

[Cite as *State v. Fernback*, 2002-Ohio-439.]

STATE OF OHIO)
)
MAHONING COUNTY) SS: SEVENTH DISTRICT

ANNETTE M. FERNBACK)
)
 PLAINTIFF-APPELLEE)
)
VS.)
)
MARTIN J. FERNBACK)
)
 DEFENDANT-APPELLANT)

CASE NO. 00-C.A.-276

O P I N I O N
 AND
JOURNAL ENTRY

CHARACTER OF PROCEEDINGS:

Appellee's Application for
Reconsideration
Case No. 99 DR 652

JUDGMENT:

Application Denied

APPEARANCES:

For Plaintiff-Appellee:

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For Defendant-Appellant:

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JUDGES:

Hon. Cheryl L. Waite
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: January 31, 2002

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PER CURIAM.

{¶1} This matter comes before us on a timely request for reconsideration filed by Appellee. Appellant has filed a response in opposition. Appellee asks that we reconsider our decision made on the Appellant's first and third assignments of error.

{¶2} On the first assignment of error we reversed the order of child support and remanded such issue to the trial court with instructions to either follow the worksheet calculation, or properly deviate from it by finding that the worksheet amount is unjust or inappropriate, and stating the findings of fact supporting a deviation after consideration of the relevant factors found in R.C. 3113.215(B)(3) and (B)(6)(b). Appellee asserts that the court considered the statutory factors and found that the father would be obligor/parent for guideline child support calculation purposes and that a deviation in his child support calculation was not warranted. (December 1, 2000 Order, 19, 20). On page 19 of the entry the trial court expressed, "...that it would not be in the best interests of the minor children to deviate from the child support worksheet." Yet, the trial court did not order the wife to pay any support, even though the worksheet calculation indicated her support responsibility to be \$475.12 annually. The order actually entered was a deviation from the calculation on the worksheet,

even though the court clearly stated in its entry that it would not be in the best interests of the minor children to deviate from the child support worksheet. It may very well be that the trial court did not intend to deviate from the worksheet calculation *as to the father* (emphasis added), but that was not clearly expressed or qualified in the judgment entry when it made the above statement. The remand was entered to allow the trial court to clarify its intent to either follow the worksheet or properly deviate from it.

{¶3} The test generally applied when determining whether an appellate decision should be reconsidered is, "whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for the court's consideration that was either not considered at all or was not fully considered by the court when it should have been." *State v. Wong* (1994), 97 Ohio App.3d 244, 246. See also, *State v. Dattilo* (March 28, 2000), Mahoning App. No. 95-C.A.-3, unreported, 1. It is clear that such an application is not to be granted where a party merely disagrees with the court's conclusions and logic. *Dattilo, supra*.

{¶4} As regards the request for reconsideration of the remand order on the issue of spousal support under the third assignment of error, we find that the application fails to demonstrate an obvious error in this Court's decision or raise

an issue that was not fully considered. This Court's reasoning is clearly expressed in the opinion as to the trial court's omission of an adequate analysis justifying the spousal support that it ordered. Absent such analysis this Court could not properly review the fairness of the award.

{¶5} For all the above stated reasons the Application for Reconsideration is denied.

Vukovich, P.J., concurs.

Waite, J., concurs.

DeGenaro, J., concurs.