

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

JOYCE KIC ONYSHKO,	:	O P I N I O N
Plaintiff-Appellee/Cross-Appellant,	:	
- vs -	:	CASE NO. 2008-P-0035
JEFFREY SCOTT ONYSHKO,	:	
Defendant-Appellant/Cross-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 97 DR 0240.

Judgment: Affirmed.

Paula C. Giulitto, Giulitto Law Office, L.L.P., 222 West Main Street, P.O. Box 350, Ravenna, OH 44266-0350 (For Plaintiff-Appellee/Cross-Appellant).

Frank J. Cimino, 250 South Chestnut Street, Suite 18, Ravenna, OH 44266 (For Defendant-Appellant/Cross-Appellee).

TIMOTHY P. CANNON, J.

{¶1} Defendant-appellant/cross-appellee, Jeffrey Scott Onyshko, appeals the judgment entered by the Domestic Relations Division of the Portage County Court of Common Pleas. In addition, plaintiff-appellee/cross-appellant, Joyce Kic Onyshko, n.k.a. Joyce Kic, filed a cross-appeal of that judgment. The trial court ruled on several post-divorce decree motions filed by the parties.

{¶2} The parties were married in 1985. Four children were born of the marriage. In 1997, Ms. Kic filed a complaint for divorce.

{¶3} The trial court entered its final divorce decree in February 1999. Ms. Kic was designated residential caretaker and legal custodian of all four children. Mr. Onyshko was ordered to pay child support of \$301 per child, per month, for a total monthly obligation of \$1,205, plus a two percent processing fee.

{¶4} The trial court ordered that health insurance be maintained for the children, to be split between the parties based on their incomes. Similarly, the parties were to split out-of-pocket medical expenses for the children. However, Ms. Kic was to be responsible for the initial costs of \$100 per child, per year.

{¶5} The decree stated that “[n]o orthodontia will be done on any minor child without agreement of the parties, or in the event of a failure to reach an agreement, the finding by the Court that such work is medically necessary.”

{¶6} The trial court ruled that neither party would pay ongoing spousal support to the other party. However, the trial court ordered that Mr. Onyshko was to pay Ms. Kic a one-time spousal support payment of \$6,593 for the purpose of covering her attorney fees.

{¶7} The trial court determined that all tax liabilities be shared jointly between the parties and any outstanding debts be split equally between the parties. The trial court did note that Mr. Onyshko had filed for bankruptcy protection and that certain obligations of his pertaining to the marital debt had been discharged by that action.

{¶8} Each party was permitted to claim two of the children as dependents for income tax purposes. However, Mr. Onyshko’s right to claim two of the children as

dependents was conditioned on his obligation to remain current on his child support obligations.

{¶9} In October 2000, the trial court issued a judgment entry ruling that Mr. Onyshko's child-support obligation be reduced to a total of \$601 per month, plus poundage. This modification was the result of an agreement between the parties and was made retroactive to January 1, 2000.

{¶10} In February 2001, the trial court issued a judgment entry finding Mr. Onyshko in contempt for failing to make child support payments for December 2000 and January 2001. The trial court ordered Mr. Onyshko to make double payments the next two months for the two payments he missed. In addition, the trial court noted that there was a total child-support arrearage of \$8,744.83.

{¶11} In January 2002, Attorney Sciangula filed an "assignment of judgment" in the instant matter. This document indicated that Ms. Kic assigned the judgment of spousal support from the original divorce decree in the amount of \$6,593 to Attorney Sciangula.

{¶12} In April 2002, Ms. Kic filed a motion to show cause as to why Mr. Onyshko should not be held in contempt for failure to pay child support and his portion of certain medical bills. She also filed a motion to modify child support. In April 2003, these motions were dismissed for failure to prosecute.

