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**EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL
QUESTION**

This cause presents two critical issues for parents in Ohio: (1) whether a court may include a parent's employment benefits while calculating child support where the party receiving those benefits is not self-employed nor shares any ownership interest in the business, and (2) whether it is a basic due process right that counsel be afforded a reasonable opportunity to prepare for trial and whether it is reversible error when that right is denied based upon information outside of the record.

In this case, the court of appeals held that employment benefits can be included in the calculation of child support even when those benefits do not stem from self employment and the parent has no ownership interest in their employer's business. The decision of the court of appeals creates legal uncertainty by undermining established precedent, threatening the integrity and consistency of the law in Ohio created by the General Assembly in R.C. 3119.01(C)(7) and (C)(13), undermining legislative intent, ignoring the plain meaning of the statute, and creating its own unsupported precedent that R.C. 3119.01(C)(13) regarding self-generated income is superfluous because R.C. 3119.01(C)(7) expressly includes "all other sources of income" in the definition of gross income without regard for the parent's employment situation.

The implications of the decision of the court of appeals will affect and influence every domestic and family court in Ohio, touching the lives of numerous parents across the state. The public's interest in the consistent operation of trial courts is profoundly impacted by this holding, which essentially ignores the sound legal reasoning applied in

other appellate jurisdictions and replaces it with its own unique interpretation of "fairness". If such a ruling is allowed to stand, it would sabotage the integrity of the law in Ohio and undermine the fundamental principle that the rule of law constrains governments as well as citizens. Similarly, the public interest is affected if the plain meaning of a statute properly adopted by the General Assembly can be judicially altered to subvert the legislature's intent that certain in-kind benefits can only be used for the calculation of child support when the recipient of those benefits is self-employed or has an ownership interest in the business.

Apart from these governmental considerations, which make this case one of great public interest, the decision of the court of appeals has broad general significance. Every parent is potentially affected by this decision, particularly a parent of limited means. Imagine a working parent with minimal income, but who is fortunate enough to have an employer that provides her with a few company benefits, such as a company car and medical insurance. Because of the appellate court's interpretation of the child support statutes, if this parent were to divorce or separate from her children's father, her company benefits would now be figured into the child support calculations, over-inflating her actual income. Should she retain custody of her children, such a holding would ultimately mean less support for the children.

The judgment of the court of appeals also has great general significance because it undermines the legislative intent of the General Assembly. The law itself determines what is fair, and all Ohio citizens suffer when courts are allowed to substitute their own individual principles of fairness at the expense of the rule of law. Moreover, the

confidence that our citizens have in the court system is compromised when the law is so easily manipulated. Not surprisingly, the conclusion of the court of appeals is contrary to both the statutory scheme of R.C. 3119.01 (C)(7) and (C)(13), and to well-reasoned decisions by two other appellate jurisdictions.

Finally, this case involves a substantial constitutional question. The decision offends Ohio's constitutional right to a fair trial by denying Morrow due process afforded under the due process clause of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 16 of the Ohio Constitution. When the trial court denied Morrow his right to a continuance after his attorney abandoned him shortly before trial, Morrow's new counsel was prevented from adequately preparing his case for trial. Moreover, both the trial court and the appellate court inappropriately added to and relied upon evidence outside of the record to determine that Morrow was not entitled to a continuance. The Ninth District Court of Appeals has consistently found reversible error when trial courts consider matters outside the record, and this court has a long-standing history of reversing appellate courts which improperly consider material which was not entered into the record during the trial court's proceedings. This court first addressed that very same issue in *State v. Ishmail* (1978), 54 Ohio St.2d 402, 403-404, 8 O.O.3d 405, 377 N.E.2d at 501:

"A reviewing court cannot add matter to the record before it, which was not part of the trial court's proceedings, and then decide the appeal on the basis of the new matter."

In summary, this case places at issue the essence of the child support statutes, thereby potentially affecting every parent in Ohio. To promote the purposes and preserve

the integrity of the child support statutes, to assure uniform application of the law and to maintain that every parent has a right to a fair and just trial, this court must grant jurisdiction to hear this case and review the erroneous decision of the court of appeals.

STATEMENT OF THE CASE AND FACTS

This case arises from the attempt of appellant Jeffrey Morrow ("Morrow") to modify his child support obligation following the economic collapse of 2008-2009.¹ Shortly before trial, Morrow's former counsel abandoned the case. Upon hiring his current counsel, Morrow requested a continuance so that his new counsel could secure discovery that his former counsel had failed to obtain, present a final witness list and familiarize himself with the case. The magistrate denied the motion without explanation (Mot. Denied, filed August 4, 2010). However, in the Magistrate's Decision, she indicates that the motion to continue was denied because on July 30, 2010, Morrow purportedly hand-delivered a letter to the court stating that he had no objection to the withdrawal of his former counsel and that he had an attorney who would be ready for the hearing on August 10. (Magistrate's Decision, filed January 12, 2011, at Appx. A-25). That letter was never offered, let alone admitted, as an exhibit at any hearing and no part of that letter had ever been introduced into the proceedings. The first mention of the letter was in the magistrate's decision. Despite that fact, the appellate court added the letter into the record (Appellate Decision, filed August 29, 2012, hereafter "Decision" at Appx. A-10, ¶ 22) even though it had not been part of the trial court's proceedings. The appellate court

¹ The appellate court also dealt with issues of parenting time which is not a part of this appeal.

then considered this new matter when it upheld the trial court's decision to deny Morrow's continuance. (Decision at Appx. A-2, A-10 ¶¶ 4, 22 & 23).

Because the continuance was denied, Morrow was prevented from investigating suspicious deposits that Appellee-Becker ("Becker") made into her bank account in 2009. Although Becker claimed on her 2009 tax returns that her adjusted gross income was only \$51,716 (Joint Exhibit XIII), she deposited \$95,102.00² in her bank account that year. (Trial transcript, hereafter "TR2" at 153; Pl Exh. 3). Becker could not account for at least \$25,000 that had been deposited into her bank in small, frequent and unaccounted-for amounts, and the court did not apply this additional money to Becker during its calculations for child support.³

During the trial it was established that Morrow's current salary at the time was \$75,000.00 (TR2 at 14-15). Despite this, the court found Morrow's annual income to be \$143,000 for purposes of calculating child support, even though the trial court never found Morrow to be voluntarily under-employed. The court arrived at the inflated figure by considering Morrow's earnings in past years and by including company benefits received from his employer, The Ohio College of Massotherapy ("OCM"), a non-profit organization.

² Becker never provided her 2007 & 2008 bank statements in discovery, as requested, so Morrow was unable to establish if similarly large deposits were made during those years.

³ Within approximately thirty days following the child support hearing, Ms. Becker transferred out of her employment position at Copley Health Center. It is unknown at the time of this writing whether the frequent, inexplicable deposits that were made into her bank account in 2009 stopped after the transfer.

The trial court denied Morrow's request for a continuance and then proceeded to deny his request for modification of child support. Morrow objected to the magistrate's decision, and upon affirmance of the decision by the trial court, appealed to the Ninth District Court of Appeals. The court of appeals affirmed the judgment of the trial court in part, and reversed in part, finding that (1) including \$16,756 as company benefits as part of Morrow's gross income for purposes of determining child support was either proper or harmless error; and (2) denying Morrow's request for a continuance was not a violation of due process.

The court of appeals erred in ruling that company benefits that stem from employment, and not from any ownership interest, may be included as gross income in the calculation of child support. The court of appeals also erred in failing to recognize that conducting a fair trial is a fundamental right of every citizen of Ohio, and due process is denied when trial courts and reviewing courts consider facts outside the record.

In support of his position on these issues, Morrow presents the following argument.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Employment benefits are includable income for purposes of calculating child support only if the party receiving those benefits is self-employed, the proprietor of a business, or is a joint owner of a partnership or closely held corporation, pursuant to R.C. 3119.01.

Matters dealing with child support are governed by Ohio Revised Code Chapter 3119 which requires that the parties' gross incomes be used to calculate a proper amount of child support. The appellate court held that employment benefits, such as a company

car and medical insurance, is income for purposes of child support calculations. "However, these kinds of benefits are income only if the party receiving those benefits is self-employed, the proprietor of a business, or is a joint owner of a partnership or closely held corporation." *Spier v. Spier*, et. al., 7th Dist. No. 05 MA 26, 2006-Oho-1289 at ¶ 16.

R.C. 3119.01(C)(7) defines "gross income" and provides:

" 'Gross income' means, except as excluded in division (C)(7) of this section, the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable, and includes income from salaries, wages, overtime pay, and bonuses to the extent described in division (D) of section 3119.05 of the Revised Code; commissions; royalties; tips; rents; dividends; severance pay; pensions; interest; trust income; annuities; social security benefits, including retirement, disability, and survivor benefits that are not means-tested; workers' compensation benefits; unemployment insurance benefits; disability insurance benefits; benefits that are not means-tested and that are received by and in the possession of the veteran who is the beneficiary for any service-connected disability under a program or law administered by the United States department of veterans' affairs or veterans' administration; spousal support actually received; and all other sources of income. 'Gross income' includes * * * self-generated income * * *."

This definition does not include employment-related benefits as income, leading to the conclusion that they should not be included as income. This conclusion is supported by the statutory definition of "self-generated income."

