar fashion for all children, regardless of the income level of the parents. That a parent has a large income has no effect on a child's basic needs: a child needs to eat, but a child does not need to eat caviar.
>
> Consideration of the "standard of living" the child would have enjoyed is based on the premise that parents may freely decide to dissolve their relationship, but children have no choice in the matter. If the child enjoyed a high standard of living during the marriage, the child is entitled to enjoy that standard after the marriage has been dissolved. *Boone v. Holmes*, 10th Dist. Franklin No. 14AP-449, 2015-Ohio-2242, ¶ 16. The court must be careful, however, to consider only how the child *would* have lived had the parents remained together, not how the child *could* have lived. When considering the standard of living of the parents, the court must ensure that the obligor parent is not so overburdened by support obligations that it affects that parent's ability to survive. *Id.* at ¶ 36. The court must also consider intangible contributions by the noncustodial parent to the effect those contributions may adversely affect that parent's standard of living. *Id.*

> Second, the court should be careful to give meaning to the word "substantial" as applied to what constitutes a change in circumstances warranting modification of child support. The word "substantial" means "drastic," "material," or "significant[.]" *Mandelbaum v. Mandelbaum*, 121 Ohio St. 3d 433, 2009-Ohio-1222, 905 N.E.2d 172, ¶ 32; *Wuscher v. Wuscher*, 9th Dist. Summit No. 27697, 2015-Ohio-5377, ¶ 16. The requirement that a change in circumstances be "substantial" is intended to prevent endless motions for modification based on incremental changes in income.
>
> Third, the change in circumstances must be one that the parties did not contemplate at the time the court issued the original child support order. *See* R.C. 3119.79(C) (allowing modification if the court determines that the amount of child support required to be paid under the child support order should be changed "due to a substantial change of circumstances that was not contemplated at the time of the issuance of the original child support order or the last modification of the child support order").

(Emphasis sic.) *Id*. at ¶ 18-21.

{¶ 24} Here, the trial court found there was a substantial change of circumstances to justify a modification in child support — the children are older now, involved in more activities, and monthly child-related expenses have increased. Recognizing the law affords the trial court more discretion in determining child support amount when the parents' income exceeds $150,000, the court determined the appropriate child support amount to be $7,000 per month.

{¶ 25} The record reflects the magistrate had employed the extrapolation method and arrived at $8,399 under the numerical guideline, which was based on the parents' income and the number of children alone. Both parties agree that, under the statute, Husband's child support calculation is not an exclusive function of the parents' income and the number of children. Rather, the trial court must take

into account the standard of living the children would enjoy had the couple remained married. However, the parties disagree sharply as to the lifestyle they had lived during the marriage or the lifestyle the children would enjoy now had the parties remained married. Husband considered the lifestyle they had lived modest while Wife characterized it as extravagant. While Wife asked for $13,800 of child support and Husband believed $3,500 was appropriate, the trial court, in the apparent belief that somewhere in the middle lies the truth, found $7,000 to be a reasonable amount to meet the children's current and growing needs and to allow the children to maintain a suitable standard of living in the mother's household. Because the statute affords the trial court wide discretion in high-income couples, we decline to interfere with the discretion exercised by the trial court here.

{¶ 26} Husband claims in his second assignment of error that the modified child support amounts to a de facto spousal support. He is correct that the court "must take care not to award child support as a substitute for spousal support when the latter terminates." *See, e.g., Ellis v. Ellis*, 7th Dist. Mahoning No. 08 MA 133, 2009-Ohio-4964, ¶ 70. However, "this does not mean that the termination of spousal support is never relevant to a determination of child support based upon the needs and standard of living of the children." *Wright v. Wright*, 8th Dist. Cuyahoga No. 91026, 2009-Ohio-128, ¶ 30.

{¶ 27} Our review indicates that the trial court was mindful of the distinction between spousal and child support. It stated in its judgment that Wife's request of $13,800 monthly child support "is an attempt to replace spousal support

with child support." It also found, however, that the parties had agreed to "frontload" the spousal support (i.e., a higher amount of spousal support and lesser amount of child support) to give Husband, the payor, substantial tax benefits. (Taking tax into consideration, Husband actually paid $6,971 for the $13,783 spousal support.) As a result, Wife had been using additional monies from spousal support to pay for the increased needs of the children and to maintain the lifestyle they were accustomed to prior the divorce. The trial court's findings are supported by our review of the record. The initial child support amount of $1,200 was intended to provide tax benefits to Husband and did not reflect the needs of the children. Given the "frontloading" of the spousal support and the increased needs of the children, the $7,000 child support, although a significant increase from the existing amount of $1,200, does not constitute a "de facto" spousal support. Husband's first and second assignments of error and Wife's first assignment of error in her cross appeal are without merit.