{¶13} Thereafter, Ms. Kic filed another motion to show cause as to why Mr. Onyshko should not be held in contempt for failure to pay child support, for failure to pay spousal support, and for failure to pay his portion of the medical expenses. In April 2003, Mr. Onyshko filed a motion for change of custody. Therein, he asserted that the

parties' two eldest children had been living with him since February 1, 2003, pursuant to the parties' agreement. Both of these motions were dismissed for failure to prosecute.

{¶14} In December 2003, Mr. Onyshko filed a motion to reinstate his motion for change of custody, which was granted by the trial court. Also, the trial court appointed a guardian ad litem.

{¶15} Mr. Onyshko filed a motion to credit his child support obligations due to the fact that the two older children lived with him for several months in 2003. Also, in December 2004, Mr. Onyshko filed a motion for Ms. Kic to show cause as to why she should not be held in contempt for failure to comply with the visitation schedule. This motion alleged that Ms. Kic denied him visitation with the children on two occasions.

{¶16} Also in December 2004, the trial court issued a visitation order. The court ordered that the two older children would spend alternate weeks with each of the parties. The younger children remained on the standard visitation schedule, primarily residing with Ms. Kic.

{¶17} In April 2005, Ms. Kic reinstated her previously filed motion for Mr. Onyshko to show cause as to why he should not be held in contempt for failure to pay child support, for failure to pay spousal support, and for failure to pay his portion of the medical expenses. Also in April 2005, Mr. Onyshko filed a motion for Ms. Kic to show cause as to why she should not be held in contempt for failure to comply with the visitation schedule. This motion alleged that Ms. Kic interfered with the visitation schedule and denied Mr. Onyshko summer visitation.

{¶18} In January 2006, Ms. Kic filed a motion for Mr. Onyshko to show cause as to why he should not be held in contempt for claiming the children as dependents for

income tax purposes when he was not permitted to do so. Also, Ms. Kic asserted that Mr. Onyshko had not paid his portion of a RITA tax bill.

{¶19} A two-day hearing was held on the various pending motions on July 17, 2006 and August 21, 2006. Both parties testified at this hearing. Following the hearing, both parties submitted post-hearing briefs for the trial court's consideration.

{¶20} On March 15, 2007, the trial court issued a judgment entry containing its findings regarding the hearing. Then, in April 2007, the trial court issued a nunc pro tunc entry of its findings. In May 2007, the trial court held a hearing as a result of a motion to clarify its judgment entry. On February 12, 2008, the trial court issued a judgment entry containing "additional findings." Then, on March 19, 2008, the trial court issued a judgment entry ruling on the various motions. Finally, on April 17, 2008, the trial court issued a nunc pro tunc judgment entry, wherein it attached child support calculations that were inadvertently not attached to its March 2008 judgment entry.

{¶21} Mr. Onyshko timely appealed the trial court's March 19, 2008 judgment entry. In addition, Ms. Kic filed a timely cross-appeal.

{¶22} There was an error during the creation of the trial transcript from the hearing held in 2006. Specifically, significant portions of Ms. Kic's testimony were not transcribed. Thus, this court remanded the matter to the trial court to permit the trial court and parties to recreate this evidence. On November 20, 2008, the trial court held a hearing to recreate the testimony of Ms. Kic.

{¶23} Mr. Onyshko raises eight assignments of error. His first assignment of error is:

{¶24} “The trial court erred to the prejudice of the defendant in awarding to the plaintiff anything other than the original spousal support amount for Attorney Sciangula’s attorney fees in the amount of \$6,593.00.”

{¶25} Ms. Kic’s first assignment of error is:

{¶26} “The Trial Court erred and abused its discretion in failing to award Ms. Kic all of the costs associated with Appellant’s failure to pay the award given Ms. Kic for her past award of attorney fees, ordered as spousal support.”

{¶27} Mr. Onyshko argues the trial court erred by imposing a spousal support award that was too high. Ms. Kic argues that the trial court should have awarded her a larger amount of spousal support.

