

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

A.M.,	:	
	:	
Plaintiff-Appellant,	:	No. 116075
	:	
v.	:	
	:	
M.M.,	:	
	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 8, 2026

Civil Appeal from the Cuyahoga County Common Pleas Court
Domestic Relations Division
Case No. DR-20-382752

Appearances:

Stafford Cruz Law Company and Kelley R. Tauring, *for*
appellant.

Meyers, Roman, Friedberg & Lewis LPA and Deanna L.
DiPetta, *for appellee.*

MICHELLE J. SHEEHAN, A.J.:

{¶ 1} Plaintiff-appellant A.M. (“Wife”) appeals the domestic relations court’s December 30, 2025 judgment entry overruling her objections to the

magistrate's decision, denying her motion to modify child support, and adopting the magistrate's decision without modification.

{¶ 2} Upon a thorough review of the record, we find that the trial court did not properly calculate whether there had been a ten percent change in the child-support obligation from the existing child support as required under R.C. 3119.79(A). As such, the court erred when it denied Wife's motion to modify child support without considering this change of circumstance.

I. Procedural History and Relevant Facts

A. Background

{¶ 3} Defendant-appellee M.M. ("Husband") and Wife had been married and were divorced pursuant to a judgment entry of divorce filed June 16, 2022. Two children were born of the marriage: D.M. (DOB: 9/23/2009) and G.M. (DOB: 3/21/2012).

{¶ 4} The parties agreed to a shared parenting plan in which Husband was designated the child-support obligor and Wife the child-support obligee. Pursuant to the parties' shared parenting plan, Husband's child-support obligation was calculated to be \$8,142.85, not including the 2% processing charge. The parties agreed at the time this amount would be inappropriate and agreed that the actual child-support obligation should be deviated down to \$0. The parties further agreed that Husband "shall pay zero (0) support for at least 2 years from the journalization of [the] divorce."

{¶ 5} Thus, the court ordered child support in the amount of \$0/month.

B. Motions to Modify Child Support

{¶ 6} On July 18, 2024, more than two years from the journalization of the divorce decree, Wife filed a motion to modify child support. Wife alleged that “due to a substantial change in circumstances, it is necessary for this Court to issue an order modifying and increasing [Husband’s] child support obligation in order to protect the best interest of the parties’ minor child.”

{¶ 7} On June 2, 2025, Husband filed a motion to modify parenting time. He further requested that Wife be designated as the obligor.

{¶ 8} The matter was heard before the magistrate on July 23, 2025, where the magistrate was presented with exhibits and testimony from both Wife and Husband.

{¶ 9} The magistrate issued its decision on July 31, 2025, captioning its filing as an “Order.” On August 8, 2025, Wife filed a motion to set aside the magistrate’s order, alleging that the magistrate incorrectly captioned its decision as an “order” rather than as a “decision.” On October 3, 2025, the magistrate reissued its decision, properly captioning it as a “magistrate’s decision.”

{¶ 10} In its decision, the magistrate found that

[t]he passage of time alone is not a per se basis for modification, but the Court may re-examine support where the previous deviation was conditional or time limited. Given that more than two years have elapsed since the parties agreed to the initial deviation, that Plaintiff continues to have the majority of parenting time, that Plaintiff has consistently contributed the larger share toward the children’s expenses and that the parties’ incomes remain substantially the same as when the deviation was initially granted, the Court finds no material

change in circumstances sufficient to justify a modification of the existing support order.

{¶ 11} The magistrate's decision thus denied both parties' motions, including Wife's motion to modify child support.

{¶ 12} On October 17, 2025, Wife filed an objection to the magistrate's decision. Wife claimed that the magistrate "failed to recalculate the [Husband's] child support obligations; failed to append the mandatory child support guidelines used to calculate his obligations; and failed to consider whether the recalculated amount is more or less than ten percent (10%) than the child support obligations under the Judgment Entry of Divorce."

{¶ 13} On December 30, 2025, the trial court overruled Wife's objections and adopted the magistrate's decision without modification.

C. Appeal

{¶ 14} Wife has appealed from the court's December 30, 2025 judgment entry, raising the following assignments of error:

1. The trial court abused its discretion and erred as a matter of law by failing to run and append the applicable child support guidelines under Ohio law.
2. The trial court abused its discretion and erred as a matter of law by failing to find a change in circumstances and increase [Husband's] child support obligations.

