

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE C. K-O. :
 : No. 112136
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 13, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. CU-02-111004

Appearances:

Zoller & Biasci Co., L.P.A., and B. Nicole Bush, *for*
appellee K.K.

H.O., *pro se*.

MARY EILEEN KILBANE, J.:

{¶ 1} Appellant-father H.O. (“H.O.”) appeals from the juvenile court’s order denying his motion to modify child support. For the following reasons, we affirm.

Factual and Procedural History

{¶ 2} H.O. and appellee-mother K.K. previously had a relationship that resulted in a daughter, C.K-O., who was born on April 29, 2001. This case concerns

competing motions to modify the child-support order related to C.K-O., initially entered on October 21, 2011.

{¶ 3} On February 27, 2020, the court issued a support order ordering that effective December 1, 2019, obligor H.O. shall pay obligee K.K. \$1,298.40, plus a processing fee of 2% per month, as current support. The court further ordered that H.O. shall pay \$14.77, plus a processing fee of 2% per month, for cash medical support. The court further ordered that the current support arrears shall be increased from \$93.67 per month, to \$262.63, plus a processing fee of 2% per month.

{¶ 4} On March 19, 2020, K.K. filed a motion to modify child support and to designate C.K-O. as a *Castle* child pursuant to R.C. 3119.86. R.C. 3119.86(A)(1)(a) provides that the duty of support to a child imposed pursuant to a court child-support order shall continue beyond the child's eighteenth birthday if the child is mentally or physically disabled and is incapable of supporting or maintaining himself or herself. *See also Castle v. Castle*, 15 Ohio St.3d 279, 473 N.E.2d 803 (1984).

{¶ 5} An affidavit attached to K.K.'s motion averred that C.K-O. has moderately severe autism spectrum disorder, and despite aggressive interventions, C.K-O.'s condition "is such that she will never be able to engage in substantial gainful activity." Therefore, K.K. requested that the court modify the child-support order to

require that H.O., the child-support obligor, continue to pay support beyond C.K-O.'s 19th birthday.

{¶ 6} On July 2, 2020, H.O. filed a motion to modify child support. In his motion to modify, H.O. asserted that a change in circumstances occurred in that he sustained a major injury preventing him from working. An affidavit attached to H.O.'s motion averred that in March 2019, while working on a roof, he fell and broke his back and tailbone and suffered a concussion. The affidavit further averred that as a result of these injuries, he developed concussive disorder and traumatically induced epilepsy, and he is therefore unable to return to work as a contractor.

{¶ 7} On November 2, 2020, K.K. filed a motion to show cause for non-payment of child support pursuant to the court's February 27, 2020 order. K.K. also moved for attorney fees.

{¶ 8} On June 28, 2022, in advance of a trial on the competing motions, both parties stipulated that C.K-O. is a *Castle* child pursuant to R.C. 3119.86(A)(1)(a). The parties also filed an agreed judgment entry stating:

On November 20, 2019, the Office of Child Support Services filed a Motion to Show Cause, alleging that [Obligor H.O.] has not paid current support for his minor child, [C.K-O.]. This entry sets forth the parties' agreement resolving the OCSS contempt action in this matter. Having been properly advised by his attorney, [H.O.] hereby knowingly, voluntarily, and intelligently waives his right to a full hearing on the merits and enters an admission that he is guilty of a 1st finding of civil contempt for failure to pay current child support each and every month in full. The parties further agree to the following terms regarding the contempt finding: 1) Obligor will be sentenced to 25 days in jail, sentence suspended, 2) Obligor may purge the sentence by paying a purge amount of \$3,000 no later than 120 days from the date of journalization of the court order 3) the Court will not make a

finding of arrears at this time due to the pending Motions to Modify filed by the parties; and 4) OCSS shall recalculate the arrears when the Court issues an order resolving the parties' pending Motions to Modify Support.

{¶ 9} The same day, the court issued a journal entry stating that H.O. had recently retained new counsel and thus requested that trial be continued. The journal entry also ordered that within ten days, H.O. was to provide K.K. with various tax and other financial documents.

{¶ 10} The court held an evidentiary hearing on the pending motions on July 12 and July 14, 2022. On July 13, 2022, the court issued a journal entry adopting the parties' aforementioned agreed judgment entry and finding H.O. guilty of contempt of court for failure to pay child support.

{¶ 11} On October 18, 2022, the court issued a journal entry and opinion denying both parties' motions to modify the child-support order. The opinion stated, in relevant part:

The evidence for each pending motion centers on [H.O.'s] obligation under a February 25, 2020 support order to pay [C.K-O.'s] child support of \$887.42 per month, \$14.77 per month in cash medical, and \$266.63 per month towards a sizable arrearage.