{¶28} This court reviews a trial court’s determination pertaining to spousal support under an abuse of discretion standard of review. *Eva v. Eva*, 11th Dist. No. 2007-P-0052, 2008-Ohio-6986, at ¶11. (Citations omitted.) “The term “abuse of discretion” connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. (Citations omitted.)

{¶29} Mr. Onyshko was ordered to pay \$6,593 in spousal support to Ms. Kic pursuant to the 1999 divorce decree. This amount represented Ms. Kic’s legal fees that were owed to Attorney Sciangula. Mr. Onyshko did not pay any of this amount. As a result, Attorney Sciangula filed a complaint in Portage County Municipal Court against Ms. Kic for the unpaid attorney fees. In addition to the underlying amount of \$6,593, Attorney Sciangula sought interest in the amount of \$3,571.12 and costs in the amount of \$322, for a total of \$10,486.12.

{¶30} In an attempt to resolve this debt, Ms. Kic made five \$400 payments to Attorney Sciangula, for a total of \$2,000. Then, she refinanced her home and paid an additional \$6,593 to Attorney Sciangula. Thus, Ms. Kic paid a total of \$8,593 to Attorney Sciangula, which apparently resolved the lawsuit between them.

{¶31} Ms. Kic retained the services of Attorney Joseph Rafidi to defend her in the lawsuit initiated by Attorney Sciangula. Ms. Kic paid Attorney Rafidi \$1,200.

{¶32} The trial court ordered Mr. Onyshko to pay Ms. Kic \$9,793. In addition, the trial court found him in contempt for failing to pay the original award.

{¶33} Despite being ordered to pay Ms. Kic \$6,593 in spousal support in 1999, Mr. Onyshko never paid this amount. The divorce decree specified that the spousal support award was to cover Ms. Kic's attorney fees. Thus, since the attorney fees were never paid, Attorney Sciangula filed suit against Ms. Kic. This resulted in Ms. Kic having to pay an additional \$2,000 to Attorney Sciangula as a portion of the interest on the underlying obligation and \$1,200 in new attorney fees to defend Attorney Sciangula's lawsuit. Since these costs were directly related to Mr. Onyshko's failure to pay the original spousal support award, we conclude the trial court did not abuse its discretion by ordering Mr. Onyshko to pay \$9,793 in spousal support.

{¶34} Ms. Kic argues the trial court should have also awarded her a higher amount of spousal support. She argues she was entitled to an additional \$3,000. At trial, Ms. Kic testified that she paid \$3,000 to Attorney James Reed, Attorney Sciangula's attorney. Ms. Kic's testimony regarding this payment was limited, stating only that she had to pay the amount.

{¶35} Ms. Kic also argues that she should have been awarded an additional \$6,191.87 in spousal support to cover the refinancing costs associated with the refinancing of her home. She argues she had to refinance her home as a result of Mr. Onyshko's failure to pay the original spousal support award.

{¶36} The trial court does not specifically address these amounts in its judgment entry. However, the trial court may have concluded that the refinancing costs and the payment to Attorney Reed were not the direct and proximate result of Mr. Onyshko's failure to pay the original award. We conclude the trial court did not abuse its discretion in failing to include these additional amounts in the spousal support award.

{¶37} Mr. Onyshko's first assignment of error is without merit.

{¶38} Ms. Kic's first assignment of error is without merit.

{¶39} Mr. Onyshko's second assignment of error is:

{¶40} "The trial court erred to the prejudice of the defendant in requiring the defendant to pay corporate obligations of Intensive Care Limited incurred by Joyce Onyshko in her capacity as president of said corporation."

{¶41} Ms. Kic's second assignment of error is:

{¶42} "The Trial Court erred in its determination of Appellant's responsibility to pay RITA and State of Ohio tax obligations pursuant to the terms of the Divorce Decree."