" 'Self-generated income' means gross receipts received by a parent from self-employment, proprietorship of a business, joint ownership of a partnership or closely held corporation, and rents minus ordinary and necessary expenses incurred by the parent in generating the gross receipts. 'Self-generated income' includes expense reimbursements or in-kind payments received by a parent from self-employment, the operation of a business, or rents, including company cars, free housing, reimbursed meals, and other

benefits, if the reimbursements are significant and reduce personal living expenses.” Id. at ¶ 20; R.C. 3119.01(C)(13).

If the phrase “gross income” included expense reimbursements or in-kind payments received in the course of employment, then there would be no need for the Revised Code to specifically include these kinds of employment-related benefits in the definition of “self-generated income.” The specific inclusion of these kinds of benefits in R.C. 3119.01(C)(13) indicates that they are not a part of a person's “gross income” unless that person is self-employed, a proprietor of a business, or a joint owner of a partnership or closely held corporation. Id. at ¶ 21.

Moreover, “[t]he canon *expressio unius est exclusio alterius* tells us that the express inclusion of one thing implies the exclusion of the other.” *Myers v. Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353 at ¶ 24. Therefore, when the legislature included in-kind benefits from *self-employed* individuals in the calculation of child support, it was, in essence, excluding in-kind benefits from *employed* individuals.

The court of appeals held that that R.C. 3119.01(C)(7) expressly includes 'all other sources of income' in the definition of gross income without regard for the parent's employment circumstances, and therefore, the trial court did not abuse its discretion by including the value of these benefits as part of Morrow's gross income. However, this holding completely ignores the plain language of R.C. 3119.01(C)(13). If these in-kind benefits, such as a company car, are already included in gross income under R.C. 3119.01(C)(7) regardless of employment status, as the appellate court concludes, then there is absolutely no reason to distinguish "self-generated income", and R.C.

3119.01(C)(13) is both unnecessary and superfluous. Certainly this cannot be the intent of the General Assembly.

Moreover, other jurisdictions in Ohio have already considered the very same arguments propounded by the appellate court and soundly rejected them. See, e.g., *Spier v. Spier, et. al.*, 7th Dist. No. 05 MA 26, 2006-Ohio-1289 at ¶¶ 16-23; *Botticher v. Stollings*, 3rd Dist. No. 11-99-08, 1999-Ohio-976 at 2. If now such a judicial ruling is allowed to stand, it would mean that courts could, in the future, ignore certain legal tenets of R.C. 3119.01 under the misguided notion that R.C. 3119.01(C)(13) is superfluous. This would be both unfortunate and erroneous, as this court has mandated that “[t]he terms of R.C. [3119.01] are mandatory in nature and must be followed literally and technically in all material respects.”⁴ *Marker v. Grimm* (1992), 65 Ohio St.3d 139, paragraph two of the syllabus.

Proposition of Law No. II: Due process is denied when counsel is not afforded reasonable time to prepare his case for trial and where the appellate court upholds the denial of a continuance based on extraneous matters that were not part of the trial court's record.

It is a basic due process right and essential to a fair trial that counsel be afforded the reasonable opportunity to prepare his case for trial. See, e.g., *White v. Ragen* (1945), 324 U.S. 760, 763-764, 65 S.Ct. 978, 89 L.Ed. 1348; *State v. Sowders* (1983), 4 Ohio St.3d 143, 144, 447 N.E.2d 118, 4 O.B.R. 386. Considering how these constitutional guarantees impact a motion for a continuance, the United States Supreme Court has

⁴ R.C. 3113.215 was repealed effective March 22, 2001, but was replaced by R.C. 3119.01, which is comparable the provisions of former R.C. 3113.215. See *Apps v. Apps*, 10th Dist. Nos. 02AP-1072 & 03AP-242, 2003-Ohio-7154, at ¶ 47.

stated:

‘There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.’ (Citations omitted.) *Ungar v. Sarafite* (1964), 376 U.S. 575, 589-590, 84 S.Ct. 841, 11 L.Ed 921.

The Ninth District Appellate Court has consistently endorsed the use of a balancing test of all competing considerations, regardless of whether the case examined is criminal or civil. See, e.g., *Vaughan v. Vaughan*, 9th Dist. No. 10CA0014-M, 2010-Ohio-5928. The Ninth District, in quoting *Ungar*, described objective factors by which a judge may assess the propriety of a motion for a continuance:

The length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstances which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case. *Id.*

In the instant case, Morrow's former attorney withdrew from the case less than two weeks before trial. (Mot., filed July 29, 2010). On August 2, 2010, only eight days before the trial, Morrow secured new counsel who immediately filed a notice of appearance, along with a motion to continue. (Mot. to Continue, filed August 2, 2010). In the motion, counsel explained that he needed time to prepare for trial, including filing a supplemental witness and exhibit list. *Id.* All witnesses and exhibits had to be identified and presented to opposing counsel 14 days prior to the trial. (Mag. Order, filed October 27, 2009). Unfortunately, Morrow's former counsel withdrew from the case after that deadline, without preparing a final witness and exhibit list.

In reviewing the appeal, the appellate court found that Father was not prejudiced unfairly by the denial of the requested continuance because Morrow was not precluded from presenting the evidence and testimony he desired, and that he contributed to the circumstances giving rise to the latest request. This is simply inaccurate. Although Morrow's newly hired counsel had filed two supplemental witness lists shortly after being retained, the trial court made it clear that any witnesses that had not been previously identified in the former counsel's witness list would not be permitted to testify at trial, including any additional witnesses identified in the supplemental witness lists.⁵ Morrow filed a motion for leave to file a final witness and exhibit list, but that motion also was denied by the court. The denial prevented Morrow from calling key witnesses who had not been identified by former counsel, including a current member of the OCM board of directors.

Without the continuance, Morrow was also prevented from securing relevant financial documents that had not been provided in discovery.⁶ This became extremely important, as it was discovered that Mother had deposited \$95,000.00 into her bank account in 2009, of which at least \$25,000.00 had come from inexplicable sources. While Morrow's counsel was allowed to cross-examine Mother regarding these deposits, without the continuance Morrow was prevented from a) learning whether Mother had made similar deposits in 2007 and 2008, and b) whether these "unknown" funds were a

⁵ See Mag. Order, Discovery, filed October 27, 2009.

⁶ Morrow's new counsel was able to secure some financial records late Friday, Aug 6, 2010, only a few days before trial, as acknowledged by Appellee's counsel at trial. See TR2 at 160, line 6-18.

result of unreported income.

The record is also devoid of discussion about what, if any, inconvenience a continuance would have caused the litigants, witnesses, opposing counsel or the court. Becker's counsel did not oppose Morrow's request, and did not suggest that delay would inconvenience her client or any witness. The magistrate did not mention any other impediment to rescheduling. The sole reason she gave for denying the motion was a "hand-delivered" letter to the court on July 30, 2010, supposedly indicating that Morrow had no objection to the withdrawal of his former counsel, and that he had new counsel who would be prepared for trial on August 10, 2010. (See Magistrate's Decision, at Appx. A-25). The appellate court refers to this letter three times in its opinion, and the letter is the basis for the appellate court's decision to uphold the trial court's denial for the request for continuance and its belief that Morrow somehow contributed to the circumstances that led to the need for a continuance (See Appx. A-2, A10-11, ¶¶ 4, 22-24).

Although this letter played a significant role in the appellate court's decision to deny the continuance, this letter was not part of the trial court record.

App.R. 9 states in relevant part:

(A) Composition of the record on appeal * * *

(1) The original papers and exhibits thereto filed in the trial court, the transcript of the proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases.

Here, the letter was not filed in the trial court or included as an exhibit to any proceeding. It had not been offered, let alone admitted, into evidence at any hearing, nor

does evidence of its existence appear in the trial transcript. Thus, the letter was not part of the record.

A bedrock principle of appellate practice in Ohio is that an appeals court is limited to the record of the proceedings at trial. In *State v. Ishmail* (1978), 54 Ohio St.2d 402, 8 O.O.3d 405, 377 N.E.2d 500, this court reversed the judgment of a court of appeals that had considered, in an appeal from a postconviction proceeding, a transcript that was not before the trial court in the proceeding that was appealed. "Since a reviewing court can only reverse the judgment of a trial court if it finds error in the proceedings of such court, it follows that a reviewing court should be limited to what transpired in the trial court as reflected by the record made of the proceedings. *State v. Ishmail*, 54 Ohio St.2d 402, 406, 377 N.E.2d 500, 502 (Ohio, 1978).

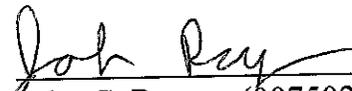
In *Ishmail*, this court declared that "[a] reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter." *Id.* at paragraph one of the syllabus. This court has consistently enforced this holding. *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110 at ¶ 13. Therefore, the appellate court is not permitted to insert the letter into the record, and because the letter is not part of the record on appeal, that letter should not have been considered on appeal.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant requests that this

court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,



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Certificate of Service

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to counsel for appellee, Linda Hoffman, 273 Main Street, Suite 200, Wadsworth, OH 44281 on October 2, 2012.



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STATE OF OHIO
COUNTY OF MEDINA

JEFFREY MORROW

Appellant

v.

SHERRI BECKER

Appellee

COURT OF APPEALS

FILED
AUG 29 AM 10:09

DAVID B. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

C.A. No. 11CA0066-M

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 04 PA 0199

DECISION AND JOURNAL ENTRY

Dated: August 27, 2012

CARR, Judge.

{¶1} Appellant Jeffrey Morrow appeals the judgment of the Medina County Court of Common Pleas, Domestic Relations Division. This Court affirms in part and reverses in part.

