[Cite as *Misleh v. Badwan*, 2009-Ohio-6949.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

NABIL A. MISLEH	C. A. No. 24693
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
SAHAR O. BADWAN	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellee	CASE No. 2004-04-1499

DECISION AND JOURNAL ENTRY

Dated: December 31, 2009

BELFANCE, Judge.

{¶1} Plaintiff-Appellant Nabil A. Misleh ("Father") appeals the judgment of the Summit County Court of Common Pleas, Domestic Relations Division ordering him to pay Sahar O. Badwan ("Mother") child support. For reasons set forth below, we affirm.

FACTS

{¶2} This Court summarized the facts of this case in *Misleh v. Badwan*, 9th Dist. No. 24185, 2009-Ohio-842, at ¶¶2-4:

> "[Father] was married to [Mother] from December 19, 2002, until May 22, 2006. The couple's only child was born December 12, 2003. In its judgment of divorce, the trial court designated [Mother] as the residential parent and ordered [Father] to pay child support. In calculating [Father's] income for child support purposes, the trial court imputed income to him of $50,000 because he was unemployed at that time. The trial court made no explicit finding, however, that [Father's] unemployment was voluntary.
>
> "On appeal, this Court reversed the child support portion of the judgment because the trial court had imputed income to [Father] without explicitly making the finding required by R.C. 3119.01(C)(11) that [Father] was voluntarily unemployed or underemployed. See *Misleh v. Badwan*, 9th Dist. No. 23284, 2007-Ohio-5677, at ¶6 and 15.

> "On remand to the trial court, the trial court held a new hearing and, on March 31, 2008, again ordered [Father] to pay child support based on an imputed annual income of $50,000."

Father again appealed to this Court, see *Misleh* at ¶5, arguing that the trial court again failed to make the requisite explicit finding that Father was voluntarily unemployed. We agreed and sustained Father's assignment of error. Id. at ¶8. We concluded that the trial court was without authority to impute income to Father absent making an explicit finding that Father was voluntarily unemployed. Id.

{¶3} Upon remand, and after examining "the parties' testimony at the trial in this matter and [] Father's testimony at the hearing on March 27, 2008," the trial court explicitly found that "Father is voluntarily unemployed[,]" imputed $50,000 of income to him, and ordered him to pay a total of $633.42 per month in child support. Father has appealed, raising one assignment of error for our review.

IMPUTED INCOME

{¶4} Father argues that the trial court erred in ordering him to pay child support by improperly imputing $50,000 of income to him. We disagree.

{¶5} "[T]he question whether a parent is voluntarily (*i.e.*, intentionally) unemployed or voluntarily underemployed is a question of fact for the trial court[,]" and "[a]bsent an abuse of discretion, that factual determination will not be disturbed on appeal." *Rock v. Cabral* (1993), 67 Ohio St.3d 108, 112. 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. Additionally, we "should not reverse the factual findings of the trial court, where there is some competent and credible evidence in support of the

trial court's findings." (Internal citations and quotations omitted.) *Quintile v. Quintile*, 9th Dist. No. 08CA0015-M, 2008-Ohio-5657, at ¶6.

{¶6} Section 3119.01(C)(5)(b) of the Ohio Revised Code provides that the income of "a parent who is unemployed or underemployed" includes "the sum of the gross income of the parent and any potential income of the parent." "Potential income" includes:

> "[i]mputed income that the court or agency determines the parent would have earned if fully employed as determined from the following criteria:
>
> "(i) The parent's prior employment experience;
>
> "(ii) The parent's education;
>
> "(iii) The parent's physical and mental disabilities, if any;
>
> "(iv) The availability of employment in the geographic area in which the parent resides;
>
> "(v) The prevailing wage and salary levels in the geographic area in which the parent resides;
>
> "(vi) The parent's special skills and training;
>
> "(vii) Whether there is evidence that the parent has the ability to earn the imputed income;
>
> "(viii) The age and special needs of the child for whom child support is being calculated under this section;
>
> "(ix) The parent's increased earning capacity because of experience;
>
> "(x) Any other relevant factor." R.C. 3119.01(C)(11)(a).

{¶7} We have previously stated that a trial court can impute income to a parent in a child support proceeding only after first explicitly finding that the parent is voluntarily unemployed or underemployed. See, e.g., *Misleh* at ¶7. With respect to the trial court's determination that Father is voluntarily unemployed, Father argues only that the trial court again failed to make this explicit finding. However, this argument is clearly without merit. The trial court made several explicit statements regarding Father being voluntarily unemployed. In one

portion of the journal entry, the trial court specifically stated that the "Court finds that Father is voluntarily unemployed." Thus, the trial court made an express finding of voluntary unemployment. Further, despite Mother's belief that Father has been secretly holding a job, Father himself claimed that he has been unemployed since 2001, and the record is devoid of evidence that Father plans to seek employment.