{¶43} This court uses an abuse of discretion standard of review when considering a trial court's determination regarding the division of marital debt. *Biro v. Biro*, 11th Dist. Nos. 2006-L-068 & 2006-L-236, 2007-Ohio-3191, at ¶92, citing *Rice v. Rice*, 11th Dist. Nos. 2006-G-2716 & 2006-G-2717, 2007-Ohio-2056, at ¶40.

{¶44} In regard to the 1995 tax obligation, Mr. Onyshko argues it is a corporate tax obligation of Ms. Kic's former corporation. However, at the hearing, Ms. Kic testified that this was a personal tax obligation, which accrued while the parties were married. Thus, if the trial court believed this evidence, a finding that Mr. Onyshko was responsible for one-half of the amount was appropriate.

{¶45} In regard to the 2002 tax obligation, Mr. Onyshko argues that it is the same as a judgment lien from 1992 that the parties paid off. The trial court ruled, "unless Husband can demonstrate that case 2002 JD 87236 is a revival of case 1992 JD 55486," Ms. Kic is entitled to judgment of \$2,231.84 in relation to this obligation. The trial court's judgment entry contained conditional language, which provided Mr. Onyshko with a method to avoid having to pay the judgment in relation to the 2002 lien.

{¶46} The trial court's judgment entry anticipated future actions on behalf of the parties, as it provided, "[t]he parties, by and through their counsel, shall determine whether case 2002 JD 87237 [sic] is a revival of case 1992 JD 55486." We note that the trial court's March 19, 2008 judgment entry may not have been a final, appealable order, since it did not "determine the action." See *McCall v. Sexton*, 4th Dist. No. 06CA12, 2007-Ohio-3982, at ¶7, citing R.C. 2505.02(B)(1). However, for the reasons set forth below, the conditional element was satisfied via the testimony of Ms. Kic. At that time the action was "determined," and "it does not appear that any further issues remain to be adjudicated by the trial court." *Id.* at ¶9. Accordingly, we will treat this matter as a premature appeal as of November 20, 2008. See App.R. 4(C). At this time, there is a final, appealable order pursuant to R.C. 2505.02, and this court has jurisdiction to consider this appeal. *Id.*

{¶47} In Ms. Kic's testimony, the following colloquy occurred on direct examination:

{¶48} "Q. Showing you what's been previously marked for identification purposes as Plaintiff's Exhibit 9, can you tell me what that document is?

{¶49} "A. It's a copy of a judgment lien originally from 1992 refiled as a 2002 judgment number against my ex-husband and myself by the Ohio Department of Tax in the amount of \$4,463.68.

{¶50} "Q. And the case number on this was originally 1992 JD 55486 with a lien being revived via Case No. 2002 JD 87236. Is that correct?

{¶51} "A. Yes."

{¶52} This testimony was provided at a hearing on November 20, 2008, subsequent to the trial court's March 19, 2008 judgment entry in which the court provided a means for Mr. Onyshko to avoid judgment being entered against him in relation to the 2002 judgment lien. Thus, there was evidence in the record that judgment lien 2002 JD 87236 was a revival of 1992 JD 55486. Therefore, the alternative triggering event has occurred, and there is no judgment against Mr. Onyshko in relation to the 2002 judgment lien.

{¶53} On appeal, Ms. Kic does not argue that the 2002 judgment lien was not a revival of the 1992 lien;¹ instead, she argues that Mr. Onyshko never paid the 1992 judgment lien. However, the trial court specifically found that the 1992 judgment lien was paid by the parties, and Ms. Kic does not challenge this finding in her cross-appeal.

1. We note that Ms. Kic concedes this point on appeal. When describing the 2002 judgment lien in her appellate brief, Ms. Kic states, "2nd tax obligation: originally, filed as 1992 JD 55486 and revived via 2002 JD 87236, in the amount of \$4,463.68."

{¶54} Since the order in the trial court's judgment entry regarding the 2002 tax lien is no longer in effect, Mr. Onyshko's assignment of error is moot as it relates to this lien. See App.R. 12(A)(1)(c).

