[Cite as *Aldo v. Angle*, 2010-Ohio-2008.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

KELLI ALDO	:	
	:	Appellate Case No. 09-CA-103
Plaintiff-Appellant	:	
	:	Trial Court Case No. 96-DR-364
v.	:	
	:	
BARTHOLEMEW ANGLE	:	(Civil Appeal from Common Pleas
	:	Court, Domestic Relations)
Defendant-Appellee	:	
	:	

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O P I N I O N

Rendered on the 7th day of May, 2010.

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BROGAN, J.

{¶ 1} Kelli Aldo appeals from the trial court's judgment entry adopting a magistrate's decision that reduced appellee Bartholemew Angle's child-support obligation.

{¶ 2} In her sole assignment of error, Aldo contends the trial court erred in

declining to find Angle voluntarily underemployed. Although Angle's income has decreased, Aldo argues that he voluntarily took a lower paying job and that he should not receive a reduction in his child-support obligation.

{¶ 3} The record reflects that the parties divorced in 1997 after having one child together. Aldo was named the residential parent. Angle was granted visitation and ordered to pay child support. In November 2008, Angle moved for a reduction in his support obligation. The basis for the request was that he had left a private-sector aviation job in Michigan to accept a lower paying position with the Federal Aviation Administration.

{¶ 4} A magistrate held a June 2009 hearing on Angle's motion and other unrelated matters. The magistrate then filed a decision finding Angle entitled to a reduction in his child-support obligation. The decision included the following pertinent findings:

{¶ 5} "Father has been a pilot since 1992.

{¶ 6} "Father began his employment as a flight instructor with Corporate Eagle in October of 1996. Thereafter in 1998 he became a corporate pilot.

{¶ 7} "Corporate Eagle is an aviation management company. Corporate Eagle operates a fractional share program whereby a person could buy a share in an aircraft.

{¶ 8} "On September 11, 2008, Father voluntarily terminated his employment as director of operations for Corporate Eagle Management Services.

{¶ 9} "Every air carrier is required to have a director of operations. The director of operations is responsible for the flight department, the aircraft, flight

scheduling, the pilots and the location of the aircraft. Father officially became the director of operations in the fall of 2006 after the former director of operations was released in September 2006.

{¶ 10} "In November of 2006 Father applied for [a] position with the Federal Aviation Administration (FAA). Father interviewed with the FAA in July of 2008. He was offered a position at the end of August 2008. Father then began employment with the FAA in September of 2008 as an aviation safety inspector for the United States.

{¶ 11} "Father's salaried position with the FAA is funded by way of continuous resolution. Exhibit A is an affidavit of income and expenses filed by Father. According to page 2 of the affidavit Father's total yearly income from the FAA is $70,711.

{¶ 12} "* * *

{¶ 13} "Father is asking for a reduction in child's poor [sic] based upon a salary cut he took in moving from Corporate Eagle to the FAA.

{¶ 14} "Father's primary reason for leaving Corporate Eagle was to enhance his quality-of-life. For one Father does not have to do after hours duty nor fly after hours. He is guaranteed to be off work on Friday, Saturday, Sunday and holidays. Father was instructed to work hours at Corporate Eagle from 7 a.m. to 5 p.m. or 6 p.m. Monday through Friday. Father also had rotating weekends where he was on call for management purposes.

{¶ 15} "After Father became the director of operations he could recall canceling perhaps two visitations that conflicted with his weekend work schedule. At other times he would take vacation on Saturdays in order to exercise visitation.

{¶ 16} "The secondary reason was to ensure longevity of employment. According

to Father Corporate Eagle was experiencing a slow decrease in business. This was evidenced throughout the State of Michigan by the fact that he was receiving more and more resumes from pilots looking for jobs and more of his friends that were pilots were out of work. Since Father left Corporate Eagle the pilot staff has been reduced from 22 to 16 pilots.

{¶ 17} "According to the deposition of Richard Nini, the CEO of Corporate Eagle, there were layoffs at [C]orporate [E]agle in October of 2008. There were also further layoffs in February of 2009. Also there was furloughing of pilots and employees whereby they would work so many days and take so many days off without pay. According to the deposition of the CEO he had no current plan to replace Father. The individual that replaced Father as the director of operations is still serving in that position. The director of operations preceding Father was fired without cause or notification.

{¶ 18} "The FAA has a 'safe pay' program whereby if an individual's job is eliminated the individual retains their current income until an upgrade in position is offered to them. The individual then must take the upgrade but the FAA will not force the individual to relocate. The individual would not suffer a decrease in pay.