I.

{¶2} Jeffrey Morrow ("Father") and Sherri Becker ("Mother") are the parents of two children ("Mo" and "Mac"). Mac, who is two years younger than Mo, has special needs arising out of Down Syndrome. Mother was designated as the residential parent and Father was awarded parenting time with the children as follows: every other Wednesday from 6 p.m. until 9 a.m. the following morning with both children; alternate weekends from 6 p.m. Thursday until 9 p.m. Sunday with Mo; and the same alternate weekends on Sunday from 11 a.m. until 9 p.m. with Mac. The court order allowed for alternative parenting time arrangements as the parties may agree. Father was also ordered to pay child support in the amount of \$2,198.05 per month.

{¶3} A little over a year later, the trial court issued a judgment entry after a hearing on motions to modify parenting time. The trial court awarded Father parenting time pursuant to the court's standard visitation schedule, with the following modifications: the parties must exchange the children in public places; the parties would share time with the children equally during Thanksgiving and winter breaks; and Father would not have summer vacation parenting time. The standard order of visitation provided for alternate weekend visits from 6 p.m. Friday until 6 p.m. Sunday, plus one weekday evening, consisting of three hours on Wednesdays if the parties could not otherwise agree. Father appealed the trial court's reduction of his parenting time. This Court affirmed the trial court's judgment. *Morrow v. Becker*, 9th Dist. No. 07CA0054-M, 2008-Ohio-155.

{¶4} In August 2009, Father filed a motion to modify and reduce his child support obligation. A couple weeks later, Mother filed a motion to modify parenting time. Four months later, she filed a motion for contempt, alleging that Father had failed to pay child support as ordered. The magistrate scheduled and continued hearings on the motions multiple times at the parties' request. The magistrate heard Mother's motion to modify parenting time on July 27, 2010, and scheduled a hearing on the issues of the modification of child support and contempt for August 10, 2010. On July 29, 2010, Father's attorney moved to withdraw. His subsequent attorney moved on August 2, 2010, to continue the August 10 hearing. Given the numerous prior continuances coupled with Father's assertion that his new counsel would be prepared for hearing, the magistrate denied the motion for a continuance. She heard Father's motion to modify child support and Mother's motion for contempt on August 10, 2010. The magistrate issued separate decisions arising out of the two hearings. Father filed objections to both decisions.

{¶5} The trial court overruled the objections, although it corrected one typographical error. In sum, the trial court ordered the following. Father would have parenting time with the children on alternating weekends from Friday at 6:00 p.m. until Monday when he delivered the children to school or child care. He was no longer granted mid-week visitations, although the parties were free to consider overnight Wednesday visitations for Mo if Father's international travel schedule abated in the future. The parties were required to follow the court's standard parenting time schedule for holidays and days of special meaning if they could not otherwise agree regarding such days. Father would not have extended parenting time, including Christmas break, spring break, and summer, unless Mother agreed to such extended time. The trial court ordered Father to pay child support in the amount of \$2,154.95 per month, plus a 2% processing charge. The trial court found Father in contempt solely for failing to pay his child support obligation through wage withholding, imposed a \$250.00 fine, and ordered Father to pay Mother \$575.00 for attorney fees and costs expended to prosecute the contempt motion. Father appealed, raising five assignments of error for review. Some assignments of error are consolidated to facilitate review.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ABUSED ITS DISCRETION BY (1) ELIMINATING MR. MORROW'S WEDNESDAY, THANKSGIVING, SPRING AND CHRISTMAS BREAK PARENTING TIME, AND (2) RESTRICTING MR. MORROW'S VISITATION WITH HIS CHILDREN TO ALTERNATING DAYS OF SPECIAL MEANING/HOLIDAYS AND EVERY OTHER WEEKEND UNLESS MS. BECKER AGREES TO ADDITIONAL VISITATION, THEREBY COMMITTING REVERSIBLE ERROR AND VIOLATING MR. MORROW'S RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED BY MISINTERPRETING THE MAGISTRATE'S DECISION, THEREBY COMMITTING REVERSIBLE ERROR AND VIOLATING MR. MORROW'S RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.

{¶6} Father argues that the trial court abused its discretion by modifying his parenting time with the children. Specifically, Father argues that the trial court erred by misinterpreting the magistrate's decision, reducing his parenting time, and leaving the issue of additional visitation to Mother's sole discretion. This Court disagrees.

{¶7} In cases where the matter was initially heard by a magistrate who issued a decision to which objections were filed and disposed, "[a]ny claim of trial court error must be based on the actions of the trial court, not on the magistrate's findings or proposed decision. In other words, the standards for appellate review do not apply to the court's acceptance or rejection of the magistrate's findings or proposed decision." *Mealey v. Mealey*, 9th Dist. No. 95CA0093, 1996 WL 233491 (May 8, 1996), *2. Civ.R. 53(D)(4)(d) requires the trial court to conduct an independent review of the record when ruling on objections. Civ.R. 53(D)(4)(b) allows the trial court to adopt or reject the magistrate's decision, in whole or in part, with or without modification. In this case, the trial court conducted the required independent review and issued its judgment based on that review. Because we are constrained to consider the issues on appeal as they arise out of the trial court's determinations and orders, Father's argument that the trial court misinterpreted the magistrate's decision is not well taken. The second assignment of error is overruled.

{¶8} As we recognized in Father's first appeal, "A trial court's decision regarding visitation rights will not be reversed on appeal except upon a finding of an abuse of discretion."

Morrow at ¶ 8, quoting *Harrold v. Collier*, 9th Dist. No. 06CA0010, 2006-Ohio-5634, ¶ 6. 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*, 5 Ohio St.3d 217, 219 (1983). When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993).

{¶9} First, Father argues that the trial court abused its discretion by reducing his parenting time by eliminating Wednesday evening visitation, as well as spring, Thanksgiving, and Christmas break parenting time.

{¶10} As an initial matter, the record indicates that, rather than reducing his parenting time, the trial court in fact increased Father's parenting time. Although the trial court eliminated the three-hour Wednesday evening visitation, it increased his bi-weekly weekend visitation to include an additional evening and overnight, which necessarily also gave him additional time on Monday morning with the children. Mother testified that both children suffer when faced with inconsistency and that Father's tardiness, failure to appear for some visits, and frequent absences due to international travel have disrupted their routines to their detriment. The evidence presented at the hearing demonstrated that Father made frequent trips to China which caused him to miss many scheduled visits with the children. In addition, Father missed some scheduled parenting time due to jet lag and his decision to attend Ohio State University football games instead of exercising visitation. Father admitted that his international travel would continue into the foreseeable future and that he could not commit to being available to spend every Wednesday evening with the children. In ordering the modification of parenting time, the trial court reasoned that eliminating the mid-week three-hour parenting time, while extending Father's

parenting time on alternate weekends was in the best interest of the children as it promoted consistency, stability, and structure for the children. Under the circumstances, this Court cannot say that the trial court abused its discretion when it so modified the parenting time order.

{¶11} Moreover, Father is incorrect in his assertion that the trial court eliminated his parenting time during spring, Thanksgiving, and Christmas breaks. The trial court ordered that “holidays and days of special meaning are to be divided as the parties agree or, if no agreement can be reached, pursuant to the Court’s Standard Parenting Time Order.” The Medina County Domestic Relations Court Standard Parenting Time Schedule, attached to the trial court’s judgment, sets out a “Holiday Parenting Time” schedule in section II. That section identifies “Holiday[s]” including “Spring Break,” “Thanksgiving,” and “Winter break.” Because these times are expressly designated as “holidays,” the trial court’s order entitles Father to visitation as delineated pursuant to the schedule, unless the parties agree to modify that parenting time. The trial court’s standard order sets forth two options for visitation during each of the above-referenced holidays and states that “in the event an option is not specified and the parties do not agree, then Option 1 shall be in effect.” Therefore, pursuant to the plain language of the trial court’s order and standard parenting time schedule, Father’s parenting time during spring, Thanksgiving, and Christmas breaks has not been eliminated. Accordingly, his argument in that regard is not well taken.

{¶12} Second, Father argues that the trial court abused its discretion by leaving the issue of extended parenting time in the sole discretion of Mother. In support, Father relies on *Barker v. Barker*, 6th Dist. No. L-00-1346, 2001 WL 477267 (May 4, 2001), in which the appellate court concluded that the trial court abused its discretion by leaving the decision to reinstate the father’s visitation in the sole discretion of the child’s psychologist. The *Barker* court concluded

such an order was unreasonable, however, because the child's psychologist could withhold her consent for visitation based on matters beyond the father's control and because the psychologist had previously exhibited bias in favor of the mother. *Id.* at *5. That is not the situation in this case.

{¶13} Here, the trial court ordered that "[Father] should receive no *extended* parenting time unless agreed to by [Mother]." (Emphasis added.) In contrast to *Barker*, the trial court did not empower Mother to determine whether Father could exercise parenting time at all. He clearly had the right to certain visitation with the children. Instead, the trial court merely acknowledged that Mother could allow Father to have additional time with the children beyond that which had been ordered. This Court concludes that the trial court did not abuse its discretion.

{¶14} Finally, Father complains that the trial court's parenting time order is biased against him because it penalizes him with forfeiture of parenting time if he is more than 30 minutes late when picking up the children for visitation. He argues that Mother, on the other hand, may disregard the times determined for exchange of the children with impunity.