II. Law and Argument

{¶ 15} Since our disposition of Wife's second assignment of error is dispositive of this appeal, we will address it first. In her second assignment of error,

Wife alleges that the court was required to find, as a matter of law, a substantial change in circumstances since the recalculated child-support obligation was ten percent greater than the \$0 originally ordered. We agree.

A. Standard of Review

{¶ 16} With respect to her second assignment of error, Wife argues that the trial court erred in denying her motion to modify child support because it failed to find a substantial change in circumstances under R.C. 3119.79(A). Our review in this matter is de novo.

{¶ 17} We generally review a court’s decision concerning the allocation of child-support obligations for an abuse of discretion. *In re J.C.*, 2021-Ohio-2451, ¶ 7 (8th Dist.). “The term ‘abuse of discretion’ means a ruling that is unreasonable, arbitrary, or unconscionable.” *State v. McAlpin*, 2026-Ohio-148, ¶ 14. However, “courts lack the discretion to make errors of law, particularly when the trial court’s decision goes against the plain language of a statute or rule.” *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 39. And in this matter, Wife alleges that the trial court misapplied R.C. 3119.79(A) when it calculated the relevant change in circumstances. Thus, this is a question of law that we review de novo. *Id.* at ¶ 38.

B. Child Support Calculation

1. Applicable Law

{¶ 18} Pursuant to R.C. 3119.79(A), “[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 v. Thomas*, 2015-Ohio-2148, ¶ 22 (8th Dist.), quoting *Bonner v. Bonner*, 2005-Ohio-6173, ¶ 10 (3d Dist.). “[A] deviation of ten percent in the amount to be paid between the original support order and the recalculated amount ‘shall be considered by the court as a change of circumstance substantial enough to require a modification of the child support amount.” *In re J.M.*, 2025-Ohio-1455, ¶ 28 (8th Dist.), quoting R.C. 3119.79(A).

{¶ 19} “There is a rebuttable presumption that the annual obligation calculated using the child support worksheet is the amount of child support that should be awarded.” *Baxter* at ¶ 40, quoting *Irish v. Irish*, 2011-Ohio-3111, ¶ 16 (9th Dist.), citing R.C. 3119.03 and *Marker v. Grimm*, 65 Ohio St.3d 139 (1992) (construing previous, analogous version of R.C. 3119.79). “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.” *J.M.* at ¶ 29, citing *Baxter* at ¶ 40.

2. Ten Percent Calculation

{¶ 20} Here, the trial court recalculated the child-support obligation as it was required to do pursuant to R.C. 3119.79(A) and determined it to be \$8,365.99. The court also referred to Wife’s proposed worksheet placing the obligation at a similar amount (\$8,363.99.) The trial court compared this number to the predeviation calculation amount done at the time of the divorce, which had been \$8,142.85. By comparing these two numbers, the trial court determined that there

was not a ten percent change in the child-support obligation and, therefore, “[n]o modification of child support is warranted.”

{¶ 21} Wife alleges that in calculating the ten percent deviation, the trial court failed to compare the recalculated amount with the amount ordered in the existing child-support order: \$0. Instead, the court incorrectly compared it to the original calculation, prior to the deviation.

{¶ 22} R.C. 3119.79(A) provides:

If an obligor or obligee under a child support order requests that the court modify the amount of child support required to be paid pursuant to the child support order, the court shall recalculate the amount of support that would be required to be paid under the child support order in accordance with the schedule and the applicable worksheet. If that amount as recalculated is more than ten per cent greater than or more than ten per cent less than the amount of child support required to be paid *pursuant to the existing child support order*, the deviation from the recalculated amount that would be required to be paid under the schedule and the applicable worksheet shall be considered by the court as a change of circumstance substantial enough to require a modification of the child support amount.

(Emphasis added.)

{¶ 23} The plain language of the statute makes clear that the recalculated amount must be compared to the “existing child support order,” not to the amount of child support calculated prior to the deviation. *Sowers v. Sowers*, 2018-Ohio-1057, ¶ 21 (2d Dist.) (In interpreting this statute, the court held that “[t]his statute does not refer to the amount of child support calculated as potentially payable in a prior child support computation worksheet; it refers to the amount *required to be paid* under the existing order.” (Empasis in original.)