On July 13, 2020, [H.O.] filed a motion to modify child support. [H.O.] alleges in his affidavit, while at work, on March 20, 2019, he fell 20 feet from a roof he was inspecting, landing on the hard concrete below. That he broke his back in five places, broke his tailbone, and received a concussion. [H.O.] stated, in the affidavit, he was in the process of obtaining Social Security disability. He further stated that he cannot work due to his injuries and is permanently disabled.

[K.K.] concedes [H.O.] fell but counters by stating [H.O.] could work as a contractor or other vocation but chooses not to work.

[H.O.] states he has no or deminious [sic] income.

* * *

After years of litigation, an evidentiary hearing was held on [numerous pending motions.]

The issues for the court to decide are as follows:

1) Did [H.O.'s] injuries suffered on March 20, 2019 in a fall cause an inability to work or produce income such that it created a "change of circumstances" of [H.O.'s] earning ability?

a) Were [H.O.'s] injuries permanent or cause him not to have an income?

b) If injuries prevented [H.O.] from having income, what income should be imputed for [H.O.]?

2) The last child support order was filed by Judge O'Mally [sic] on February 25, 2020, effective December 1, 2019, which imputed [H.O.'s] income at \$112,400 and [K.K.'s] income at \$35,838.40. Have their incomes and other factors changed significantly?

3) Should [K.K.'s] Motion to Show Cause, based on [H.O.'s] failure to pay child support, be voided or merged into the Agreed Judgment Entry of July 13, 2022?

* * *

The Court finds:

A) [H.O.] was his only witness to testify in support of the Motion to Modify Child Support.

B) [H.O.] testified that on March 20, 2019, he fell 20 to 30 feet from a roof while working as an inspector for [his company]; he hit the concrete below and broke his back in five places, broke his tailbone, received a concussion, and injured his hand.

C) [K.K.] acknowledged the fall but did not know the extent of [H.O.'s] injuries.

D) [H.O.] testified he was hospitalized for three to five days.

E) [H.O.] said he had multiple injuries.

F) [H.O.] said he developed concussive disorder and had traumatically-induced epilepsy, in addition to breaking his back in five places, breaking his tailbone, and injuring his hand.

G) [H.O.] stated he had multiple surgeries.

H) [H.O.] stated he has been unable to work since his 2019 fall to the concrete. No doctors, no surgeons, or occupational or vocational therapists testified as to [H.O.'s] claim of disability or inability to work. Only [H.O.] testified he had permanent injuries.

I) [H.O.] testified that since 2019, he has done odd jobs for friends and his former wife and consulting work but did not produce Federal Tax form 1099 of income for the same.

J) [H.O.] in his affidavit attached to his Motion to Modify, filed July 13, 2020, stated that he was applying for Social Security disability as a result of the fall. As of the evidentiary hearing, he had not filed a Social Security disability claim, although he claimed he had recently contacted counsel.

K) At trial, [H.O.] testified that in July of 2022, he was in the process of filing a Social Security disability claim but has not filed a claim as of that date.

* * *

[H.O. introduced exhibits in the form of several 1040s and W-2's, all prepared by himself.]

S) On all above-mentioned 1040's, [H.O.] listed his occupation as a contractor. His W-2, Exhibit R, listed him as an employee of [his company] in 2017, 2018, and 2019.

T) [H.O.] had a controlling interest in [his company], he stated from time to time.

U) [H.O.] states he fell off a building while inspecting it for [his company] on March 20, 2019, but he claims he did not apply for Workers' Compensation.

V) [H.O.] also testified he used a cane after the fall for balance and had surgery on his left hand/wrist.

W) [H.O.] testified that he was the defendant in a lawsuit filed in Lake County Common Pleas Court filed in 2020 by Linda M. Butter. [H.O.] eventually acknowledged that as a result of that lawsuit, the Lake County Court found he fraudulently transferred his one-half interest in his home to his wife.¹ At first, [H.O.] would not admit a judgment was granted in 2022 for fraudulent transfer but, subsequently, indicated he was appealing the judgment.

X) Prior to the judgment for fraudulent transfer on October 18, 2021, [H.O.] was granted a dissolution from his wife. See Exhibit M-16. The parties executed a voluntary Separation Agreement and Shared Parenting Plan.

1. They disposed of marital property, automobiles, personal property, and household goods without listing any of the specific property or providing a value for the same.
2. They disposed of bank accounts, retirement accounts, or other accounts without listing the accounts nor providing values for the same.
3. They disposed of debts, medical bills, or auto loans without listing the same or indicating the value of the same.
4. By deviation, [H.O.] was to pay child support of \$200.00 for his two children from his wife. No alimony was awarded. Wife waived interest in [H.O.'s] business.
5. The Wife was to receive the marital home...free and clear of any claim of [H.O.]. "The parties acknowledge that wife is sole title owner of said property and there is no existing mortgage obligation related to the residence."
6. Wife retains the 2012 Mercedes GL450, and Wife was to make all remaining payments on the same.
7. [H.O.] retained all rights to [his company].
8. The parties agreed beginning 2021, they will file separate income tax returns.