{¶15} The trial court's order merely reiterates the court's local rule subsumed in the standard parenting time schedule under Section VI., captioned "Promptness." Loc.R. 6.05, Form 6.04A. The rule states in pertinent part: "The residential parent has no duty to wait for the nonresidential parent to pick up the children longer than thirty (30) minutes, unless the nonresidential parent notifies the residential parent that she/he will be late, and the residential parent agrees to remain available after the thirty (30) minute waiting period. A parent who is more than thirty (30) minutes late loses the parenting time period."

{¶16} The Ohio Supreme Court has held that state courts may adopt rules of local practice and that such local rules are enforceable as long as they are not inconsistent with the Ohio Rules of Civil Procedure. *Vance v. Roedersheimer*, 64 Ohio St.3d 552, 554 (1992); *see, also*, Ohio Constitution, Article IV, Section 5(B); Civ.R. 83; Sup.R. 5. Loc. R. 1.01 of the Local Rules of the Court of Common Pleas of Medina County, Domestic Relations Division, states that these rules “were promulgated by the Medina County Court of Common Pleas, Domestic Relations Division, pursuant to Article IV, Section 5(B) of the Ohio Constitution and Rule 5 of the Ohio Supreme Court Rules of Superintendence for the Courts of Common Pleas.” Father has not argued that Loc.R. 6.05, which incorporates the standard parenting time schedule, is inconsistent with the Ohio Rules of Civil Procedure. Moreover, he has not demonstrated how such a local rule would be unenforceable.

{¶17} In addition, Father is incorrect in his assertion that Mother is free to delay his access to the children by disregarding the times designated for exchange. Mother is bound to comply with the court’s orders regarding parenting time. If she refuses or otherwise fails to do so, Father may file a motion for contempt and Mother would be subject to contempt sanctions. Accordingly, Father’s argument that the trial court’s order is biased in favor of Mother is not well taken. The first assignment of error is overruled.

{¶18} For the above reasons, Father’s first and second assignments of error are overruled.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO GRANT A CONTINUANCE AFTER MR. MORROW’S FORMER COUNSEL ABANDONED HIM ON THE EVE OF TRIAL, THEREBY COMMITTING REVERSIBLE ERROR AND VIOLATING MR. MORROW’S RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH

AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION
16 OF THE OHIO CONSTITUTION.

{¶19} Father argues that the trial court erred by denying his motion to continue the hearing on his motion to modify child support. Additionally, he argues that the denial of his request for a continuance violated his right to due process of law. This Court disagrees.

{¶20} It is well settled that the decision to grant or deny a continuance lies in the sound discretion of the trial judge. *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964). The United States Supreme Court emphasized that “not every denial of a request for more time [] violates due process even if the party fails to offer evidences or is compelled to defend without counsel.” *Ungar*, 376 U.S. at 589. Whether a denial of a request for a continuance is so arbitrary as to violate due process depends on the circumstances of the case, particularly the reasons articulated to the trial court in support of the request. *Id.* “In determining whether the trial court abused its discretion by denying a motion for a continuance, this court must ‘apply a balancing test, weighing the trial court’s interest in controlling its own docket, including facilitating the efficient dispensation of justice, versus the potential prejudice to the moving party.’” *Kocinski v. Kocinski*, 9th Dist. No. 03CA008388, 2004-Ohio-4445, ¶ 10, quoting *Burton v. Burton*, 132 Ohio App.3d 473, 476 (3d Dist.1999).

{¶21} Father filed his motion to modify/reduce child support on August 4, 2009. The trial court scheduled a hearing on the motion on October 23, 2009. The hearing on Mother’s motion to modify parenting time was subsequently scheduled for the same date and time. Father moved to extend the time in which he must respond to Mother’s discovery requests until October 19, 2009, merely four days before the scheduled hearing. The hearing date was converted to a pretrial and the hearing was rescheduled for February 24 and 25, 2010. Father filed his witness and exhibit lists on February 11, 2010. Thirty-six minutes before the hearing was scheduled to

begin, Father filed a motion to continue because his attorney was involved in an ongoing complex trial in another court. The magistrate continued the hearing until May 21, 2010. On May 20, 2010, Father moved to continue the hearing due to his aunt's death on May 15, 2010, and an obligation to leave town for the funeral. The trial court bifurcated the motion hearings and continued the hearing on Mother's motion to modify parenting time to July 27, 2010, and continued the hearing on Father's motion to modify child support to August 10, 2010.

{¶22} On July 29, 2010, Father's attorney moved to withdraw from further representation. The trial court granted the motion. The record contains a signed letter from Father to the magistrate in which Father asserted that he did not challenge his attorney's withdrawal, that he had secured alternate counsel, and that his new attorney would be prepared for the hearing on August 10, 2010. On August 2, 2010, Father's new attorney filed a notice of appearance, a supplemental witness and exhibit list, and a motion to continue the hearing. In support of a continuance, Father's attorney asserted that he needed additional time to review documents and provide Mother's counsel with a supplemental witness and exhibit list. He further asserted that Father would be unfairly prejudiced by the inability to call any additional witnesses he might disclose in a supplemental witness list. Father did not suggest a new date for the hearing. The magistrate denied the motion to continue on August 4, 2010. The same day, Father's attorney filed a second supplemental witness and exhibit list. Father's attorney orally renewed his motion to continue immediately prior to the hearing. The magistrate again denied the motion.

{¶23} Based on a review of the circumstances of this case, this Court cannot say that the domestic relations court abused its discretion by denying Father's August 2, 2010 motion to continue the hearing on his motion to modify child support. Father filed his motion nearly a year

earlier, at a time he believed he could present evidence to justify the reduction. He moved for multiple prior continuances, which the court granted. Father's attorney did not move to withdraw on the "eve of trial," as Father asserts, but rather twelve days prior to trial. Father informed the magistrate by letter the following day that he had secured new counsel who "will prepare and be prepared for the hearing on August 10, 2010 regarding the modification of child support." Father's new counsel filed two supplemental witness and exhibit lists and requested leave to file a third supplement. Although the trial court denied leave to file the third supplement, Father was not precluded from presenting any evidence at the hearing, even over Mother's objection that he had not identified such evidence prior to hearing. Father was permitted to file two supplemental witness and exhibits beyond the deadline, and he was not precluded from presenting any witnesses at the hearing.

{¶24} Given the indefinite nature of the requested continuance, Father's role in creating the circumstances giving rise to the latest request, the inconvenience of repeated delays and uncertainty for Mother, the trial court's right to control its docket coupled with the efficient dispensation of justice outweighs any potential prejudice to Father. *See Kocinski* at ¶ 10. In fact, because Father was not precluded from presenting all evidence and testimony he desired, he has not demonstrated that he was prejudiced at all, let alone unfairly. Although he argues that he had no time "to investigate the approximately \$25,000 of unknown funds deposited into [Mother's] bank account in 2009[,]" he presented copies of Mother's bank statements evidencing such activity on her account and was able to cross-examine Mother extensively on the issue. Accordingly, the denial of a continuance did not violate Father's right to due process, and the trial court did not abuse its discretion by denying Father's third motion for a continuance. Father's third assignment of error is overruled.

ASSIGNMENT OF ERROR IV

THE TRIAL COURT ABUSED ITS DISCRETION BY (1) IMPUTING AN ADDITIONAL \$16,756 OF INCOME FOR CORPORATE BENEFITS WHEN CALCULATING MR. MORROW'S CHILD SUPPORT OBLIGATION (2) AVERAGING MR. MORROW'S AND MS. BECKER'S INCOME OVER THE PRIOR THREE YEARS THEREBY IMPUTING A GROSS INCOME THAT DOES NOT ACCURATELY REFLECT CURRENT EARNINGS OR EITHER PARTY AND (3) IGNORING THE BASIC CHILD SUPPORT SCHEDULE AND TREATING THE INSTANT ACTION ON A CASE-BY-CASE BASIS. THUS, THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND VIOLATED MR. MORROW'S RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.

{¶25} Father argues that the domestic relations court abused its discretion in its calculation of child support. Specifically, Father argues that the trial court erred by (1) including corporate benefits in his gross income, (2) averaging the parties' incomes and imputing income to Father, and (3) establishing child support outside the basic child support schedule. This Court disagrees.

{¶26} As an initial matter, a trial court's decision regarding child support obligations will not be overturned absent a showing of an abuse of discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144 (1989).

Corporate benefits as income

{¶27} Father argues that the trial court erred by including \$16,756 as company benefits as part of his gross income for purposes of determining his child support obligation. That amount consisted of the annual values of a company car (\$9,600), insurance (\$4,356), a cell phone (\$1,200), and Ohio State University football tickets (\$1,600). The trial court did not include the value of the laptop computer provided to Father by his business.

{¶28} R.C. 3119.02 requires the court to calculate the child support obligation in accordance with the applicable child support computation worksheet. The worksheet requires that child support be based on the gross income of the parents. R.C. 3119.01(C)(7) defines “gross income” as “the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable * * *.” The statute then sets out a non-exclusive list of the types of income included, for example, salaries, wages, tips, rents, interest, and pensions. The list concludes with “and all other sources of income.” Moreover, the statute expressly includes “self-generated income” in a parent’s gross income. However, certain types of income are expressly excluded from the definition of gross income. R.C. 3119.01(C)(7)(a)-(f). One such exclusion is “Nonrecurring or unsustainable income or cash flow items[.]” R.C. 3119.01(C)(7)(e).

