

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

PATRICIA ANN STEVENS,	:	
Plaintiff-Appellant,	:	CASE NOS. CA2009-02-028
	:	CA2009-06-073
- vs -	:	<u>OPINION</u>
	:	3/22/2010
TODD AUSTIN STEVENS,	:	
Defendant-Appellee.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 06DR30317

Robert W. Cettel, The Drees Center, Suite 210, 7265 Kenwood Road, Cincinnati, Ohio 45236, for plaintiff-appellant

Todd Austin Stevens, 4568 Fringe Tree Green, Mason, Ohio 45040, defendant-appellee, pro se

HENDRICKSON, J.

{¶1} This case is a consolidated appeal in which plaintiff-appellant, Patricia Ann Stevens nka Patricia Ann Arico, challenges two decisions of the Warren County Court of Common Pleas, Domestic Relations Division, regarding child support obligations following her divorce from defendant-appellee, Todd Austin Stevens.¹ For the reasons

1. Todd has failed to file a brief in this case. Therefore, pursuant to App.R. 18(C), this court may accept Patricia's statement of facts and issues as correct and reverse the judgment if her brief reasonably supports such action. *State v. Campbell*, Butler App. No. CA2007-12-313, 2008-Ohio-5542, fn. 1.

outlined below, we affirm the decisions of the domestic relations court.

{¶12} This case has a long and complicated procedural history and, therefore, this court will confine itself to the basic facts relevant to this appeal. The parties were married on January 27, 1996. The marriage produced two children: Nicholas, born July 15, 1996, and Jonathan, born May 8, 1999.

{¶13} On June 30, 2006, Patricia filed a complaint for divorce. The trial court entered a final decree of divorce on October 15, 2007, which was subsequently amended on November 6, 2007. Pursuant to the amended decree, Patricia was awarded spousal support in the amount of \$575 per month plus a two percent processing fee. The spousal support was to terminate after 26 months, or upon Patricia's death or remarriage. Patricia was also designated residential parent and legal custodian of the children, with Todd receiving parenting time several days each week. The parenting schedule allowed Todd to have the children "approximately 43 [percent] of the time."

{¶14} For child support calculation purposes, Patricia's annual income as a dental hygienist was established at \$57,200 and Todd's annual income as an engineer was established at \$90,720. The court calculated child support pursuant to the basic worksheet, under which Todd was required to pay \$1,233.52 in monthly support. The court determined that given Todd's extended parenting time, the parties' incomes, and the standard of living of the children during the marriage, the calculated amount of support was "unjust and inappropriate and not in the best interests of the children." The court deviated from the worksheet calculation, and ordered Todd to pay monthly child support in the amount of \$500 plus a two percent processing fee.

{¶15} The court prepared an additional worksheet reflecting the amount of child

support owed by Todd upon the termination of spousal support. Although the worksheet indicated a monthly support obligation of \$1,342.91, the court also found that a deviation was necessary based upon Todd's extended parting time, the income of the parties, and the children's standard of living. Accordingly, Todd was ordered to pay child support in the amount of \$700 per month plus fees upon the termination of his spousal support obligation.

{¶16} The parties did not appeal the amended decree.

First Appeal

{¶17} Patricia's first appeal to this court is predicated on motions she filed on October 5, 2007, and on February 12 and April 11, 2008, requesting the court to modify Todd's child and spousal support obligations because she had been laid off from her employment.

{¶18} The trial court magistrate held hearings on Patricia's motions in March, April and June 2008, and issued a decision on October 7, 2008. The magistrate found that the parties had stipulated that spousal support would terminate on June 16, 2008 as a result of Patricia's remarriage. For purposes of child support recalculation, the magistrate determined that although Patricia had been unemployed for approximately seven weeks, she had once again secured employment as a dental hygienist. Patricia's 2007 tax return indicated that she had earned \$45,456 in wages and \$1,415 in unemployment compensation. The magistrate established Todd's 2007 income at \$93,078.

{¶19} After recalculating child support pursuant to the basic worksheet, the magistrate denied Patricia's request to modify child support. Although the magistrate did not specifically state that it had deviated from the basic worksheet calculation, the

magistrate found that the recalculated amounts were not ten percent more than the current obligations and, therefore, did not constitute a change of circumstances warranting a support modification. Patricia filed objections to the magistrate's decision, arguing that it was error for the magistrate to include her 2007 unemployment compensation in the child support calculation effective June 16, 2008. She also argued that the magistrate failed to set forth findings of fact with regard to the support deviations, and that the deviation amounts were unjust, unreasonable, and not in the best interests of the children.

{¶10} In its December 1, 2008 decision, the trial court overruled Patricia's objection regarding the magistrate's use of her 2007 unemployment income in the June 2008 child support calculation, finding that Patricia had failed to file a transcript of the proceedings in support of her objection. The court sustained her objection regarding the child support worksheet deviations, concluding that the magistrate had failed to adequately support the deviations with findings of fact. The court remanded the matter to the magistrate.