¹ K.K. is not the wife referred to here.

Y) In Exhibits F1, F2, F3, and F4, [H.O.] offered that he filed separate income tax returns not with his wife, although his wife's name was on some of the exhibits.

Z) The Dissolution and Property Agreement was filed on July 13, 2021 after the lawsuit for fraudulent transfer and K.K.'s motion to modify child support was filed.

AA) [H.O.] owned a 2012 Mercedes Benz which he purchased for \$42,141.72, including sales tax in February 2016. He was to make 60 payments of \$829.30 per month. (See Mother's Exhibit M-15) The payments were made timely through August of 2019 and then were caught up in November 2019, January 2020, and March 2020. The automobile was paid off in March of 2020 with payments of \$1,695.92 and \$8,105.80.

BB) [H.O.] testified that his former Wife made the payments for the Mercedes but Wife did not testify to confirm [H.O.'s] representations.

CC) At trial, [H.O.] testified that his former Wife allowed him to stay at the Lakeside Warehouse property which [H.O.] formerly owned.

* * *

2. [K.K.] also testified that [H.O.] seldom paid his monthly child support obligation and seldom visited [C.K-O.]

3. [K.K.'s] Exhibit M-2 is the current child support order adopted by Judge O'Malley on February 25, 2020.

4. [K.K.'s] attorney testified that her attorney fees for the contempt proceedings was somewhere around \$3,700.00. However, counsel failed to file a separate fee statement and failed to establish her reasonable fees. See Loc.R. 19(B).

5. As was stated above, [H.O.] testified friends and family hired him for odd jobs or consulting, but his income tax exhibits, from his own making, show no income.

6. The Court finds that [H.O.] frequently did not answer questions or answer questions directly. That often, when he did answer questions, he redirected the question or gave vague or ambiguous answers. [H.O.'s] exhibits appear to be in conflict with his testimony. [H.O.] had a recent judgment for a fraudulent transfer. [H.O.'s] appearance and demeanor was uneasy and argumentative with [K.K.'s] counsel. [H.O.]

rationalized and justified his behavior. [H.O.'s] testimony was not credible.

7. [H.O.] produced no witnesses for his present medical condition, alleged disability or inability to work or produce income (vocational or occupational therapy).

8. [H.O.], because he was not credible, has not shown a change of circumstances nor a change for his income nor change to his ability to earn income. [H.O.] failed to meet his burden of proof in his motion to modify child support.

{¶ 12} The court therefore denied both motions to modify child support and further found that K.K.'s motion to show cause based on H.O.'s failure to pay child support was merged into the July 13, 2022 agreed judgment entry.

{¶ 13} H.O. appeals, presenting a single assignment of error for our review:

The trial court erred in refusing to modify child support in favor of the appellant due to the material changes in circumstances evidenced in the form of serious injury preventing the appellant from working and earning the same income as they were at the time that the child support was originally imposed in contradiction with [R.C.] 3109.04(E)(1)(a) thereby warranting reversal on appeal.

{¶ 14} On January 12, 2023, this court issued a journal entry noting that the transcript was due on December 27, 2022, and no transcript had been filed. The journal entry further ordered H.O. to file the transcript on or before February 14, 2023, and stated that failure to do so would result in the record being converted to an App.R. 9(A) record.

{¶ 15} On February 1, 2023, H.O. filed a "statement regarding transcripts on appeal," in which he stated that he intended to proceed without filing the transcripts because he did not believe they were necessary pursuant to App.R. 9(B)(5). H.O. specifically states that transcripts are unnecessary "due to the fact that the Court's

order being appealed contains a full summarization of the issues raised as well as the Court's decision and reasoning for the decision which makes the production of a transcript unnecessary in the present matter."

Law and Analysis

{¶ 16} A trial court's decision regarding child-support obligations will not be reversed on appeal absent an abuse of discretion. *In re M.L.H.*, 8th Dist. Cuyahoga No. 110031, 2021-Ohio-2681, ¶ 12, citing *Toensing v. Toensing*, 8th Dist. Cuyahoga No. 87066, 2006-Ohio-3320, ¶ 11, citing *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 686 N.E.2d 1108 (1997).