{¶29} Father is the president of Ohio College of Massotherapy (OCM) and OCM Online. OCM is a non-profit corporation, while OCM Online is a for-profit corporation. Father receives a salary from both businesses. While those salaries are not distinguished clearly on his 2007 tax return, his 2008 tax return indicates he was paid a salary of \$121,897 by OCM and \$110,316 by OCM Online. He testified that he received certain non-monetary benefits from his employment, including a Lexus automobile, car insurance, a cell phone, and a laptop computer. He also admitted that the company buys four-seat season tickets for Ohio State University football games, but claimed those were a perk for “my” employees but a necessary business expense for himself when he attended games. It is not entirely clear whether OCM provided these benefits to Father or whether he received them from employment with both OCM and OCM Online.

{¶30} Father does not dispute that the monetary value of the above benefits comports with the trial court's finding. Rather, he argues that none of the above benefits should have been included in the calculation of his gross income. Specifically, he argues that the value of such benefits could only be included as "self-generated income" pursuant to R.C. 3119.01(C)(13), and that that provision is not applicable because Father has not received those benefits as "gross receipts received * * * from self-employment, proprietorship of a business, joint ownership of a partnership or closely held corporation, and rents[.]" Because R.C. 3119.01(C)(13) includes in the definition of self-generated income expense reimbursements and in-kind payments such as company cars, Father argues that such benefits are necessarily excluded as gross income under R.C. 3119.01(C)(7).

{¶31} This Court does not agree that reimbursements and in-kind payments such as company cars may only be included as gross income if a parent is self-employed or has an ownership interest in the business merely because R.C. 3119.01(C)(13) lists examples of such benefits. There is nothing in the statute which indicates that the provision of company cars, housing, meals, or other benefits may only be considered as gross income under the limited circumstances where a parent receives them as self-generated income. R.C. 3119.01(C)(7) expressly includes "all other sources of income" in the definition of gross income without regard for the parent's employment circumstances. R.C. 3119.01(C)(7) identifies six types of income expressly excluded from the definition of gross income. None of those exclusions mention benefits of the type included in the trial court's calculation of Father's gross income. "Inasmuch as the legislature chose not to include such an exception it must be presumed that none was intended." *Patton v. Diemer*, 35 Ohio St.3d 68, 70 (1988). Accordingly, even assuming that

Father received the above benefits from OCM, a non-profit corporation in which he necessarily had no ownership interest, there is no statutory support for excluding the value of those benefits.

{¶32} On the other hand, if Father received those benefits from his employment with OCM Online, a for-profit corporation in which he had an ownership interest, the value of most of those benefits would necessarily be included in his gross income as self-generated income because the benefits "are significant and reduce personal living expenses." See R.C. 3119.01(C)(13).

{¶33} In either event, Father testified that he had no other car or cell phone for personal use. He admitted that he had no land line telephone at home. He testified that the company paid for his car insurance. He admitted in his appellate brief that he would lose the benefit of these items if he lost his job. He would, therefore, have to pay for such items out of pocket. Accordingly, the trial court did not abuse its discretion by including the value of these benefits as part of Father's gross income.

{¶34} On the other hand, in regard to the Ohio State tickets, Father testified that he provided the dates of the football games to his employees and asked them to let him know which games they were interested in attending. He further testified that he sometimes gives some tickets away to non-employees who have business with the companies. While Father attends some football games every season, he reasonably does not derive a personal benefit from all four seats of every game. Therefore, while he derives some personal economic benefit, he does not derive the full \$1,600 value of the tickets as a benefit. He did not, however, testify regarding how many tickets he used for himself and his personal guests, such as his child Mo. Accordingly, the trial court erred by including that entire amount in his gross income. However, based on our resolution of the remaining issues in this assignment of error and the negligible

result the slightly reduced income would have on Father's child support obligation, any error was harmless.

Imputation of income and income averaging

{¶35} Father argues that the trial court erred because it averaged his income from the prior three years and imputed the averaged income to him without making an express finding that he was underemployed. He further argues that the trial court erred by averaging Mother's income to calculate her gross income.

{¶36} R.C. 3119.01(C)(5) defines "income" depending on the circumstances of the parent: "(a) For a parent who is employed to full capacity, the gross income of the parent; (b) For a parent who is unemployed or underemployed, the sum of the gross income of the parent and any potential income of the parent." This Court has consistently held that a trial court must expressly find a parent to be voluntarily unemployed or underemployed before imputing income to that parent. *Misleh v. Badwan*, 9th Dist. No. 24185, 2009-Ohio-842, ¶ 7, citing *Musci v. Musci*, 9th Dist. No. 23088, 2006-Ohio-5882, ¶ 17. However, in this case, the trial court did not impute income to Father. Instead, the trial court averaged Father's income based on fluctuations in his income. Father's reliance on law that requires the trial court to make an express finding of voluntary underemployment before averaging income is misplaced.

{¶37} R.C. 3119.05(H) states: "When the court or agency calculates gross income, the court or agency, when appropriate, may average income over a reasonable period of years." This Court had held that the decision as to the propriety of averaging a parent's income lies in the sound discretion of the trial court which is in the best position to weigh the facts and circumstances. *Akin v. Akin*, 9th Dist. Nos. 25524, 25543, 2011-Ohio-2765, ¶ 13; *Krone v. Krone*, 9th Dist. No. 25450, 2011-Ohio-3196, ¶ 32.

{¶38} Father testified that his income has fluctuated based on the recent decrease in student enrollment. His accountant testified that the businesses have recently rebounded after the economic downturn. Father testified as to the changes he made in the year before the hearing to cut business overhead, and the accountant testified that those actions greatly improved the companies' financial positions. Under the circumstances, the trial court did not abuse its discretion by averaging Father's income from the prior three years based on the fluctuations in his income.

{¶39} Father further argues that the trial court erred by averaging Mother's income because her income has steadily increased rather than fluctuated. His argument is not supported by the record. Mother's tax returns submitted into evidence indicated that Mother's adjusted gross income was \$58,588 in 2007, \$42,212 in 2008, and \$51,716 in 2009. She testified that she received a one-time \$500 employee of the month bonus and a one-time \$5000 employee of the year bonus in 2009. By averaging Mother's income over the past three years, properly not including the bonuses as nonrecurring or unsustainable income pursuant to R.C. 3119.01(C)(7)(e), the trial court arrived at an amount nearly \$3000 more than it would have had it merely used Mother's gross income from 2009 minus the nonrecurring income. By doing so, a higher percentage of the support obligation was attributed to Mother, thereby inuring a benefit to Father. Under the circumstances, the trial court did not abuse its discretion by averaging Mother's income from the prior three years based on fluctuations in her income.

Basic child support schedule

{¶40} Father argues that the trial court erred by failing to apply the basic child support schedule because the parents' combined gross income was not more than \$150,000.

{¶41} R.C. 3119.021 sets out the basic child support schedule which must be used to calculate child support unless the parents' combined gross income is less than \$6,600 or more than \$150,000. R.C. 3119.04(B) states, in relevant part: "If the combined gross income of both parents is greater than one hundred fifty thousand dollars per year, the court * * * shall determine the amount of the obligor's child support obligation on a case-by-case basis and shall consider the needs and the standard of living of the children who are the subject of the child support order and of the parents."

{¶42} Father argues that the trial court was precluded from determining his child support obligation on a case-by-case basis because the combination of the parents' actual income is less than \$150,000. He argues that, because R.C. 3119.01(C)(7) defines gross income as income earned during a calendar year, the trial court erred by using the parties' averaged incomes. This Court has already concluded that the trial court did not err by averaging the parents' prior three years' incomes to determine their annual gross incomes. The average of Father's prior three years' incomes was \$143,622, while Mother's was \$49,954, resulting in a combined gross income of \$193,576 for the parents. Accordingly, the trial court was required to determine Father's child support obligation on a case-by-case basis.

{¶43} Father further argues that his child support obligation is more than 50% of his current take home pay. In support, he cites *Siebert v. Tavaréz*, 8th Dist. No. 88310, 2007-Ohio-2643, ¶ 36, for the proposition that the trial court must "ensure that the obligor parent is not so overburdened by child support payments that it affects that parent's ability to survive." Father fails, however, to explain how his current obligation impacts his ability to survive.

{¶44} On the other hand, the evidence adduced at trial demonstrated that Father continued to live well. He recently bought a \$405,000 home with a pool on which he was able to

make an \$80,000 down payment even before he sold his prior home for \$260,000. He made certain improvements to the property and acquired new furnishings. Father was driving a Lexus automobile, furnished by OCM, as well as an \$11,000 motorcycle for which he paid cash. He continued to travel internationally, ostensibly for business, although he had not secured any new business opportunities from his numerous and frequent trips to China. Moreover, even though Father recently voted to decrease his salary, because of the control he exerts on the board of trustees for the college, he retains considerable power to establish his salary. He did not testify that his recent decrease in salary caused him to downsize his lifestyle in any way.

{¶45} Moreover, Father cites no law to show that withholding of “over 50%” is not permissible under these circumstances. In fact, in a garnishment context, 15 U.S.C. 1673(b)(2)(B) would allow withholding of up to 60% of Father’s disposable earnings as he is not supporting a spouse or other dependent children. Accordingly, Father’s fourth assignment of error is overruled.

ASSIGNMENT OF ERROR V

THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING MR. MORROW IN CONTEMPT, THEREBY COMMITTING REVERSIBLE ERROR AND VIOLATING MR. MORROW’S RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.

{¶46} Father argues that the trial court erred by finding him in contempt for failing to pay his child support obligation through wage withholding. This Court agrees.