{¶11} In its December 17, 2008 decision on remand, the magistrate found that the parties' incomes and Todd's extended parenting time had remained unchanged from the date of the parties' divorce decree. Although the recalculated worksheets indicated monthly support obligations of \$1,300.41 for the period of October 5, 2007 through June 16, 2008, and \$1,412.55 for the period "effective June 16, 2008," the magistrate stated that it had granted respective monthly deviations of \$744.91 and \$544.85. The magistrate further stated that the deviation amounts should have been entered on the worksheets.

{¶12} Patricia filed objections to the magistrate's decision, advancing nearly

identical arguments to those raised in her initial objections. Patricia's objections were overruled by the trial court in its February 6, 2009 decision.

Second Appeal

{¶13} The foundation for Patricia's second appeal stems from motions filed by the parties in November 2008 and January 2009 regarding additional requests to modify child support. The requests were precipitated by Todd's termination from his employment and a reduction in Patricia's income as a result of her reduced work hours. The record indicates that at the time the motions were filed, Todd's monthly child support obligation was \$700 plus fees.

{¶14} After a hearing on the matter on February 24, 2009, the magistrate issued a decision on March 27, 2009. The magistrate found that Patricia's income had been reduced, and for child support recalculation purposes established her income at \$29,640 per year. The magistrate also determined that Todd was unemployed but had received a severance package from his employer in the amount of his annual salary. His income was established at \$93,078 per year. The magistrate prepared basic child support worksheets, and increased Todd's monthly child support obligation to \$759.95 effective January 29, 2009.

{¶15} Patricia filed objections to the magistrate's decision, arguing that the magistrate erred in failing to set forth the specific facts and monetary value of the deviations in each worksheet. Patricia also argued that the final child support figure was unjust, unreasonable, and not in the best interests of the children.

{¶16} In its May 26, 2009 decision, the court overruled Patricia's objection with regard to the final support figure, but sustained her objection concerning the magistrate's failure to set forth specific facts to support the downward deviation. The

trial court modified the magistrate's decision as follows:

{¶17} "There is a deviation of standard child support. Given Todd's extended parenting time, the incomes of the parties, and the standard of living of the children during the marriage, the court determined that the calculated amount of child support is unjust and inappropriate and not in the best interest of the children."

{¶18} Patricia appealed the February 6 and May 26, 2009 decisions of the trial court, raising four assignments of error for our review. Patricia's second, third and fourth assignments of error involve similar issues and will be addressed together.

{¶19} Assignment of Error No. 1:

{¶20} "THE TRIAL COURT ERRED TO THE PREJUDICE OF [PATRICIA] BY ADDING \$1,415 IN NONRECURRING, U[N]SUSTAINABLE UNEMPLOYMENT COMPENSATION INCOME WITHOUT EXPLANATION."

{¶21} In her first assignment of error, Patricia contends that the trial court erred in adopting the magistrate's determination to include \$1,415 in unemployment compensation she received in 2007 to her income calculation for 2008.

{¶22} In its February 6, 2009 decision, the trial court adopted the magistrate's factual finding with regard to Patricia's income computation for 2008 after noting that she failed to file transcripts of the March 10, April 18, and June 24, 2008 hearings in support of her objection. Civ.R. 53(D)(3)(b)(iii) provides that an objection to a factual finding, whether or not specifically designated as a finding of fact, must be supported by a transcript or affidavit of the evidence submitted to the magistrate. The objecting party is required to file the transcript or affidavit with the court within 30 days after filing objections unless the time for preparing the transcript is extended by the court. See Civ.R. 53(D)(3)(b)(iii).

{¶23} It is well-established that when an objecting party fails to file a transcript with the objections, the court is "free to adopt the magistrate's findings without further consideration of the objections." *Shimman v. Germano*, Lucas App. No. L-06-1358, 2008-Ohio-717, ¶14. In such a circumstance, the trial court has the discretion to adopt the factual findings of the magistrate, and is limited to examining only the magistrate's conclusions of law and recommendations. *Id.*; *Bartlett v. Sobetsky*, Clermont App. No. CA2007-07-085, 2008-Ohio-4432, ¶9. As the trial court indicated, it was incapable of conducting an independent review of the magistrate's decision and was permitted to accept the magistrate's factual finding to include Patricia's 2007 unemployment compensation in her 2008 income calculation.