Wife's Imputed Income

{¶ 28} Wife argues under her second assignment of error that trial court erred when it imputed to her an amount of income not supported by the evidence. Specifically, she argues there was no evidence that a teaching job would be available to her.

{¶ 29} Pursuant to R.C. 3119.01(C)(9)(b) and 3119.01(C)(17), the trial court is permitted to impute potential income to a parent who is voluntarily unemployed or voluntarily underemployed for the purpose of determining the parent's child

support obligation. Whether a parent is voluntarily underemployed and the amount of any income to be imputed to the parent are matters to be determined by the trial court based on the particular facts and circumstances of each case. *Rock v. Cabral*, 67 Ohio St.3d 108, 616 N.E.2d 218 (1993), syllabus. A parent who claims the other parent is voluntarily underemployed has the burden of proof. *Id.*

{¶ 30} Here, the magistrate found Wife to be voluntarily underemployed and found her to be capable of earning a substitute teacher's wages. However, because there was no evidence in the record regarding how much income she would make as a substitute teacher, the magistrate imputed to her an income of $13,511, which represented minimum wages of $8.12 per hour at 32 hours a week. The magistrate used that imputed income in calculating the $8,399 child support under the extrapolation method.

{¶ 31} The trial court also found Wife to be voluntarily underemployed, but imputed to her an income of $54,800, which represented the median salary of elementary teachers in Ohio as reported by the vocational expert, who also opined that teachers in reading, which Wife has a master's degree in, are sought by the schools. The trial court reasoned that Wife was capable of working as an elementary school teacher but chose to take financial risks and pursued an entrepreneurial venture with uncertain earnings potential.

{¶ 32} A careful reading of the trial court's judgment, however, shows that the trial court did not appear to base its child support order of $7,000 on the imputed income. The trial court specifically stated that the extrapolation method

was unwarranted in this case. Instead, after considering the growing needs of the children and a suitable standard living for them, it exercised the discretion given to the court under R.C. 3119.04 for high-income families and determined $7,000 to be a proper child support amount. As such, Wife's second assignment of error is without merit.

Interim Order

{¶ 33} Husband's third assignment of error concerns the trial court's interim order issued on September 29, 2017. The record reflect that Wife filed the motion to modify child support on January 15, 2016. The magistrate issued his decision on December 9, 2016, modifying the child support to $8,399 per month. Both parties filed an objection to the magistrate's decision. The briefing for the objections was completed in March 2017. The trial court then issued an interim order on September 29, 2017.

{¶ 34} The court stated in the interim order that, in order to properly evaluate the qualitative needs and standard of living of the children and parents, the court needed additional information, including updated expense affidavits and the parties' tax returns for 2016 and 2017.[2] The court set a hearing for May 30, 2018. It appears the trial court set the hearing for May 30, 2018, because the 2017 tax returns

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[2] Pursuant to Civ.R. 53(D)(4)(d), in ruling on objections from the magistrate's decision, the trial court may hear additional evidence. Civ.R. 53(D)(4)(b) also allows the court to take additional evidence before adopting or rejecting a magistrate's decision, whether or not objections are filed. Here, the trial court ordered the parties to exchange their 2016 and 2017 tax documents and updated income and expense affidavits and then provide them to the court.

would be available only after the April 2018 tax-filing deadline. The court also modified the child support amount to $9,000, effective on September 1, 2017, but it failed to address the amount for the period between Wife's filing of the motion to modify and the issuance of the interim order.

{¶ 35} The trial court eventually issued a decision on July 6, 2018, setting the child support amount at $7,000, beginning on January 15, 2016, when Wife filed the motion to modify. However, in the portion of the judgment relating to support arrearage, the court stated that from September 1, 2017, to May 31, 2018 (the nine-month period between the interim order and the final order), the child support amount remained $9,000.

{¶ 36} Subsequently, the court issued a nunc pro tunc order on July 24, 2018, in an attempt to correct the support arrearage portion of its judgment. The nunc pro tunc judgment retained the amount of $9,000 for the nine-month period, but added a paragraph, stating the child support amount would be $7,000 from January 15, 2016, through August 31, 2017.