{¶47} This Court reviews contempt proceedings for an abuse of discretion. *Akin* at ¶ 44, citing *Thomarios v. Thomarios*, 9th Dist. No. 14232, 1990 WL 1777 (Jan. 10, 1990). An abuse of discretion connotes that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore*, 5 Ohio St.3d at 219.

{¶48} As this Court previously recognized: “Contempt of court is defined as disobedience of an order of a court. It is conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions.” *Poitinger v. Poitinger*, 9th Dist. No. 22240, 2005-Ohio-2680, ¶ 31, quoting *Windham Bank v. Tomaszczyk*, 27 Ohio St.2d 55 (1971), paragraph one of the syllabus. Although contempt is generally classified as either civil or criminal to facilitate review, the Ohio Supreme Court has recognized that contempt proceedings are sui generis, i.e., neither wholly civil nor wholly criminal. *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253. The *Brown* court elaborated:

While both types of contempt contain an element of punishment, courts distinguish criminal and civil contempt not on the basis of punishment, but rather, by the character and purpose of the punishment. Punishment is remedial or coercive and for the benefit of the complainant in civil contempt. Prison sentences are conditional. The contemnor is said to carry the keys of his prison in his own pocket, since he will be freed if he agrees to do as ordered. Criminal contempt, on the other hand, is usually characterized by an unconditional prison sentence. Such imprisonment operates not as a remedy coercive in its nature but as punishment for the completed act of disobedience, and to vindicate the authority of the law and the court. Therefore, to determine if the sanctions in the instant cause were criminal or civil in nature, it is necessary to determine the purpose behind each sanction: was it to coerce [Father] to obey the [child support order], or was it to punish [him] for past violations?

(Internal citations omitted.) *Id.* at 253-254.

{¶49} In this case, the trial court fined Father after finding that he had failed to pay his child support through wage withholding. However, the court gave him the opportunity to purge his contempt and avoid paying the fine by establishing wage withholding within thirty days of the court’s judgment. Because the trial court’s punishment was remedial and coercive in nature, and Father had the opportunity to purge the contempt, it was civil in nature. In civil contempt proceedings, a finding of contempt must be premised on clear and convincing evidence. *Romans*

v. Romans, 9th Dist. No. 23181, 2006-Ohio-6554, ¶ 9. This Court has long recognized that the movant's burden of proving a prima facie case of contempt may be met by producing the order and proof of the contemnor's failure to comply. *Rossen v. Rossen*, 2 Ohio App.2d 381, 383-384 (9th Dist.1964).

{¶50} Mother alleged in her contempt motion that Father had failed to pay child support and that he had failed to effect the mandatory wage withholding. The trial court found Father in contempt solely on the basis that he had failed to pay his child support obligation by wage withholding "as ordered by this Court and pursuant to the Ohio Revised Code." The domestic relations court cited to the parties' March 30, 2005 agreed judgment entry which addressed interim issues of parenting time and child support pending trial to ultimately resolve those issues. The March 30, 2005 entry ordered Father to pay child support by wage withholding through the Ohio Child Support Payment Central, in Columbus. That entry included the following order in bold font: "All child support and spousal support under this order shall be withheld or deducted from the income or assets of the Obligor pursuant to a withholding or deduction notice or appropriate court order issued in accordance with Section 3121.03 of the Ohio Revised Code." Mother cited neither the March 30, 2005 order nor R.C. 3121.03 in her contempt motion.

{¶51} On March 1, 2006, the domestic relations court issued a final judgment in which it designated Mother as the residential parent, ordered parenting time for Father, and ordered Father to pay child support. The child support order stated: "Effective October 1, 2005, Mr. Morrow shall pay child support through the Medina County Child Support Enforcement Agency in the amount of \$2,198.05 per month, which includes 2% processing fee." There was no order that the support be paid through wage withholding. Moreover, the March 1, 2006 order did not

include any notice identical or similar to the notice in the March 30, 2005 order, referencing R.C. 3121.03 or otherwise mentioning wage withholding.

{¶52} Mother relied on the March 1, 2006 order for her allegation that Father was required to pay child support by wage withholding. However, at the hearing, Mother admitted that the current order for child support ordered Father to pay CSEA directly, not by wage withholding.

{¶53} Mother failed to present clear and convincing evidence that Father violated the current child support order. Before a party may be held in contempt for disobeying a court order, the prior order “must spell out the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed upon him.” *Collette v. Collette*, 9th Dist. No. 20423, 2001 WL 986209 (Aug. 22, 2001). The interim child support order issued on March 30, 2005, was superseded by the final judgment issued on March 1, 2006. While the interim order ordered Father to pay child support by wage withholding to the central agency in Columbus, the final judgment ordered Father to pay child support directly to Medina County CSEA. Moreover, the final judgment made no reference to R.C. 3121.03 or any other code provision which would have put Father on notice of any obligation to pay child support by wage withholding. Accordingly, the domestic relations court erred when it found Father in contempt for failing to pay child support by wage withholding based on the evidence adduced at trial. Father’s fifth assignment of error is sustained.

III.

{¶54} Father’s first, second, third, and fourth assignments of error are overruled. Father’s fifth assignment of error is sustained. The judgment of the Medina County Court of

Common Pleas, Domestic Relations Division, is affirmed in part and reversed in part, and the cause remanded for further proceedings consistent with this opinion.

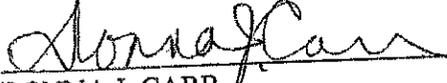
Judgment affirmed in part,
Reversed in part,
And cause remanded.

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 Medina, 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(C). 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 equally to both parties.


DONNA J. CARR
FOR THE COURT

WHITMORE, P. J.
BELFANCE, J.
CONCUR.

APPEARANCES:

JOHN C. RAGNER, Attorney at Law, for Appellant.

LINDA HOFFMAN, Attorney at Law, for Appellee.

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
MEDINA COUNTY, OHIO

COMMON PLEAS COURT

2011 JAN 12 PM 3:48

FILED
DAVID B WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

JEFFREY MORROW
Plaintiff
Vs.
SHERRI BECKER
Defendant

CASE NO. 04PA0199

JUDGE MARY R. KOVACK

MAGISTRATE'S DECISION

This matter came up for hearing on August 10, 2010, on Plaintiff's motion to modify child support filed August 4, 2009, and Defendant's motion to show cause re support filed December 30, 2009, before Magistrate Jackie L. Owen to whom it was referred by the Honorable Mary R. Kovack. Plaintiff was present with Attorney John Ragner. Defendant was present with Attorney Linda Hoffmann.

Plaintiff orally moved to continue this hearing based upon his attorney not having enough time to prepare.

At the previous hearing on July 27, 2010, Plaintiff affirmed on the record that he wanted Attorney James Campbell to represent him. The hearing on parenting time issues then proceeded. On July 29, 2010, Attorney Campbell filed his motion to withdraw. On July 30, 2010, Plaintiff hand-delivered a letter to the Court indicating he had no objection to the release of Attorney Campbell. Plaintiff stated he had an attorney who would be prepared for this hearing on August 10. Attorney John Ragner filed a notice of appearance on August 2. Attorney Ragner filed a motion to continue at the same time, which was denied based upon Plaintiff's written assurance that his new attorney would be ready. A Magistrate's Order issued August 3 permitted Attorney Campbell's withdrawal.

One of Plaintiff's arguments for a continuance of the hearing scheduled August 10 was that he did not have time to gather witnesses and exhibits. On February 11, 2010, Plaintiff filed his first exhibit and witness lists. On February 12 Defendant filed her exhibit and witness lists. On August 2 Plaintiff filed a supplemental witness and exhibit list. On August 4 Plaintiff filed a second supplemental exhibit and witness list. On August 6 Plaintiff filed subpoenas indicating service of all of them on August 5. On August 6 Plaintiff sought leave to plead to submit Plaintiff's final witness and exhibit,

which leave was denied. This matter has been set for final hearing at least two times. Plaintiff has had ample opportunity to discover all the information needed to proceed on his motion to modify child support.

Plaintiff's motion to continue on the day of trial was denied.

The hearing proceeded.

Plaintiff has moved to modify his child support obligation for the parties' two minor children Mackenzie Morrow dob 1/13/2004 and Morgan Morrow dob 6/21/2002. Per the Judgment Entry and Order filed March 1, 2006, Plaintiff's child support obligation is \$2,154.95 per month plus 2% processing charge for the two children.

Plaintiff testified that his income has decreased significantly necessitating a modification of his child support obligation.

Plaintiff has been employed by the Ohio College of Massotherapy (OCM) for eighteen years. It is a not-for-profit corporation with he and his uncle the sole board members and shareholders. The college has a two-year associate's degree/diploma program. Plaintiff also runs Ohio College of Massotherapy Online (OCM Online). This is a for-profit corporation with Plaintiff the sole shareholder. It also offers a two-year associate's degree.

Plaintiff testified that enrollment has been decreasing for both colleges since 2005. Several departments have been discontinued at OCM and the student/teacher ratio has increased. The 403b plan for the college's employees was also cut.

Plaintiff testified that he believes that Defendant took proprietary information about the college with her when she left in 2005 and gave it to Hamrick so it could open its own massage school close to OCM. Plaintiff had no personal information or documentation to evidence this belief. Defendant denied giving any proprietary information to Hamrick. She stated that Hamrick already had the school approved and paperwork submitted before she was hired part-time to help with setting up classes. Her job at OCM was running the bookstore. The Magistrate finds Defendant's testimony more credible.