{¶24} In addition, although transcripts of the proceedings are included in the record on appeal, as an appellate court, we are precluded from considering evidence not before the trial court when reviewing a magistrate's decision adopted by the court. *Finkelman v. Davis*, Butler App. No. CA2003-07-173, 2004-Ohio-3909, ¶6. "[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." *Helmke v. Helmke*, Ottawa App. No. OT-04-029, 2005-Ohio-1388, ¶16, quoting *State v. Ishmail* (1978), 54 Ohio St.2d 402, paragraph one of the syllabus. Consequently, because she failed to file transcripts of the proceedings below, Patricia is precluded from challenging on appeal the trial court's adoption of the magistrate's factual finding regarding this issue.

{¶25} Patricia's first assignment of error is therefore overruled.

{¶26} Assignment of Error No. 2:

{¶27} "THE COURT ERRED TO THE PREJUDICE OF [PATRICIA] BY FAILING

TO SET FORTH SPECIFIC FINDINGS OF FACT TO SUPPORT CHILD SUPPORT DETERMINATIONS."

{¶28} Assignment of Error No. 3:

{¶29} "THE COURT ERRED TO THE PREJUDICE OF [PATRICIA] BY FAILING TO ATTACH A COMPLETE AND ACCURATE CHILD SUPPORT WORKSHEET IN CONFORMANCE WITH R.C[.] [3119.023]."

{¶30} Assignment of Error No. 4:

{¶31} "THE COURT ERRED TO THE PREJUDICE [OF PATRICIA] BY MAKING AN ORDER THAT WAS UNJUST, UNREASONABLE[,] AND NOT IN THE BEST INTERESTS OF THE CHILDREN[.] THE DEVIATION WAS AN ABUSE OF DISCRETION."

{¶32} In her remaining assignments of error, Patricia challenges the trial court's adoption of the magistrate's findings regarding Todd's child support obligations.

{¶33} "The purpose of the child support system is to protect the child and his best interest." *Kauza v. Kauza*, Clermont App. No. CA2008-02-014, 2008-Ohio-5668, ¶10, quoting *Richardson v. Ballard* (1996), 113 Ohio App.3d 552, 555. A trial court's determinations with regard to child support obligations will not be reversed on appeal absent a showing of an abuse of discretion. *Van Osdell v. Van Osdell*, Warren App. No. CA2007-10-123, 2008-Ohio-5843, ¶20. An abuse of discretion is more than error of law or judgment; it requires a finding that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶34} R.C. 3119.022 provides a worksheet to be completed by a trial court in calculating child support obligations in a proceeding in which one parent is designated as residential parent and legal custodian of the children subject to the support order.

The completion of a worksheet identical in content and form to that set forth in R.C. 3119.022 is mandatory. *Rotte v. Rotte*, Butler App. No. CA2004-10-249, 2005-Ohio-6269, ¶21. Upon completion, the worksheet calculations are "rebuttably presumed" to be the correct amount of child support owed by the obligor. *Id.*, citing *Marker v. Grimm* (1992), 65 Ohio St.3d 139.

{¶35} However, the overriding concern in the calculation of child support is the best interests of the child. *Id.* at ¶22. R.C. 3119.22 provides that "[t]he court may order an amount of child support that deviates from the amount of child support that would otherwise result from the use of the basic child support schedule and the applicable worksheet * * * if, after considering the factors and criteria set forth in section 3119.23 of the Revised Code, the court determines that the amount calculated pursuant to the basic child support schedule and the applicable worksheet, * * * would be unjust or inappropriate and would not be in the best interest of the child." R.C. 3119.23 sets forth several factors the court may consider in determining whether to grant a deviation. These include the following: "(D) Extended parenting time or extraordinary costs associated with parenting time; * * * (G) Disparity in income between parties or households; (K) The relative financial resources, other assets and resources, and needs of each parent; (L) The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued or had the parents been married; * * * (P) Any other relevant factor." See R.C. 3119.23.

{¶36} In her third assignment of error, Patricia contends that the court erred in failing to attach "fully completed and accurate" child support worksheets to its February 6 and May 26, 2009 decisions.

{¶37} At the outset, we observe that the trial court did not attach child support

worksheets to its final entries. Patricia correctly notes that R.C. 3119.01 et seq., requires the completion of a child support worksheet before a child support order or modification of a child support order is entered. *Brown v. Brown*, Madison App. No. CA2008-08-021, 2009-Ohio-2204, ¶87, citing *Marker*, 65 Ohio St.3d at 142. The trial court must include this document in the record. *Id.* However, this court has determined that child support worksheets prepared by a magistrate and adopted by the trial court are deemed to have been completed by the trial court. See *Fallang v. Fallang* (1996), 109 Ohio App.3d 543, 546; *In re Krechting* (1996), 108 Ohio App.3d 435, fn. 3. Accordingly, a trial court can rely on a magistrate's filed worksheet if the court's figures reflect those calculated by the magistrate. *Grenga v. Bonacci*, Mahoning App. No. 08 MA 59, 2008-Ohio-6369, ¶11-12. See, also, *Kouchecki v. Kouchecki* (July 6, 2000), Cuyahoga App. No. 76537, 2000 WL 897198 at *1 (a trial court need not complete another worksheet or attach a worksheet to its judgment entry if it relies upon one filed by the magistrate.) In this case, because the trial court's entries adopted the magistrate's worksheet calculations, the court was not required to complete additional child support worksheets or attach them to its February and May 2009 entries.