{¶55} In regard to the 2003 tax obligation, the trial court found this to be the sole responsibility of Ms. Kic. Ms. Kic contends this obligation was actually a revival from a 1993 tax obligation, so Mr. Onyshko should be responsible for one-half of it. At trial, Ms. Kic testified she "believed" it was a revival. She then testified that she had discovered documentation that the debt had accrued prior to the parties' divorce. However, she admitted that she did not present this evidence at the initial hearing, thus there was no evidence before the trial court demonstrating this was a marital debt.

{¶56} Ms. Kic challenges the trial court's finding that Mr. Onyshko was not responsible for one-half of a RITA tax bill in the amount of \$3,188.44. The trial court determined this was a corporate debt of a company formerly owned by Ms. Kic. On appeal, Ms. Kic does not contest the trial court's determination that the RITA bill was a corporate debt. Instead, she argues that Mr. Onyshko was responsible for the bill because the original divorce decree stated that the parties shall jointly be responsible for *any* tax liabilities. However, this language necessarily meant that the parties should be responsible for their own tax liabilities, not the tax liabilities of a third party, whether that party happens to be another person or a corporation.

{¶57} The trial court did not abuse its discretion in its determination of the parties' tax liabilities.

{¶58} Mr. Onyshko's second assignment of error is without merit in part and moot in part.

{¶59} Ms. Kic's second assignment of error is without merit.

{¶60} Mr. Onyshko's third assignment of error is:

{¶61} "The trial court erred to the prejudice of the defendant in determining that the defendant was in contempt of the court order in claiming the children as tax dependents in the years 1999, 2000 and 2002 in light of the fact that the plaintiff did not even file tax returns for those years until 2005."

{¶62} The trial court found Mr. Onyshko in contempt for claiming two of the children as dependents for tax years 1999, 2000, and 2002.

{¶63} Mr. Onyshko argues that he should not have been found in contempt for claiming the children as dependents because Ms. Kic did not file tax returns for those years as of 2005. We disagree. The trial court's 1999 divorce decree expressly stated that Mr. Onyshko was not to claim any of the children as dependents unless he was current on his child support obligations. This order stood independent of whether Ms. Kic attempted to claim the children.

{¶64} Mr. Onyshko's third assignment of error is without merit.

{¶65} Mr. Onyshko's fourth assignment of error is:

{¶66} "The trial court erred to the prejudice of the defendant in its calculation of the medical related expenses to which the defendant herein is obligated to the plaintiff."

{¶67} Ms. Kic's third and fourth assignments of error are:

{¶68} "[3.] The Trial Court erred in failing to award Ms. Kic judgment for Appellant's proportionate share of the parties' children's out-of-pocket medical expenses retroactive to 1999.

{¶69} “[4.] The Trial Court erred in failing to find that orthodontia care for the parties’ daughter was medically necessary.”

{¶70} We review a trial court’s decision regarding an order for the payment of medical expenses for children in a domestic relations case under the abuse of discretion standard of review. See, e.g., *Harkey v. Harkey*, 11th Dist. No. 2006-L-273, 2008-Ohio-1027, at ¶90. (Citations omitted.)

{¶71} Mr. Onyshko argues the trial court erred by ordering that he reimburse Ms. Kic for the amounts she paid to provide medical insurance for the children. He claims the amounts she submitted included the total amount she paid for insurance, including insurance coverage for herself. At the hearing, Ms. Kic testified that the figures contained in plaintiff’s exhibit 21 were the accurate figures. Mr. Onyshko argues that these figures total \$11,935.77. Ms. Kic argues that these figures total \$14,463.41. The trial court, in its March 15, 2007 judgment entry stated: “Wife submitted evidence that of the total amount she paid for health insurance coverage, the following sums are attributable only for the children: 1999, \$1,944; 2000, \$1,753; 2001, \$1,762; 2002, \$1,965; 2003, \$2,148; [2004], \$1,682; 2005, \$834; 2006, \$2,373. The total paid is \$14,463 and Husband is responsible for \$7,232.”