{¶ 19} "Exhibit E contains copies of Father's 2008 pay stubs from Corporate Eagle for the period mid May through mid-September [when he left to take the position with the FAA].

{¶ 20} "Exhibit H is Father's W-2 forms for 2008. In 2008 Father earned $89,063 [from Corporate Eagle before leaving in September].

{¶ 21} "Exhibit I [is] a letter from the CEO of [C]orporate [E]agle saying that

Father had base compensation of $89,308 in 2008. Exhibit I is incorrect.

{¶ 22} "In the same letter the CEO says that Father had bonus income in 2007 and 2008 of about $12,143 and $3,266 respectively. In fact Father did not elect to participate in the Corporate Eagle's bonus owner program because Father believed the balance sheet of the company would not support the projected profitability of the company. In fact there was no company profit. The letter is incorrect.

{¶ 23} "According to the second page of Exhibit 8 which contains Father's W-2 for 2007, Father had total wages of $92,389.

{¶ 24} "According to the second page of Exhibit 8 which contains Father's W-2 for 2006, Father had total wages of $88,842.

{¶ 25} "* * *

{¶ 26} "The questioning of Father raises for consideration by the Court whether or not Father is voluntarily unemployed or underemployed for the purpose of imputing income to Father in calculating child support. * * *

{¶ 27} "* * *

{¶ 28} "It is undisputed that Father's decision to terminate his employment with Corporate Eagle and accept a position with the FAA was entirely voluntary.

{¶ 29} "However, Father adequately explained why he left his job at Corporate Eagle.

{¶ 30} "Furthermore, no evidence was presented to show Father was attempting to avert his child support obligations by taking a lower paying job.

{¶ 31} "The evidence supports the finding that Father is not voluntarily underemployed." (Doc. #123 at 5-8).

{¶ 32} The magistrate proceeded to recalculate Angle's child-support obligation based on the lower salary he receives from the FAA. Aldo filed objections to the magistrate's decision, arguing, inter alia, that Angle is voluntarily underemployed. After a de novo review, the trial court rejected Aldo's argument, overruled her objections, and adopted the magistrate's decision. This appeal followed.

{¶ 33} Aldo's sole argument on appeal concerns the trial court's failure to find Angle voluntarily underemployed and to impute income to him. "[T]he question whether a parent is * * * voluntarily underemployed is a question of fact for the trial court. Absent an abuse of discretion that factual determination will not be disturbed on appeal." *Rock v. Cabral* (1993), 67 Ohio St.3d 108, 112. An abuse of discretion "'implies that the court's attitude is unreasonable, arbitrary or unconscionable.' " *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. "[A]n abuse of discretion most commonly arises from a decision that was unreasonable." *Wilson v. Lee,* 172 Ohio App.3d 791, 2007-Ohio-4542, at ¶11. "Decisions are unreasonable if they are not supported by a sound reasoning process." *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161. After reviewing the record and applicable law, we find no abuse of discretion here.

{¶ 34} In assessing voluntarily underemployment and the imputation of income, we have noted that a trial court should consider the factors set forth in R.C. 3119.01(C)(11). *Gregory v. Gregory*, 172 Ohio App.3d 822, 825, 2007-Ohio-4098. Among other things, "[t]hose factors include what the parent would have earned if fully employed, prior employment experience, education, physical, and mental disabilities, if any, and availability of employment in the area." Id. In *Robinson v. Robinson*, 168 Ohio

App.3d 476, 2006-Ohio-4282, we explained: "[T]he court is not required to determine whether it was the obligor's subjective purpose to avoid his support obligation. Instead, the only reasons relevant to a finding of voluntary underemployment are those set out in R.C. 3119.01(C)(11)(I) through (x), concerning which the court is permitted in its discretion to give an obligor's stated reasons for changing jobs whatever weight it wishes." Id. at 484.

{¶ 35} This court has recognized that a drop in income due to a voluntary choice "does not necessarily demonstrate voluntary underemployment." *Woloch v. Foster* (1994), 98 Ohio App.3d 806, 811. "The test is not only whether the change was voluntary, but also whether it was made with due regard to the obligor's income-producing abilities and her or his duty to provide for the continuing needs of the child or children concerned." Id. "[T]o avoid the imputation of potential income, the parent must show an objectively reasonable basis for terminating or otherwise diminishing employment. Reasonableness is measured by examining the effect of the parent's decision on the interests of the child." *Holt v. Troha* (Aug. 2, 1996), Greene App. No. 96-CA-19.

