[Cite as *Daniels v. O'Dell*, 2010-Ohio-1341.]

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

ASA DANIELS	C.A. No. 24873
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
MELISSA O'DELL	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellee	CASE No. 2009-02-0413

DECISION AND JOURNAL ENTRY

Dated: March 31, 2010

CARR, Judge.

{¶1} Appellant, Asa Daniels ("Father"), appeals the judgment of the Summit County Court of Common Pleas, Domestic Relations Division. This Court affirms.

I.

{¶2} On November 24, 2008, the Summit County Child Support Enforcement Agency ("CSEA") issued an administrative order establishing paternity of Melissa O'Dell's ("Mother") child, finding Father to be the natural father of the child. On January 14, 2009, CSEA issued an original administrative order for child support as to the child, ordering Father to pay $432.71 per month, plus a processing charge. Father filed an objection in the Domestic Relations Court pursuant to R.C. 3111.84, asserting that the agency calculated the amount of child support based upon information that Father was currently employed, although he was not. Mother also filed an objection to the administrative order, asserting that the full amount of Father's income was not

considered when the agency determined the amount of child support. The domestic relations court scheduled a hearing before the magistrate on the parties' objections.

{¶3} Father failed to appear at the March 27, 2009 hearing, and the magistrate presided over a hearing attended only by Mother. On March 31, 2009, the magistrate issued a decision in which she found Father to be voluntarily unemployed. She based this determination on Father's termination from work as a juvenile corrections officer because he had been charged with a crime. The magistrate imputed income to Father in the amount of $18.00 per hour, the approximate amount he would have been earning had he not been fired. The magistrate also considered Father's monthly pay from the Army Reserve and ordered that Father pay $830.50 per month, plus a 2% processing fee, as support for his child.

{¶4} Father filed timely objections to the magistrate's decision, as well as a praecipe to the court reporter for the preparation of a transcript of the March 27, 2009 hearing. The court reporter prepared and filed the hearing transcript on May 27, 2009, as part of the trial court record. Father raised two issues in his objections. First, Father asserted that he was recently "terminated from any employment opportunities" with an ironworkers' union "[d]ue to hard economic conditions[.]" Second, Father argued that the magistrate improperly found him to be voluntarily unemployed from his job as a corrections officer because he was involuntarily released from that employment. Mother responded in opposition to Father's objections.

{¶5} On June 22, 2009, the domestic relations court overruled Father's objections. The trial court found Father to be voluntarily unemployed due to his termination for cause from his job as a corrections officer, and ordered Father to pay child support in the amount of $830.50 per month, plus a 2% processing charge. Father filed a timely appeal, raising two assignments of error for review.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT FAILED TO MAKE A SPECIFIC DETERMINATION THAT THE CHILD SUPPORT OBLIGOR WAS VOLUNTARILY UNEMPLOYED AND IMPUTED INCOME FROM THE OBLIGOR'S PREVIOUS EMPLOYMENT."

{¶6} Father argues that the domestic relations court failed to find that he was voluntarily unemployed before imputing income to him. This Court disagrees.

{¶7} This Court has held that the trial court must find a party to be voluntarily unemployed or underemployed before it may impute income in a determination of child support. *Misleh v. Badwan*, 9th Dist. No. 23284, 2007-Ohio-5677, at ¶5-6. A simple review of the trial court record indicates that the domestic relations court made the express finding that Father was voluntarily unemployed.

{¶8} Father agreed that the magistrate found him to be voluntarily unemployed when she stated in her decision that "[Father] is deemed voluntarily unemployed." This Court agrees that this language constitutes an express finding of voluntary unemployment. In its journal entry ruling on Father's objections, the domestic relations court also stated that "[Father] is deemed to be voluntarily unemployed." Accordingly, the trial court made the requisite preliminary finding of voluntary unemployment before it imputed income to Father in its determination of child support. Father's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

"THE TRIAL COURT ERRED BY DETERMINING THE APPELLANT'S CHILD SUPPORT OBLIGATION WITHOUT ANY EVIDENCE OF THE INCOME OF THE APPELLANT."

{¶9} Father argues that the trial court erred by determining his child support obligation in the absence of evidence of his income. This Court disagrees.

{¶10} When reviewing an appeal from the trial court's ruling on objections to a magistrate's decision, this Court must determine whether the trial court abused its discretion in reaching its decision. *Turner v. Turner*, 9th Dist. No. 07CA009187, 2008-Ohio-2601, at ¶10. "In so doing, we consider the trial court's action with reference to the nature of the underlying matter." *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009-Ohio-3139, at ¶18. "Any claim of trial court error must be based on the actions of the trial court, not on the magistrate's findings or proposed decision." *Mealey v. Mealey* (May 8, 1996), 9th Dist. No. 95CA0093. A trial court's decision regarding child support obligations will not be overturned absent a showing of an abuse of discretion. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. Id.

{¶11} Civ.R. 53(D)(3)(b)(iv) states:

> "Waiver of right to assign adoption by court as error on appeal. 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, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)."

{¶12} Father's objections to the magistrate's decision raised only issues relating to the nature of his unemployment. Specifically, he argued that the magistrate erred by concluding that he was voluntarily unemployed because: (1) he "was terminated from any employment opportunities" with an ironworkers' union "[d]ue to hard economic conditions," and (2) he "was

involuntarily released from employment" as a juvenile corrections officer. Father did not object to any finding or conclusion regarding the amount of his child support obligation. Furthermore, Father has not argued plain error on appeal. Accordingly, he has waived the right to assign as error on appeal the amount of his child support obligation based on the lack of any evidence regarding his income.

{¶13} Moreover, were this Court to construe his objections below so as to preserve this issue on appeal, his assignment of error remains not well taken. At the March 27, 2009 hearing, Mother testified that she and Father both worked at Indian River Juvenile Correctional Facility as corrections officers until Father was fired for criminal conduct. Mother testified that Father began his employment at the corrections facility two to three weeks before she did. She testified that her base pay is approximately $18.00 per hour, and that Father's base pay would be the same had he remained employed at the facility. She admitted that she makes slightly more than her base pay because she has longevity credit with the state, while Father would not have that extra income. Mother testified that Father also makes $200.00 per month for his service in the Army Reserve. Father failed to appear and present any evidence to the contrary regarding his income. The record contains unrebutted evidence by Mother regarding Father's income. Accordingly, the trial court did not determine Father's child support obligation in the absence of any evidence of Father's income. Father's second assignment of error is overruled.

III.

{¶14} Father's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Domestic Relations Division, is affirmed.

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.

DONNA J. CARR
FOR THE COURT

MOORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

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

RAVI SURI, Attorney at Law, for Appellee.