{¶72} Mr. Onyshko does not direct this court to which year(s) the trial court allegedly miscalculated the amounts submitted by Ms. Kic. Therefore, he has not demonstrated that the trial court abused its discretion by arriving at the figure it did. Moreover, we have independently reviewed the trial court’s mathematical calculations and conclude that they are supported by the record.

{¶73} In a distinct argument, Mr. Onyshko asserts that the trial court found he was only required to reimburse Ms. Kic for the years 2004 and 2005. However, the trial court's order stated that Ms. Kic's claims for "reimbursement of *out-of-pocket medical expenses* through the year 2003" were dismissed. (Emphasis added.) The trial court ordered Mr. Onyshko to pay Ms. Kic \$7,232 as reimbursement for payments made for *medical insurance*. Based on the trial court's prior entries, this figure clearly included the years 1999 through 2006. Accordingly, this argument lacks merit.

{¶74} The trial court found that Ms. Kic failed to submit sufficient evidence to establish the amounts she paid out-of-pocket for the children's medical expenses. Ms. Kic submitted copies of her bank statements, wherein certain transactions were highlighted or otherwise designated as medical expenses. In addition, she submitted "audit sheets," which were self-prepared sheets indicating the expenditures for medical expenses. Ms. Kic did not submit any medical bills or other documentation from health care providers themselves. Nor did she submit any receipts demonstrating specific payments. Thus, we conclude the trial court did not abuse its discretion by failing to order Mr. Onyshko to reimburse Ms. Kic for these expenditures.

{¶75} Ms. Kic argues that the trial court should have determined that the orthodontia care for one of the children was medically necessary.

{¶76} On appeal, Ms. Kic directs this court to a motion she filed on April 22, 2002. However, she does not seek a ruling that the orthodontia care was medically necessary in this motion. In fact, the subject of the parties' daughter needing orthodontia care is not even mentioned in the motion.

{¶77} Pursuant to the trial court's 1999 judgment entry, "[n]o orthodontia work will be done on any minor child" unless there is (1) an agreement of the parties or (2) an order of the court stating that the treatment is medically necessary. In support of her claim that Mr. Onyshko should reimburse her for half of the expenses related to the orthodontia treatment, Ms. Kic introduced an unsworn copy of a letter from Dr. Martin Layman, dated June 29, 2002, regarding orthodontia treatment of the parties' daughter. However, Ms. Kic was required to get the court's approval for orthodontia care *prior* to the work being performed.

{¶78} In this matter, there was no evidence that the parties had an agreement that their daughter needed orthodontia treatment. Nor was there a prior determination by the trial court that the work was medically necessary. Accordingly, the trial court did not err in failing to order that Mr. Onyshko reimburse Ms. Kic for one-half the cost of their daughter's orthodontia treatment.

{¶79} Mr. Onyshko's fourth assignment of error is without merit.

{¶80} Ms. Kic's third and fourth assignments of error are without merit.

{¶81} Mr. Onyshko's fifth and seventh assignments of error are:

{¶82} "[5.] The trial court erred to the prejudice of the defendant by failing to properly review the tax returns that had been marked as joint exhibits 1 through 19.

{¶83} "[7.] The trial court erred to the prejudice of the defendant in establishing the annual income for the defendant herein in ignoring the exhibits that had been presented and simply going back to the original divorce decree for the establishment of the defendant's income. As a result of that the contributions for the uninsured medical expenditures is miscalculated."

{¶84} Mr. Onyshko argues the trial court erred in its computation of his income for child support purposes. A trial court's decision regarding child support will not be reversed by a reviewing court unless it is shown that the trial court abused its discretion. *Pauly v. Pauly* (1997), 80 Ohio St.3d 386, 390, citing *Booth v. Booth* (1989), 44 Ohio St.3d 124, 144.