{¶ 24} In *DePalmo v. DePalmo*, 78 Ohio St.3d 535 (1997), the Supreme Court of Ohio held that when “the court is modifying a preexisting order for the payment of child support, the court must apply the ten percent test established by R.C. 3113.215(B)(4) [now R.C. 3119.79(A)] in the Child Support Guidelines and the standards set out in [*Marker v. Grimm*, 65 Ohio St.3d 139].” *Id.* at 540 – 541. “Obviously, when the amount of child support provided by the noncustodial parent is zero, but the Child Support Guidelines clearly establish that the noncustodial parent owes support, then that ten percent difference is clearly met.” *Id.* at 540. As such, “a substantial change in circumstances is ‘statutorily presumed’ in such situations.” *Truckey v. Truckey*, 2019-Ohio-3232, ¶ 13 (11th Dist.), citing *Schilling v. Ball*, 2017-Ohio-5511, ¶ 14 (11th Dist.).

{¶ 25} Here, the trial court erred when it found that there was “no ten percent difference greater than or less than the amount of child support from the prior order.” The court came to this conclusion by incorrectly comparing the recalculated amount to the calculation done at the time of the divorce, prior to the deviation. This was an error that led to the trial court finding that there had been no change in circumstances.

{¶ 26} Since the amount required to be paid under the existing order was \$0, the recalculated obligation clearly met the ten percent deviation threshold set forth in the statute. As such, the trial court was required, as a matter of law, to consider that “as a change of circumstance substantial enough to require a modification of the child support amount.” R.C. 3119.79(A).

3. Harmless Error

{¶ 27} Our analysis does not end there. Husband argues throughout his brief that any error committed by the court amounts to harmless error.

{¶ 28} Civ.R. 61 provides, in relevant part, that “[n]o error or defect in any ruling or order . . . is ground . . . for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.” The rule further provides that “[t]he court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.” ““Under the concept of harmless error, it is neither prudent nor appropriate for this court to order a trial court to remedy an error that does not affect the outcome of the case; i.e., the appellate court may not reverse the trial court unless a substantive right is affected.”” *Housel v. Winking Lizard Tavern*, 2026-Ohio-1970, ¶ 49 (8th Dist.), quoting *Luri v. Republic Servs.*, 2014-Ohio-3817, ¶ 9 (8th Dist.), quoting *Children’s Hosp. Med. Ctr. v. S. Lorain Merchants’ Assn.*, 2006-Ohio-2407, ¶ 7 (9th Dist.).

{¶ 29} In determining whether modification of the child-support order was appropriate, the court was required to consider the ten percent deviation from the recalculated amount set forth in the applicable worksheet “as a change of circumstance substantial enough to require a modification of the child support amount.” R.C. 3119.79(A). In coming to its conclusion, the court failed to properly calculate the ten percent deviation and, as a result, failed to recognize or consider a “change of circumstance substantial enough to require a modification of the child

support amount.” As such, since the trial court’s error affected the outcome of its decision, we cannot say that the error was harmless. Accordingly, Wife’s second assignment of error is sustained.

{¶ 30} This is not to say that the trial court has no discretion at all in the matter. On remand, the trial court must accept that a substantial change of circumstances occurred under R.C. 3119.79(A), but “does have discretion pursuant to R.C. 3119.79(A) to consider whether deviation from the amount of support calculated is warranted upon consideration of the statutory factors set out in R.C. 3119.23.” *Truckey*, 2019-Ohio-3232, at ¶ 27. *See also Mossing-Landers v. Landers*, 2016-Ohio-7625, ¶ 61 (2d Dist.) (“R.C. 3119.22 specifically allows courts to deviate from the amount of support calculated if that amount ‘would be unjust or inappropriate and would not be in the best interest of the child.’”).

{¶ 31} Because our disposition of the second assignment of error, the first assignment of error is rendered moot and we decline to address it. App.R. 12(A)(1)(c).

{¶ 32} Judgment reversed; case remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellee 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, domestic relations 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.

MICHELLE J. SHEEHAN, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
EILEEN A. GALLAGHER, J., CONCUR