On April 28, 2009, the Board of Trustees held a meeting by teleconference between Plaintiff and his uncle in California. Plaintiff's uncle has only been to Ohio one time. Minutes were issued regarding that meeting. Plaintiff supplied Defendant's

Exhibit 4, a copy of the Board minutes, to Defendant as part of discovery. Defendant's Exhibit 4 is not signed by Plaintiff's uncle. Those minutes indicate that Plaintiff voluntarily cut his salary in half to \$75,000 per year. Plaintiff's Exhibit 1 is a copy of the minutes, but this copy contains Plaintiff's uncle's signature. There is an added sentence regarding selling the company car Plaintiff drove to get another one and the Board considering this fair since Plaintiff volunteered to take a pay cut. Plaintiff stated that Plaintiff's Exhibit 1 was a true copy of the minutes-not Defendant's Exhibit 4, which he supplied to Defendant. Plaintiff was not credible in his testimony regarding the differences in the two minutes and the reasons therefore. It is clear that Plaintiff voluntarily cut his salary with his uncle's agreement.

Plaintiff began making business trips to China in October, 2008, with the stated purpose of expanding the college to that country. The first trip in October, 2008, was not for business reasons. OCM pays for his travel expenses on approved trips. In 2009 those expenses totaled more than \$12,000. Defendant's Exh. 1. Plaintiff was in China about one-half of every month in 2009 and 2010. He had not developed any new business in China as of the date of hearing. Plaintiff stated that he is still building contacts in the country that he hopes will pay off. Plaintiff did acquire a Chinese fiancée and they will be marrying towards the end of 2010 or beginning of 2011. Plaintiff's many trips to China over the past two years with no results except a new fiancée makes the Magistrate question his credibility as to the reasons for the trips and whether the colleges are paying for personal trips. Plaintiff admitted that the colleges do not make the same amount of money they would, if he were there.

Plaintiff testified that enrollment has increased for OCM for Fall Semester, 2010.

Plaintiff's 2009 tax returns were not prepared as of the trial date. Plaintiff admitted that he did not ask to have them completed by the trial. A witness from Plaintiff's accounting firm stated that the firm could have had the returns completed by trial date, if asked. This witness also testified that OCM is back to about the same financial position now that it was in 2007. In 2007 Plaintiff's gross annual income was \$187,228. Joint Exh. XII.

Plaintiff's lifestyle is not that of one making only \$75,000 per year. He bought a new home in 2007 for \$405,000 with \$80,000 down (from sale of previous residence).

Defendant's Exh. 3. He made improvements to the property since the purchase including building a three-car pole building (approximately \$15-20,000), paid \$12,000 cash for a motorcycle (Plaintiff claims the money came from an inheritance), new furnishings inside and out, a pool and a security system.

The Magistrate finds that Plaintiff voluntarily reduced his income prior to filing his motion to modify child support.

OCM provides a company car (\$9,600 annually) to Plaintiff as well as insurance (\$4,356), a cell phone (\$1,200) (he has no private cell phone or landline), a laptop, Ohio State University season football tickets (\$1,600). Joint Exh. II-V for health care expenses. These benefits total at least \$16,756. Plaintiff's combined salary from OCM and from OCM Online is \$75,000. Plaintiff's total projected gross income for 2010 is \$91,756 including benefits. Plaintiff's insurance cost annually to cover the children is \$4,356. Joint Exh. II-V. He has an adjustment for local tax.

Plaintiff's gross annual income for 2009 was \$106,883, and for 2008 was \$232,213. Joint Exh. X and XI.

Plaintiff's average annual gross income is \$143,622 for tax years 2008, 2009, and projected 2010. The Magistrate finds that it is appropriate to average three years due to the fluctuations in Plaintiff's income from year-to-year and his power to change that income. R.C. 3109.05(H). Plaintiff insisted that he was not the owner of OCM or OCM Online. The Board needs to ratify his decisions. However, he and his uncle are the Board and his uncle has only been to Ohio one time.

Defendant is employed by Copley Health Center making \$22.94 per hour working full-time. Joint Exh. VIII. She has additional part-time income from Hamrick as a student servicer. In an average month Defendant works about twenty hours for Hamrick at \$23 per hour. Joint Exh. IX. Defendant's gross annual income for 2009 was \$51,716 and for 2008 was \$44,912. Joint Exh. XIII & XIV. Defendant also carries health insurance for the parties' minor child Mackenzie as she is a special needs child at an annual cost of \$1,509. Joint VI. The Magistrate finds that it is appropriate to average three years for Defendant's gross income also. Her average annual gross is \$49,954. Defendant does have a rental property, but the first and second mortgage payments exceed the monthly rental income.

Defendant has daycare expenses for both girls. Per her 2009 tax return she paid \$3,166. Joint Exh. XIII. Defendant testified that her actual daycare expenses for 2009 were \$8,796.84. Defendant's Exh. 6. She was only permitted to claim one child per the IRS on Form 2441. Defendant also stated that her childcare expenses have increased due to Plaintiff's frequent trips to China. Defendant had her work schedule arranged at her full-time job to work the weekends the girls were with Plaintiff. Plaintiff has been absent at least one of those weekends every month so that she has had to obtain childcare. Defendant tried to rearrange her work hours but was not successful. Her documented daycare expenses for 2010 from January 1, 2010, through July 6, 2010, were \$4,052.41, which is consistent for the amount claimed in 2009.

Based upon the child support worksheet attached hereto Plaintiff's child support obligation would be \$2,085.42 per month. This is less than 10% different from the current child support amount and is not a change of circumstance pursuant to statute.

Therefore, Plaintiff should continue to pay \$2,154.95 per month plus 2% processing charge.

Defendant has moved for Plaintiff to show cause why he should not be held in contempt for failure to pay child support and failure to pay by wage withholding.

Defendant testified that Plaintiff failed to pay the full amount of child support for several months, but that after she filed her motion for contempt Plaintiff caught up on child support and was current as of the date of hearing. Defendant's Exh. 5.

Defendant also stated that since Plaintiff self-pays instead of wage withholding she never knows when she will receive the funds. If Plaintiff is in China, the funds are almost always late. Defendant wants a wage withholding order in place.

Plaintiff testified that he did get behind in his child support obligation for several months but that he brought it current by February, 2010.

Plaintiff had no rebuttal for why child support was not withheld from his wages.

Per Joint Exhibit VII Plaintiff does receive a paycheck. He is a salaried employee of OCM and OCM Online. There is no reason that a wage withholding order cannot be done. Plaintiff is the head of both corporations and has had the power to do the wage withholding order and has either refused or ignored his statutory obligation.

The Magistrate finds Plaintiff in contempt for failing to pay his child support by wage withholding as ordered. For his contempt Plaintiff should pay a fine of \$250.

In order to avoid paying the fine Plaintiff must begin wage withholding on his wages from OCM and OCM Online as previously ordered within thirty (30) days of the date of the order.

There will be a purge hearing before the Honorable Mary R. Kovack to determine whether Plaintiff has purged himself of contempt. Plaintiff is cautioned that he must appear or a capias will issue for his arrest.

Defendant requested an award of attorney fees and costs for the necessity of filing her motion to get Plaintiff to comply with court orders.

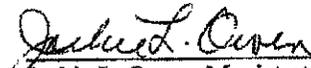
The Magistrate finds that an award of \$500 attorney fees and court cost of \$75 is appropriate and reasonable for a total of \$575.

Defendant and her counsel are awarded \$575 in attorney fees and court costs. Plaintiff should pay to Defendant and her counsel \$575 within thirty (30) days of the judgment entry. If Plaintiff pays as ordered, no interest should attach. If Plaintiff fails to pay as ordered, interest should attach at the statutory rate for any amount due and owing from the date of judgment.

Per Civ.R. 53 parties may file written objections to this Magistrate's Decision within fourteen (14) days of the time-stamped date.

A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law in that decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(D)(3)(b).

The Court shall prepare the judgment entry.


Jackie L. Owen, Magistrate

Cc: John Ragner, Esq.
Linda Hoffmann, Esq.
MCCSEA

**CHILD SUPPORT COMPUTATION WORKSHEET
SOLE RESIDENTIAL PARENT OR SHARED PARENTING ORDER**

Names of Parties:	Date: Jan 03, 2011
Sherri Becker	Case No.:
Jeffrey Morrow	Judge:

The following parent was designated as the residential parent and legal custodian: Mother Father X Shared

No. of Minor Children 2

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
1a. Annual gross income from employment or, when determined appropriate by the court or agency, average annual gross income from employment over a reasonable period of years (Exclude overtime, bonuses, self-employment income, or commissions)	143,622	49,954	
1b. Amount of overtime, bonuses and commissions	0	0	
	FATHER	MOTHER	
Year 3 (Three years ago)	0	0	
Year 2 (Two years ago)	0	0	
Year 1 (Last calendar year)	0	0	
AVERAGE	0	0	
(Include in Col. I and/or Col. II the average of the three years or the year 1 amount, whichever is less, if there exists a reasonable expectation that the total earnings from overtime and/or bonuses during the current calendar year will meet or exceed the amount that is the lower of the average of the three years or the year 1 amount. If, however, there exists a reasonable expectation that the total earnings from overtime/bonuses during the calendar year will be less than the lower of the average of the three years or the year 1 amount, include the amount reasonably expected to be earned this year.)			
2. For Self-Employment Income:			
a. Gross receipts from business	0	0	
b. Ordinary and necessary business expenses	0	0	
c. 5.6% of adjusted gross income or the actual marginal difference between the actual rate paid by the self-employed individual and the FICA rate	0	0	
d. Adjusted gross income from self-employment (Subtract the sum of 2b and 2c from 2a)	0	0	
3. Annual income from interest and dividends (whether or not taxable)	0	0	
4. Annual Income from unemployment compensation	0	0	
5. Annual income from workers' compensation, disability insurance benefits, or Social Security Disability/Retirement benefits	0	0	
6. Other annual income			
a. Other Taxable Income	0	0	
b. Cash Perks	0	0	
c. Spousal support received	0	0	