{¶ 37} Under his third assignment of error, Husband argues the trial court violated his due process rights during the nine-month period between the interim order and the final order because he was unable to "appeal" the interim order "or otherwise proceed forward in any way." He also argues the interim order "effectively prevented [him] from seeking a modification of the Court's child support order." He specifically argues that during the period his income was only $295,000 and he was

prevented from seeking a downward modification during the period based on his reduced income.

{¶ 38} Essentially, Husband argues he should have the right to immediately challenge the court's interim order. Due process affords an opportunity to be heard, not an opportunity to be heard immediately. There is no statutory or case law authority supporting Husband's claim that he should be able challenge the court's interim order while the court reviewed the parties' objections to the magistrate's decision. Once the court decided the proper amount of support in the final order, he would be entitled to a credit if he has overpaid during the period the interim order is in effect.

{¶ 39} Husband also claims the court's interim order was improper because Civ.R. 53(D)(4)(e)(ii) prohibits an interim order from lasting more than 28 days from its date of entry. That rule states:

> *Interim order*. The court may enter an interim order on the basis of a magistrate's decision without waiting for or ruling on timely objections by the parties where immediate relief is justified. The timely filing of objections does not stay the execution of an interim order, but *an interim order shall not extend more than twenty-eight days from the date of entry, subject to extension by the court in increments of twenty-eight additional days for good cause shown*. An interim order shall comply with Civ.R. 54(A), be journalized pursuant to Civ.R. 58(A), and be served pursuant to Civ.R. 58(B).

(Emphasis added.)

{¶ 40} Husband claims the trial court apparently intended the September 2017 interim order to automatically renew itself until the hearing on May 30, 2018. He cites *Denier v. Carnes-Denier*, 2017-Ohio-334, 77 N.E.3d 588 (12th Dist.), where

the appellate court read this rule as not permitting a trial court to issue an interim order that automatically renews.

{¶ 41} Husband did not object to the interim order in the trial court as a violation of Civ.R. 53(D)(4)(e)(ii). As such, he did not preserve the issue for our review. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997) ("in civil as well as criminal cases, [the] failure to timely advise a trial court of possible error, by objection or otherwise, results in a waiver of the issue for purposes of appeal.").

{¶ 42} Furthermore, we note that Civ.R. 53(D)(4)(e)(ii) allows a trial court to extend an interim order in 28-day increments "upon a showing of good cause." *Siferd v. Siferd*, 2017-Ohio-8624, 100 N.E.3d 915, ¶ 57 (3d Dist.). Had Husband brought this issue to the trial court's attention, the trial court would have "good cause" to renew the interim order, as the trial court set the hearing date on May 31, 2018, to allow the parties time to exchange and submit additional financial documents, including the parties' 2017 tax returns.

{¶ 43} Under the third assignment of error, Husband also argues that the trial court erred in ordering him to pay $9,000 per month during the nine-month period between the interim order and the final order. We find merit to this claim.

{¶ 44} Our review reflects that, in page 8 of the court's July 6, 2018 judgment, the court stated "[t]his order for child support and cash medical support is effective January 15, 2016." Yet, under the "Support Arrearage" section of the judgment, the court retained the previously ordered amount of $9,000 for the nine-

month period between the interim order and the final order and also stated, in contradiction to its pronouncement at page 8, that "[t]he current child support amount of $7,000 per month ($2,333.33) is effective June 1, 2018."

{¶ 45} The court appeared to recognize the lack of clarity in its judgment entry. It issued a nunc pro tunc a few weeks later. The nunc pro tunc order clarified that the amount of $7,000 was effective from the period between the filing of the motion to modify and the interim order, yet it left the amount of $9,000 intact for the interim period. The original judgment entry and the nunc pro tunc judgment together reflect that the support amount was $7,000 between the filing of the motion to modify and the issuance of the interim order, $9,000 during the nine-month interim period, and $7,000 after the issuance of the final order. We are unable to discern any basis for the additional $2,000 per month during the nine-month period. Accordingly, we reverse this portion of the court's judgment and remand the matter to the trial court for a redetermination of the proper child support amount for the period from September 1, 2017, to May 31, 2018, and provide a basis for a deviation from the modified child support of $7,000, if any. Husband's third assignment of error is overruled in part and sustained in part.

Payment of Arrearage at Statutory Rate of 20%

{¶ 46} Under her third assignment of error, Wife claims the trial court erred in ordering Husband to pay any child support arrearage at a statutory rate of 20%. She argues Husband should be required to pay the amount of arrears in a lump sum payment.