{¶ 17} An abuse of discretion has been defined as an attitude that is unreasonable, arbitrary, or unconscionable. *Id.*, citing *Baxter v. Thomas*, 8th Dist. Cuyahoga No. 101186, 2015-Ohio-2148, ¶ 21, citing *In re C.K.*, 2d Dist. Montgomery No. 25728, 2013-Ohio-4513, ¶ 13. A decision is unreasonable if there is no sound reasoning process that would support that decision. *Id.*, citing *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). "When applying the abuse of discretion standard, a reviewing court may not simply substitute its own judgment for that of the trial court." *Baxter* at ¶ 21, citing *Adams v. Adams*, 3d Dist. Union No. 14-13-01, 2013-Ohio-2947, ¶ 15, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983); *Johnson v. Abdullah*, 166 Ohio St.3d 427, 2021-Ohio-3304, 187 N.E.3d 463.

{¶ 18} R.C. 3119.79(A) provides that "[w]hen considering a motion to modify a child-support order, the trial court must recalculate the amount of support

required to be paid pursuant to the statutory child support guideline schedule and the applicable worksheet using the parties' updated financial information." *Baxter* at ¶ 22, quoting *Bonner v. Bonner*, 3d Dist. Union No. 14-05-26, 2005-Ohio-6173, ¶ 10. Further, "[a] deviation of ten percent in the amount to be paid between the original support order and the recalculated amount under the current circumstances is deemed to be a 'change of circumstances substantial enough to require a modification of the child support amount.'" *Id.*, quoting R.C. 3119.79(A).

{¶ 19} In addition, "[t]here is a rebuttable presumption that the annual obligation calculated using the child support worksheet is the amount of child support that should be awarded." *In re M.L.H.*, 8th Dist. Cuyahoga No. 110031, 2021-Ohio-2681, at ¶ 21, quoting *Baxter* at ¶ 40, quoting *Irish v. Irish*, 9th Dist. Lorain No. 10CA009810, 2011-Ohio-3111, ¶ 16, citing R.C. 3119.03 and *Marker v. Grimm*, 65 Ohio St.3d 139, 601 N.E.2d 496 (1992). The party who seeks to rebut the presumption has the burden of proof and must provide facts from which the court can determine that the actual annual obligation is unjust or inappropriate and would not be in the children's best interest. *Id.*, citing *Baxter* at ¶ 40, citing *Murray v. Murray*, 128 Ohio App.3d 662, 671, 716 N.E.2d 288 (12th Dist.1999).

{¶ 20} As an initial matter, we note that the record in this case is incomplete because of H.O.'s failure to file a transcript of the proceedings. The appellant has the duty to file the transcript or such parts of the transcript that are necessary for evaluating the trial court's decision. App.R. 9(B); *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). "This court has consistently held

that “[f]ailure to file the transcript prevents an appellate court from reviewing an appellant’s assigned errors. Thus, absent a transcript or alternative record under App.R. 9(C) or (D), we must presume regularity in the proceedings below.” *Capriolo v. Am. Constr. Group, LLC*, 8th Dist. Cuyahoga No. 111403, 2022-Ohio-4508, ¶ 26, quoting *Farmer v. Healthcare Bridge*, 8th Dist. Cuyahoga No. 110469, 2021-Ohio-3207, ¶ 6, quoting *Lakewood v. Collins*, 8th Dist. Cuyahoga No. 102953, 2015-Ohio-4389, ¶ 9. See also *Knapp* at 199 (“When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court’s proceedings and affirm.”). Thus, because H.O. failed to file a transcript pursuant to App.R. 9, we must presume regularity in the proceedings below.

{¶ 21} H.O. argues that the lower court abused its discretion in finding that he did not suffer an injury that caused an inability to work or produce income based on “the overwhelming evidence presented demonstrating the same.” Because of the limited record in this case, we are unable to review the “overwhelming evidence” and are instead required to presume regularity in the proceedings below. Further, based on our review of the record, including the trial court’s opinion, we cannot conclude that it was unreasonable, arbitrary, or unconscionable for the trial court to conclude

that H.O. had not established a change in circumstances warranting a modification of the child-support order.

{¶ 22} Even setting aside the trial court's significant concerns about H.O.'s credibility, we note that the record before us shows that H.O. did not present any evidence outside of his own testimony and internally contradictory documents he created himself in support of his motion to modify. Further, a review of the judgment entry from which H.O. appeals reveals that the trial court used the child support computation worksheet and, based on our review of the limited record before us, properly calculated the parties' respective child-support obligations based on the evidence before it. The parties stipulated that C.K-O. is a *Castle* child, thereby acknowledging that the obligor's child-support duty would continue beyond C.K-O.'s eighteenth birthday, and the record reflects that H.O. failed to present sufficient evidence to support modification of his child-support obligation.

{¶ 23} Therefore, we overrule H.O.'s sole assignment of error.

{¶ 24} Judgment affirmed.

It is ordered that appellee recover from appellant 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, juvenile 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

KATHLEEN ANN KEOUGH, P.J., and
EILEEN A. GALLAGHER, J., CONCUR