

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

BOBBI JO PAHLS,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-01-005
- vs -	:	<u>OPINION</u>
	:	12/30/2009
ANTHONY T. PAHLS,	:	
Defendant-Appellant.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR07-12-1516

Gena R. Larison, 120 North Second Street, P.O. Box 741, Hamilton, Ohio 45012, for plaintiff-appellee

Clayton G. Napier, 29 North "D" Street, Hamilton, Ohio 45013, for defendant-appellant

Susan C. Lipnickey, 14 West Park Place, Suite D, Oxford, Ohio 45056, guardian ad litem

RINGLAND, J.

{¶1} Defendant-appellant, Anthony T. Pahls, appeals the decision of the Butler County Court of Common Pleas, Domestic Relations Division, regarding child support and dependent tax exemptions. We reverse the trial court's decision.

{¶2} The pertinent facts as they relate to this appeal are as follows: Anthony and plaintiff-appellee, Bobbi Jo Pahls, were married on March 2, 1991. Two children were born

from this union: J.P. on September 8, 1991 and C.P. on June 2, 1995. On December 14, 2007, Bobbi Jo filed for divorce.

{¶3} The trial court named Anthony legal custodian and residential parent for both children, and designated Bobbi Jo the nonresidential parent.¹ Bobbi Jo received parenting time on alternating weekends and one evening a week for three hours. During summer vacation, the trial court ordered both parties to alternate physical care of the children on a weekly basis. Other holiday parenting time was allocated pursuant to the court's standard schedule. In his brief, appellant describes the parties' custody arrangement as a "ten month two month split."²

{¶4} The trial court complied with the requirements of R.C. 3119.01 et seq., and completed a child support worksheet in which it found mother to be the child support obligor in the amount of \$317.05 per month, including the CSEA processing fee. However, in its October 15, 2005 decision on divorce, the trial court stated:

{¶5} "This order is not in the best interest of the children as Mrs. Pahls has just obtained a job at \$7.00 an hour. Mr. Pahls claims a loss of earnings due to no longer running his own business. He is now an employee, earning \$500.00 per week. Child support is set at 0 (zero) per month due to the low earnings of Mrs. Pahls and the equal split of time between the parents in the summer."

{¶6} In addition, the trial court ordered each party to claim a child as a tax exemption. After J.P. could no longer be claimed, the parties would alternate yearly claiming C.P. as an exemption. Anthony filed a timely appeal from the trial court's December 23,

1. Anthony, with Bobbi Jo's acquiescence, was named residential parent for school purposes in order to allow the children to remain in the Ross School District.

2. Bobbi Jo failed to file an appellate brief in this case. Pursuant to App.R. 18(C), this court may accept appellant's statement of facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action.

2008 divorce decree, raising two assignments of error.

{¶7} Assignment of Error No. 1:

{¶8} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN REFUSING TO MAKE AN AWARD OF CHILD SUPPORT."

{¶9} In his first assignment of error, Anthony argues the trial court erred in ordering a deviation from Bobbi Jo's child support obligation from \$317.05 per month to zero. We agree.

{¶10} "The trial court possesses considerable discretion in child support matters." *Murray v. Murray* (1999), 128 Ohio App.3d 662, 666. "The decision of the trial court will be reversed only if it is the product of an abuse of discretion." *Id.*, citing *Pauly v. Pauly* (1997), 80 Ohio St.3d 386, 390. An abuse of discretion is more than an error of law; it implies the trial court acted is unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶11} "The terms of R.C. [3119.01-3119.024] are mandatory in nature and must be followed literally and technically in all material respects." *Marker v. Grimm* (1992), 65 Ohio St.3d 139, at paragraph 2 of the syllabus (requiring strict compliance with R.C. 3113.215, the former analogous child support provision). In addition, not only is the amount of support due pursuant to the basic child support schedule and applicable worksheet presumed to be the correct amount; but it also "must be ordered" absent a finding the amount is not in the child's best interest. *DePalmo v. DePalmo*, 78 Ohio St.3d 535 at 538-39, 1997-Ohio-184; R.C. 3119.22.

{¶12} The factors and criteria the trial court may consider in ordering a deviation pursuant to R.C. 3119.22 are enumerated in R.C. 3119.23. If the trial court orders a deviation, it must journalize the amount of support calculated under the guidelines, determine the amount "would be unjust or inappropriate and would not be in the best interest of the

child," and set forth findings of fact to support its decision. R.C. 3119.22. See, also, *Marker* at paragraph 3 of the syllabus.

{¶13} However, as noted above, the trial court must comply with *all* child support statutes, including R.C. 3119.06, which requires trial courts to issue a minimum support order of \$50. "R.C. 3119.06 mandates a minimum child-support award of \$50 per month and permits a court to order less or nothing at all *only* upon proof of the of the nonresidential parent's 'medically verified or documented physical or mental disability or institutionalization in a facility for persons with a mental illness or any other circumstances considered appropriate by the court.'" (Emphasis added.) *Moore v. Moore*, 166 Ohio App.3d 429, 2006-Ohio-1431, ¶17.

{¶14} Anthony contends the trial court erred in ordering a deviation, especially in light of the fact that he is the children's residential parent for approximately ten months out of the year. He further argues that Bobbi Jo is employed and is receiving \$400 per month in spousal support in addition to earning approximately \$770 as a cashier. Anthony contends the trial court abused its discretion in deviating from Bobbi Jo's child support obligation because child support is mandatory; and the factors cited by the court in ordering the deviation do not exist in the statutory framework. Lastly, Anthony suggests the trial court violated the requirements of R.C. 3119.06, in deviating below the statutory minimum.