{¶ 47} R.C. 3123.21 governs child support arrearage. It states:

> (A) A withholding or deduction notice described in section 3121.03 of the Revised Code or an order to collect current support due under a support order and any arrearage owed by the obligor under a support order pertaining to the same child or spouse shall be rebuttably presumed to provide that the arrearage amount collected with each payment of current support equal at least twenty per cent of the current support payment.
>
> (B) A court or administrative hearing officer may consider evidence of household expenditures, income variables, extraordinary health care issues, and other reasons for a deviation from the twenty per cent presumption.

{¶ 48} By R.C. 3123.21, the General Assembly created a rebuttable presumption of a minimum monthly payment of 20 percent of the current support payment to address an arrearage, but the trial court has the opportunity to deviate upward or downward from the 20 percent presumption. *Galloway v. Khan*, 10th Dist. Franklin No. 06AP-140, 2006-Ohio-6637, ¶ 51. We review the trial court's decision regarding R.C. 3121.21 for an abuse of discretion. *Hayman v. Hayman*, 184 Ohio App.3d 97, 2009-Ohio-4855, 919 N.E.2d 797, ¶ 39-42 (5th Dist.).

{¶ 49} Regarding arrearage, the trial court ordered Husband to pay at the statutory rate of 20% should any arrearage exists. Wife argues Husband should be required to pay any arrears in a lump sum because his income reflects an ability to do so. However, there is no statutory provision for the payment of arrears in one payment; the statute only permits the court to deviate from the 20% statutory rate if the evidence supports it. *Galloway* at ¶ 50. Although the evidence here may warrant an upward deviation from the statutory rate, we are unable to conclude the

trial court abused its discretion in ordering the arrearage to be paid at the statutory rate. Wife's third assignment of error is without merit.

Attorney Fees

{¶ 50} Regarding attorney fees, Wife requested attorney fees of $26,654. The magistrate awarded the full amount, stating that her counsel's hourly rate of $435 was reasonable given his expertise and experience. The magistrate also noted the child support matter involved significant issues and Wife incurred the fees for the benefit of the children for the most part. The trial court initially awarded Wife attorney fees in the amount of $20,000 in the interim order. In its final judgment, the court awarded attorney fees for Wife in the amount of $26,654. In the subsequent nunc pro tunc order, the court, citing its interim order, reverted to an award of attorney fees of $20,000. Under Wife's fourth assignment of error, she argues that the trial court erred in reducing her award of attorney fees.

{¶ 51} It is well established that an award of attorney fees is within the sound discretion of the trial court and its discretion will not be overruled absent an attitude that is unreasonable, arbitrary, or unconscionable. *Cyr*, 8th Dist. Cuyahoga No. 84255, 2005-Ohio-504. R.C. 3105.73 governs attorney fees in divorce or dissolution and post-decree proceeding. It states:

> (B) In any post-decree motion or proceeding that arises out of an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that motion or proceeding, the court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties'

> income, the conduct of the parties, and any other relevant factors the court deems appropriate, but it may not consider the parties' assets.

{¶ 52} The statute enumerates factors that the trial court may consider but also permits the trial court to consider any other factors it deems appropriate. *Iacampo v. Oliver-Iacampo*, 11th Dist. Geauga No. 2011-G-3026, 2012-Ohio-1790, ¶ 149. Notably absent is the requirement that the court make any specific findings. *Welty v. Welty*, 11th Dist. Ashtabula Nos. 2007-A-0013 and 2007-A-0015, 2007-Ohio-5217, ¶ 41. Although the trial court did not give an express analysis for its reduction of attorney fees, our review of the court's decision reflects the court stressed the significant sum of spousal support Wife had received over the years and the importance of an appreciation of her own financial responsibility. As the trial court enjoys broad discretion under R.C. 3105.73 in determining an equitable award of attorney fees, we are unable to conclude its reduction of $6,654 in attorney fees was unreasonable, arbitrary, or unconscionable. Wife's fourth assignment of error is without merit.

{¶ 53} The court's judgment is affirmed regarding Husband's child support obligation in the amount of $7,000, the attorney fees of $20,000 awarded to Wife, and the payment of any arrearage at the statutory rate. The judgment regarding Husband's child support obligation in the amount of $9,000 from September 1, 2017, through May 31, 2018, is reversed and remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellant and appellee share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing 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.

MICHELLE J. SHEEHAN, JUDGE

ANITA LASTER MAYS, P.J., and
RAYMOND C. HEADEN, J., CONCUR