Worksheet: Sole/Shared

Date: Jan 03, 2011

Case No.:

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
7a. Total annual gross income (add lines 1a, 1b, 2d & 3-6)	143,622	49,954	
7b. Health insurance maximum (multiply line 7a by 5%)	7,181	2,498	

ADJUSTMENTS TO INCOME

8. Adjustment for minor children born to or adopted by either parent and another parent who are living with this parent; adjustment does not apply to stepchildren (number of children times federal income tax exemption less child support received, not to exceed the federal tax exemption)	0	0	
9. Annual court-ordered support paid for other children	0	0	
10. Annual court-ordered spousal support paid to any spouse or former spouse	0	0	
11. Amount of local income taxes actually paid or estimated to be paid	2,872	999	
12. Mandatory work-related deductions such as union dues, uniform fees, etc. (Not including taxes, Social Security or retirement)			
a. Mandatory Work Related/Other Deduction	0	0	
b. Mandatory Work Related/Other Deduction	0	0	
13. Total gross income adjustments (add lines 8 through 12)	2,872	999	
14a. Adjusted annual gross income (subtract line 13 from line 7a)	140,750	48,955	
14b. Cash medical support maximum (If the amount on line 7a, Col. I, is under 150% of the federal poverty level for an individual, enter \$0 on line 14b, Col. I. If the amount on line 7a, Col. I, is 150% or higher of the federal poverty level for an individual, multiply the amount on line 14a, Col. I, by 5% and enter this amount on line 14b, Col. I. If the amount on line 7a, Col. II, is under 150% of the federal poverty level for an individual, enter \$0 on line 14b, Col. II. If the amount on line 7a, Col. II, is 150% or higher of the federal poverty level for an individual, multiply the amount on line 14a, Col. II, by 5% and enter this amount on line 14b, Col. II.)	7,038	2,448	

Worksheet: Sole/Shared

Date: Jan 03, 2011

Case No.:

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
15. Combined annual income that is basis for child support order (Add line 14a, Col. I and Col. II)			189,705
16. Percentage of parent's income to total income:			
a. Father (divide line 14a, Col. I, by line 15, Col. III)	74.19%		
b. Mother (divide line 14a, Col. II, by line 15, Col. III)		25.81%	
17a. Basic combined child support obligation (From schedule on income up to \$150,000 - Amounts between schedule values are calculated)			21,971
17b. Support on Income over \$150,000			4,169
Income for which support is to be applied	189,705		
Percent to be used on income over \$150,000	10.50%		
17c. Total child support obligation			26,140
18. Annual support obligation per parent			
a. Father-Multiply line 17c, Col. III by line 16a	19,393		
b. Mother-Multiply line 17c, Col. III by line 16b		6,747	
19. Annual child care expenses for the children who are the subject of this order that are work-, employment training-, or education-related, as approved by the court or agency (deduct tax credit from annual cost, whether or not claimed)	0	8,797	
a. Less federal child care tax credit	0	(1,200)	
b. Less OH child care tax credit	0	0	
c. Net child care costs	0	7,597	
20a. Marginal, out-of-pocket costs, necessary to provide for health insurance for the children who are the subject of this order (contributing cost of private family health insurance, minus the contributing cost of private single health insurance, divided by the total number of dependents covered by the plan, including the children subject of the support order, times the number of children subject of the support order)	4,356	1,509	
20b. Cash medical support obligation (enter the amount on line 14b or the amount of annual health care expenditures estimated by the United States Department of Agriculture and described in section 3119.30 of the Revised Code, whichever amount is lower)	1,954	0	
21. ADJUSTMENTS TO CHILD SUPPORT WHEN HEALTH INSURANCE IS PROVIDED:			
Father (Only if obligor or shared parenting)			
a. Additions: Line 16a times the sum of amounts shown on line 19c, Col. II and line 20a, Col. II	6,756		
c. Subtractions: Line 16b times sum of amounts shown on line 19c, Col. I and line 20a, Col. I	1,124		

Worksheet: Sole/Shared

Date: Jan 03, 2011

Case No.:

COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
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Mother (Only if obligor or shared parenting)

- | | | |
|---|-------|--|
| b. Additions: Line 16b times the sum of amounts shown on line 19c, Col. I and line 20a, Col. I) | 1,124 | |
| d. Subtractions: Line 16a times sum of amounts shown on line 19c, Col. II and line 20a, Col. II | 6,756 | |

22. OBLIGATION AFTER ADJUSTMENTS TO CHILD SUPPORT WHEN HEALTH INSURANCE IS PROVIDED:

- | | | |
|--|--------|-------|
| a. Father: Line 18a plus or minus the difference between line 21a minus line 21c | 25,025 | |
| b. Mother: Line 18b plus or minus the difference between line 21b minus line 21d | | 1,115 |

23. ACTUAL ANNUAL OBLIGATION WHEN HEALTH INSURANCE IS PROVIDED:

- | | | |
|--|--------|---|
| a. Line 22 for the obligor parent | 25,025 | 0 |
| b. Any non-means-tested benefits, including Social Security and Veterans' benefits, paid to and received by a child or a person on behalf of the child due to death, disability, or retirement of the parent | 0 | 0 |
| c. Actual annual obligation (subtract line 23b from 23a) | 25,025 | 0 |

24. ADJUSTMENTS TO CHILD SUPPORT WHEN HEALTH INSURANCE IS NOT PROVIDED:

Father (Only if obligor or shared parenting)

- | | | |
|---|-------|--|
| a. Additions: Line 16a times the sum of amounts shown on line 19c, Col. II and line 20b, Col. IIb | 5,636 | |
| c. Subtractions: Line 16b times sum of amounts shown on line 19c, Col. I and line 20b, Col. I | 504 | |

Mother (Only if obligor or shared parenting)

- | | | |
|---|--|-------|
| b. Additions: Line 16b times the sum of amounts shown on line 19c, Col. I and line 20b, Col. I) | | 504 |
| d. Subtractions: Line 16a times sum of amounts shown on line 19c, Col. II and line 20b, Col. II | | 5,636 |

25. OBLIGATION AFTER ADJUSTMENTS TO CHILD SUPPORT WHEN INSURANCE IS NOT PROVIDED:

- | | | |
|--|--------|-------|
| a. Father: Line 18a plus or minus the difference between line 24a minus line 24c | 24,525 | |
| b. Mother: Line 18b plus or minus the difference between line 24b minus line 24d | | 1,615 |

Worksheet: Sole/Shared

Date: Jan 03, 2011

Case No.:

COLUMN I COLUMN II COLUMN III
FATHER MOTHER COMBINED

26. ACTUAL ANNUAL OBLIGATION WHEN INSURANCE IS NOT PROVIDED:

a. Line 25 for the obligor parent	\$24,525	\$0
b. Any non-means-tested benefits, including Social Security and Veterans' benefits, paid to and received by a child or a person on behalf of the child due to death, disability, or retirement of the parent	\$0	\$0
c. Actual annual obligation (subtract line 26b from 26a)	\$24,525	\$0

27a. Deviation from sole residential parent support amount shown on line 23c or 26c if amount would be unjust or inappropriate: (See section 3119.23 of the Revised Code.) (Specific facts and monetary values must be stated.)

	0	0
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Reason:

27b. Deviation amount - shared parenting (health ins. provided)

	0	0
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27c. Deviation amount - shared parenting (health ins. not provided)

	0	0
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(See sections 3119.23 and 3119.24 of the Revised Code.) (Specific facts including amount of time children spend with each parent, ability of each parent to maintain adequate housing for children, and each parent's expenses for children must be stated to justify deviation.)

Reason:

	WHEN HEALTH INSURANCE IS PROVIDED	WHEN HEALTH INSURANCE IS NOT PROVIDED
28. FINAL CHILD SUPPORT FIGURE: (This amount reflects final annual child support obligation; in Col. I, enter line 23c plus or minus any amounts indicated in line 27a or 27b; in Col. II, enter line 26c plus or minus any amounts indicated in line 27a or 27b)	25,025	24,525
	Father is Obligor	
29. FOR DECREE: Child support per month (divide obligor's annual share, line 28, by 12) plus any processing charge.	2,085.42	2,043.75
Including 2% processing charge	2,127.13	2,084.62
30. FINAL CASH MEDICAL SUPPORT FIGURE: (this amount reflects the final, annual cash medical support to be paid by the obligor when neither parent provides health insurance cover- age for the child; enter obligor's cash medical support amount from line 20b)		1,954
31. FOR DECREE: Cash medical support per month (divide line 30 by 12)		162.83
Including 2% processing charge		166.09

Comments:

PREPARED BY: _____ PRO SE: _____
 COUNSEL: _____
 Representing _____
 CSEA: _____ OTHER: _____
 WORKSHEET HAS BEEN REVIEWED AND AGREED TO:

 MOTHER DATE

 FATHER DATE