{¶ 36} "While a child support obligor may no longer be a completely 'free agent' in terms of having an unlimited range of employment choices due to the child support obligation, courts must consider that some reasonable choices which result in short-term consequential reductions in income may in the long-term substantially benefit the living standards of the children. There are times when a court must respect the reasonable choice of an obligor to attempt to better his or her life in the hope that such a choice will ultimately benefit the lives of the children." *Martin v. Custer* (September 29,

1993), Darke App. No. 1317; see, also, *Koogler v. Koogler* (July 18, 1997), Montgomery App. No. 16253 (finding that an obligor was not voluntarily underemployed because he acted reasonably and in the long-term best interest of his children by switching from an unstable career in the glass industry to pursue a full-time career as an auctioneer).

{¶ 37} As we explained in *Palmer v. Palmer* (June 14, 1995), Greene App. No. 94-CA-112, "[t]he system for the determination and enforcement of child support obligations of parents who are separated or divorced * * * was never intended to shackle parents to jobs that they held at the time of divorce or separation, when child support amounts were originally ordered. Parents who are subject to support orders are as free as those who are not to adjust their employment to conform to their opportunities, and to their disadvantages as well. However, they may not use their separation or divorce to avoid their responsibilities, and their children should not suffer from needs that would have been met by their parents had their marriage not ended or separation not ensued."

{¶ 38} With the foregoing standards in mind, we cannot say the trial court abused its discretion in declining to find Angle voluntarily underemployed for purposes of imputing income to him. The record reflects that the trial court independently reviewed the record and considered the factors set forth in R.C. 3119.01(C)(11). Moreover, the evidence presented at the hearing on Angle's motion supports a finding that he had an objectively reasonable basis for switching jobs when the FAA offer materialized. The most compelling reason was Angle's second one, namely his desire for greater job security, which the FAA provided. Angle testified that he had concerns about his job security with Corporate Eagle based on (1) the fact that his predecessor had been

terminated without cause or prior notice, (2) the slow decline in business he observed after becoming the company's director of operations, and (3) the generally poor state of private aviation in Michigan as evidenced by the increasing number of resumes he received.

{¶ 39} Angle's concerns were validated to some extent by evidence that, following his departure, Corporate Eagle discharged several pilots and instituted defensive measures such as furloughs and pay cuts. Although federal law required Corporate Eagle to have someone fill the position of director of operations, the trial court was entitled to accept Angle's testimony that he "felt a real big bullseye on [his] back" and feared being replaced with another pilot, who might command a lower salary. Even though Angle's supervisor claimed his job was not in jeopardy, Angle was not required to agree with this assessment, particularly in light of the fact that his predecessor had been fired without cause or notice. In any event, the reasonableness of Angle's decision to leave Corporate Eagle need not be evaluated through the lens of perfect hindsight. The trial court acted within its discretion in crediting Angle's concerns about job security and finding that those concerns justified taking a lower paying job with the FAA. To the extent that Angle improved his job security, he improved his chances of providing for the needs of his child albeit at a reduced salary.

{¶ 40} Angle's other reason for departing Corporate Eagle is less compelling but nevertheless provides some objectively reasonable justification for his decision. Angle testified that "quality-of-life" issues entered into his decision to accept the FAA's job offer. In particular, he mentioned no longer having "to do after hours duty" or "to fly after hours." The FAA job also enabled him to have all Fridays, Saturdays, Sundays and

holidays off. To some extent, Angle's former job with Corporate Eagle had interfered with his ability to visit his daughter. In his capacity as director of operations, he was forced to cancel weekend visitation with his daughter "a couple times" due to work conflicts. On other occasions, he was required to expend his vacation leave to avoid having to work on Saturdays so he could travel to Ohio for visitation. It is neither unreasonable nor an abuse of discretion to conclude that the elimination of these impediments to visitation inured to the benefit of Angle's daughter.

{¶ 41} Finally, we note the absence of any evidence that the financial needs of Angle's daughter will go unmet as a result of his reduced salary. As set forth above, the record reflects that Angle's salary with the FAA is $70,711 per year. In addition, Angle's new wife earns more than $51,000 per pear, resulting in a combined gross income exceeding $121,000. For her part, Aldo's base salary as a Honda employee is approximately $49,000. She and her new husband had a combined gross income of more than $102,000 in 2008. These figures lend further support to the objective reasonableness of Angle's decision to switch jobs. As we have explained, "[r]easonableness is measured by examining the effect of the parent's decision on the interests of the child." *Holt*, supra. In light of these substantial incomes, Angle's employment with the FAA is unlikely to have a materially adverse effect on his daughter's well being.

{¶ 42} Based on the reasoning set forth above, we overrule Aldo's assignment of error and affirm the judgment of the Clark County Common Pleas Court, Domestic Relations Division.

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DONOVAN, P.J., and FAIN, J., concur.

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