{¶85} Mr. Onyshko testified he is a contractor with variable income. He owns several corporations, which had various amounts of income and loss over the years in question. As Ms. Kic noted in her brief, Mr. Onyshko did not provide corporate tax returns for his businesses from 2002 through 2005, nor did he provide personal tax returns for 2005. Accordingly, the trial court, in its "additional findings" judgment entry filed February 12, 2008, found:

{¶86} "[Mr. Onyshko's] amended personal tax return for 2000 showed income of \$18,471. The amended corporate tax return shows income to the corporation of \$42,150 and other financial documents of 2000 show an income of \$33,271 for a total of \$93,892. It is unlikely that this is Husband's true income and the Court speculates that the personal income is contained in the figures shown as corporate tax income and as outlined in the other financial [documents]. Never-the-less, it is impossible to use any of these figures to arrive at an income to Husband of \$25,000.

{¶87} "Husband is self employed and his income is not easily determined. It became more difficult when documents, like tax returns, were not provided for all the years in question. No personal or corporate tax returns were provided for 2005 for example, but other financial documents show income for 2005 in the sum of \$97,065."

{¶88} These findings indicate the trial court considered the evidence submitted by the parties. However, they also suggest that the trial court did not find all of the evidence credible. As trier of fact, the trial court was in the best position to weigh the evidence and assign appropriate credibility. Accordingly, we will not disturb the trial court's determination on this issue.

{¶89} We note that Mr. Onyshko moved the trial court to modify his child support obligation. Thus, he bore the burden of proof to provide the court with the necessary evidentiary material to demonstrate that a modification was justified.

{¶90} When considering all of the evidence, the trial court concluded that the most appropriate figure to represent Mr. Onyshko's income was \$52,000 per year. This was the same figure used at the time of the original divorce decree. In light of the variable incomes of Mr. Onyshko and the lack of evidence before the trial court, we conclude the trial court did not abuse its discretion by setting Mr. Onyshko's income at \$52,000 for the purpose of child support calculations.

{¶91} Mr. Onyshko's fifth and seventh assignments of error are without merit.

{¶92} Mr. Onyshko's sixth assignment of error is:

{¶93} "The trial court erred to the prejudice of the defendant in mistakenly allowing the child support enforcement agency to recalculate the child support from the time of the divorce, completely overlooking the court's entry of October 4, 2000."

{¶94} As Ms. Kic notes, the language Mr. Onyshko objects to is "[h]usband's child support is as Ordered by the Judgment of Divorce until March 1, 2003." This language is contained in the trial court's March 15, 2007 findings. It is not contained in the trial court's March 19, 2008 judgment entry, from which this appeal is taken. Thus,

in its modified judgment entry, the trial court only issued an order regarding Mr. Onyshko's child support obligation from March 1, 2003 forward.

{¶95} Accordingly, Mr. Onyshko has not demonstrated that the trial court abused its discretion in its modification of child support as of March 1, 2003.

{¶96} Mr. Onyshko's sixth assignment of error is without merit.

{¶97} Ms. Kic's fifth assignment of error is:

{¶98} "The Trial Court erred in ordering that the effective date of Appellant's modified child support obligation was March 1, 2003 as Appellant did not file a Motion to Modify Child Support until April 23, 2003."

{¶99} Since this matter pertains to child support, we employ the abuse of discretion standard of review. *Pauly v. Pauly*, 80 Ohio St.3d at 390, citing *Booth v. Booth*, 44 Ohio St.3d at 144.

{¶100} Ms. Kic argues that the trial court erred in modifying Mr. Onyshko's child support obligation as of March 1, 2003, since he did not file his motion for change of custody until April 23, 2003. The trial court modified Mr. Onyshko's child support obligation for this time period because the parties' two oldest children were residing with him at that time. There was evidence presented at the hearing that these children began living with Mr. Onyshko on February 1, 2003.