{¶8} Father next argues that the trial court erred in failing to consider the specific factors set forth in R.C. 3119.01(C)(11)(a) before imputing income to him. Specifically, Father alleges that the trial court failed to include "analysis of [Father's] prior employment, education, qualifications, available employment in the geographic area or prevailing wage or salary levels for such employment in this area."

{¶9} As a preliminary matter, this Court notes that there is no requirement in the statute that the trial court make express determinations in regard to every factor. However, while "[t]he amount of income to be imputed upon a parent is derived from the trial court's consideration of the above [R.C. 3119.01(C)(11)(a)] factors[,]" *Wilburn v. Wilburn*, 169 Ohio App.3d 415, 2006-Ohio-5820, at ¶38, we believe there is evidence that the trial court did consider most of these factors in making its determination. The trial court's statement of facts contains the following findings:

> "Father testified that he had no physical or mental impairments which would prevent him from working. []Father further testified that prior to his marriage to Mother that he had been in business and earned $80,000 to $90,0000 per year. []Father testified that he was capable of earning $80,000 to $90,000 if he had a business to operate. []When questioned about his ability to pay his living expenses and those of his children since 2001 (when he closed his grocery business), Father gave vague and contradictory statements. * * * Father certified on a credit application [for a car loan for a vehicle for his nephew] that he had annual income of $50,000 per year. * * * Father testified that he had $57,000 in a savings account."

Additionally, in the trial court's decision, it stated that

> "Father is a 55-year-old man in good physical and mental health with a work history of being successful in business. []Father's testimony concerning his attempt to start a business during the marriage established that job opportunities exist for someone with his work history and occupational qualifications. * * * The Court determines that it would not be equitable to impute income to Father in the full amount he earned when his business was successful because of the time necessary to develop a successful business. []The Court will impute income to Father in the amount of $50,000, which is the amount of income he certified to Toyota Financial Services."

Thus it is clear that the trial court considered the factors set forth in R.C. 3119.01(C)(11)(a), as it explicitly provided facts relevant to several of the factors. See e.g., R.C. 3119.01(C)(11)(a)(i) (Father's prior work experience); R.C. 3119.01(C)(11)(a)(iii) (any physical and mental disabilities of Father); R.C. 3119.01(C)(11)(a)(iv) (the availability of employment in the area); R.C. 3119.01(C)(11)(a)(vi) (Father's special skills and training); R.C. 3119.01(C)(11)(a)(vii) (evidence that Father could earn the imputed income). Father believes that the trial court did not consider certain factors in reaching its decision. Assuming that to be true, Father offers no explanation as to how an explicit consideration of those factors was material to the trial court's analysis and how consideration of those factors would have altered the trial court's determination. Father does not provide this Court with the facts that correspond to the factors which he believes were not properly considered, nor does he point this Court to places in the record evidencing that information related to the factors was presented to the trial court for consideration. App.R. 16(A)(7). Furthermore, R.C. 3119.01(C)(11)(a)(x) permits the trial court to consider any other relevant factor thereby allowing the trial court to assess evidence that does not expressly correspond to the enumerated factors. In this case, the trial court considered evidence that Father had signed a loan application wherein he stated his annual income was $50,000 and Father's testimony that he had $57,000 in a savings account.

{¶10} Father essentially argues that the trial court imputed $50,000 of income to him "based solely on a car loan application." Without deciding whether this in and of itself would be proper, we conclude that Father is incorrect in his underlying assertion. While we agree that the amount of imputed income does equal the amount of income Father himself reported on a car loan application, there is no evidence that this is the only evidence that the trial court considered when determining how much income to impute to Father. The trial court specifically stated that "Father testified that he was capable of earning $80,000 to $90,000 if he had a business to operate." The trial court concluded that "it would not be equitable to impute income to Father in the full amount he earned when his business was successful because of the time necessary to develop a successful business." The trial court also noted that Father had $57,000 in a savings account.

{¶11} The trial court specifically stated in its entry that "[w]hen questioned about his ability to pay his living expenses and those of his children since 2001 (when he closed his grocery business), Father gave vague and contradictory statements[,]" indicating that the trial court found Father's testimony not entirely credible. Thus, it appears that the trial court's decision with respect to how much income to impute to Father was based upon all the evidence, including a consideration of the witnesses' credibility.

{¶12} Our review of the March 27, 2008 hearing transcript reveals that the trial court's factual findings are supported by the record. Father testified that he has been unemployed since 2001. From the record, it does not appear that Father plans to seek employment anytime in the near future. Father indeed stated that he was successful in business, that he could be successful again, and that he could easily make $80,000 to $90,000 a year. Father provided no testimony

indicating that he was physically or mentally incapable of working. Therefore, we conclude that the trial court did not abuse its discretion in imputing income of $50,000 to Father.

CONCLUSION

{¶13} In light of the foregoing, Father's assignment of error is overruled.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

CHRIS G. MANOS, Attorney at Law, for Appellant.

JAMES RECUPERO, Attorney at Law, for Appellee.