{¶15} The trial court's decision in ordering a downward deviation to zero of Bobbi Jo's statutory child support obligation was unreasonable. Although the trial court stated the deviation was in the children's best interest, we find the circumstances in this case do not warrant such a substantial deviation. In addition, the trial court did not cite sufficient findings of fact in support of its decision. The record reveals that even though Bobbi Jo will have the children 50 percent of the time during the summer months, and has parenting time on alternate weekends and one evening a week, Anthony is primarily responsible for the

children during the remainder of the year. Moreover, the court cited income disparity as one reason for the deviation, however based on Anthony's spousal support obligations, which reduces his income to \$1,600 per month, and Bobbi's Jo's income, which is \$1,240 with support and earnings, the "disparity" is really only \$360 per month. We also observe that Bobbi Jo testified she was residing with her father, and was not paying any rent. See R.C. 3119.23(H).

{¶16} Most significant however, is the trial court's abuse of discretion in failing to award the statutory minimum support award. See R.C. 3119.06. There was nothing in the record to show Bobbi Jo was suffering from a disability, nor was there any evidence of institutionalization or other appropriate circumstances, which would justify ordering support below the statutory minimum. See *Moore* at ¶17.

{¶17} Therefore, we sustain Anthony's assignment of error and remand this matter to the trial court to reassess Bobbi Jo's child support obligation.

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN SPLITTING THE TAX DEDUCTION FOR THE CHILDREN WHERE APPELLEE NON[]CUSTODIAL PARENT PAYS NO SUPPORT."

{¶20} In his second assignment of error, Anthony maintains the trial court erred in allowing Bobbi Jo to claim a child for income tax purposes when she is the noncustodial parent. We agree.

{¶21} In general, we review a trial court's decision allocating tax exemptions for dependents under an abuse of discretion standard. See *Eickelberger v. Eickelberger* (1994), 93 Ohio App.3d 221, 225-26, citing *Hughes v. Hughes* (1988), 35 Ohio St.3d 165.³ However,

3. We are aware that the facts in *Eickelberger* are somewhat similar to this case. However, it is distinguishable in that the parties *agreed*, pursuant to a shared parenting plan, to each claim one child as a dependant as a tax

this discretion is both guided and limited by the statutory requirements of R.C. 3119.82.

{¶22} The Internal Revenue Code creates a presumption in favor of the custodial parent in the allocation of the federal income tax dependency exemption. *Gregory v. Kottman-Gregory*, Madison App. Nos. CA2004-11-039, CA2004-11-041, 2005-Ohio-6558, ¶35, citing *Singer v. Dickerson* (1992), 63 Ohio St.3d 408, 411. See, also, Section 152(e), Title 26, U.S.Code. However, the trial court may award the tax exemption to the noncustodial parent if (1) the custodial parent executes a written declaration surrendering of the exemption to the noncustodial parent; or (2) the trial court determines to award the noncustodial parent the tax exemption because it would "produce a net tax savings for the parents, thereby furthering the best interest of the child." *Gregory* at ¶35, quoting *Singer* at 411, 415. "Such savings would occur through allocation to the noncustodial parent only if the noncustodial parent's taxable income falls into a higher tax bracket than the tax bracket of the custodial parent." *Singer* at 415-16, citing *Bobo v. Jewell* (1988), 38 Ohio St.3d 330, 333.

{¶23} In order to determine whether awarding the tax exemption to the noncustodial parent will result in a net tax savings, "the trial court must review all of the relevant factors, including 'the parents' gross incomes, the exemptions and deductions to which the parents are otherwise entitled, and the relevant federal, state, and local income tax rates.'" *Gregory* at ¶36, quoting *Singer* at paragraph three of the syllabus. See, also, R.C. 3119.82.⁴ If the tax exemption is awarded to the noncustodial parent, "the record must show that the best

exemption. *Id.* at 223, 225-26. We are not aware of any such agreement between the parties in the instant case.

4. R.C. 3119.82 states in pertinent part, "Whenever a court issues * * * a court child support order, it shall designate which parent may claim the children * * * as dependents for federal income tax purposes * * * the court * * * may permit the parent who is not the residential parent and legal custodian to claim the children as dependents for federal income tax purposes *only if the court determines that this furthers the best interest of the children* and * * * shall consider * * * *any net tax savings, the relative financial circumstances and needs of the parents and children, the amount of time the children spend with each parent, the eligibility of either or both parents for the federal earned income tax credit or other state or federal tax credit, and any other relevant factor concerning the best interest of the children.* (Emphasis added.)

interest of the child has been furthered." *Gregory* at ¶36, citing *Corple v. Corple* (1997), 123 Ohio App.3d 31, 34.

{¶24} A careful review of the record does not indicate the trial court satisfied the requirements of *Singer*, or R.C. 3119.82, in awarding Bobbi Jo, the noncustodial parent, a dependent child tax exemption. In ordering the dependency exemption, the trial court failed to identify a net tax savings, or that the children's best interests were furthered in granting the exemption to Bobbi Jo. Furthermore, we cannot determine from the record what factors, if any, the trial court relied on in determining Bobbi Jo should claim a dependent tax exemption.

{¶25} Based on the foregoing, we hold the trial court abused its discretion in granting Bobbi Jo a dependency exemption, and sustain Anthony's second assignment of error. We reverse and remand this matter to the trial court in order to comply with the requirements of R.C. 3119.82 and *Singer*, and determine whether such an award furthers the best interest of the children.

{¶26} Judgment reversed and remanded for further proceedings.

BRESSLER, P.J., and YOUNG, J., concur.

[Cite as *Pahls v. Pahls*, 2009-Ohio-6923.]