{¶101} Ms. Kic argues that pursuant to R.C. 3119.83, the trial court did not have jurisdiction to retroactively modify child support prior to the date the party filed the motion to modify. See *Walker v. Walker*, 151 Ohio App.3d 332, 2003-Ohio-73, at ¶22. (Citations omitted.)

{¶102} We note that there was a motion to modify child support pending before the trial court in 2002, as Ms. Kic filed a motion for modification of child support on April 22, 2002. This motion was dismissed on April 15, 2003, only days before Mr. Onyshko filed his motion for change of custody. Accordingly, with the exception of an eight-day period in April 2003, there was a motion pending before the trial court on the issue of child support from April 2002 until the trial court's final judgment in March 2007. Moreover, both parties were on notice, as of April 2002, that the trial court was going to revisit the issue of child support, thereby satisfying the requirements contained in R.C. 3119.84.

{¶103} In this matter, Mr. Onyshko filed his motion for change of custody on April 23, 2003, less than two months after the effective date chosen by the trial court. In addition, as previously mentioned, the parties' two eldest daughters were living with Mr. Onyshko during this time, so there was evidence in the record that Mr. Onyshko was, in fact, supporting them during this time period.

{¶104} Accordingly, for the reasons set forth above and under our highly deferential standard of review, we conclude the trial court did not abuse its discretion by making its modification order effective March 1, 2003.

{¶105} Ms. Kic's fifth assignment of error is without merit.

{¶106} Mr. Onyshko's eighth assignment of error is:

{¶107} "The trial court erred to the prejudice of the defendant in failing to give credit to the defendant for the funds paid on behalf of his daughter Sarah for the trip with People to People program to Europe."

{¶108} The trial court denied Mr. Onyshko's request that he be given a credit against his child support obligations, in the amount of \$6,032, for the cost of a trip to Europe for the parties' daughter. It must be remembered that the purpose of child support is to meet the needs of the minor children. *Carnes v. Kemp*, 104 Ohio St.3d 629, 2004-Ohio-7107, at ¶10. (Citations omitted.) In this matter, there is no evidence that the three-week trip to Europe constituted a *need* of the parties' child. As such, the trial court did not abuse its discretion by failing to give Mr. Onyshko a credit for the cost of the trip to Europe.

{¶109} Mr. Onyshko's eighth assignment of error is without merit.

{¶110} Ms. Kic's sixth and seventh assignments of error are:

{¶111} "[6.] The Trial Court erred in dismissing Ms. Kic's Motion for Contempt for Appellant's failure to pay child support due to the confusion regarding the Defendant's child support obligation."

{¶112} "[7.] The Trial Court erred in refusing to find Appellant in Contempt and/or award Ms. Kic attorney fees and costs."

{¶113} This court reviews a trial court's determination on contempt proceedings under the abuse of discretion standard. See *Lincoln Health Care, Inc. v. Keck*, 11th Dist. No. 2002-L-006, 2003-Ohio-4864, at ¶21. (Citation omitted.)

{¶114} The trial court concluded that it would not find Mr. Onyshko in contempt for failure to pay child support due to "the confusion regarding [his] child support figure." In this matter, both parties collectively filed numerous motions to change custody, to modify Mr. Onyshko's child support obligation, and for contempt. These motions were filed at various times over a period of several years. These motions were not ultimately

resolved until 2008. We conclude the trial court did not abuse its discretion for failing to find Mr. Onyshko in contempt during the time when the issue of his child support obligation was pending before the court. Likewise, the trial court did not abuse its discretion by failing to order Mr. Onyshko to pay Ms. Kic's attorney fees for these proceedings.

{¶115} Ms. Kic's sixth and seventh assignments of errors are without merit.

{¶116} The judgment of the Domestic Relations Division of the Portage County Court of Common Pleas is affirmed.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.