{¶38} Furthermore, although Patricia argues that the worksheets failed to conform to the requirements of R.C. 3119.023, we note that the form provided in that section is for use in proceedings in which parents have split parental rights and responsibilities. As previously discussed, because Patricia was designated as residential parent and legal custodian of the children, the court was required to use the worksheet provided in R.C. 3119.022.²

2. The child support computation worksheet in R.C. 3119.022 was amended by 2007 H 119, effective June 30, 2007. The amendment redesignated lines 24 through 26 of the worksheet as new lines 27 through 29. Patricia argues that the court's February 6, 2009 decision should be reversed because the 2007 worksheet was not used in calculating Todd's support obligation. Upon review, we find any claim of error

{¶39} In her second and fourth assignments of error, Patricia argues that the court abused its discretion in failing to set forth both the deviation amounts and specific findings of fact regarding the deviations in each worksheet prepared. She also contends that the deviations were unjust, unreasonable, and not in the best interests of the children.

{¶40} In its December 17, 2008 decision on remand, the magistrate determined that the parties' incomes and Todd's extended parenting time had remained unchanged from the date of the parties divorce decree. As a result, the magistrate determined that the worksheet calculations would be "unjust or inappropriate and would not be in the best interests of the children," and established downward deviations. The deviations were not more than ten percent of Todd's current obligations of \$700 and \$500 per month and therefore, did not constitute a change of circumstances warranting a support modification. The magistrate also stated that its decision was made considering R.C. 3119.22 and factors (D) and (G) of R.C. 3119.23. Although included in the magistrate's decision, the deviation amounts were not entered on lines 24a of the worksheets.

{¶41} In its February 6, 2009 decision overruling Patricia's objection that the magistrate "improperly deviated from the basic child support obligation without explanation," the trial court determined that it was "clear" that the magistrate intended to state that the deviations were due to the differences in income between the parties, as well as Todd's extended parenting time. In light of those considerations, the court found that deviations were appropriate and adopted the magistrate's findings.

{¶42} Although the deviation amounts and factual findings were not stated in the worksheets, this court has determined that a failure to include a deviation calculation in

to be harmless, as there was no meaningful difference between the former and amended versions of the

a child support worksheet does not, standing alone, constitute an abuse of a court's discretion. See *Rotte*, 2005-Ohio-6269 at ¶26. A trial court will satisfy its statutory obligations when it includes "in the journal,' the amount of child support calculated according to the worksheet through the line establishing the actual annual obligation * * *, a determination that the amount would be unjust and not in the best interest of the child, and findings of fact in support of that determination." *Id.*, quoting R.C. 3119.22.

{¶43} Upon review, we find that the magistrate properly calculated child support according to the worksheets through the lines establishing the actual annual obligations.

In its February 6 decision adopting the magistrate's support calculations, the trial court determined that the standard calculations would not be appropriate or in the best interests of the children, and identified multiple factors in R.C. 3119.23 which would justify downward deviations in the amount of support awarded. These included differences in the parties' incomes and Todd's extended parenting time with the children.

Having met the requirements of R.C. 3119.22, we find that the court's failure to include specific deviation findings on the worksheets did not constitute an abuse of its discretion. We further find no error in the court's decision to deviate from the worksheet calculations.

{¶44} Turning our attention to the court's May 26, 2009 decision, we likewise find no abuse of discretion in the trial court's adoption of the magistrate's child support order.

First, contrary to Patricia's argument, the worksheet attached to the magistrate's decision sets forth the deviation amount on line 27a, and included a finding that the deviation was "[d]ue to extended parenting time [Todd] has with the children." In its decision, the trial court also noted that given Todd's extended parenting time, the

worksheet which would have affected the child support calculation in this case.

income of the parties, and the standard of living of the children during the marriage, the calculated amount of support pursuant to the basic worksheet was "unjust and inappropriate and not in the best interest of the children." The court also stated that it had reviewed the evidence submitted and the factors set forth in R.C. 3119.23 and found that the deviation in the amount of \$759.95 per month was both "appropriate and warranted." In light of these findings, it cannot be said that the court's decision to deviate from the guideline calculation, or the amount of the deviation, was arbitrary, unreasonable or unconscionable.

{¶45} Based on the foregoing, Patricia's second, third, and fourth assignments of error are overruled.

{¶46} Judgment affirmed.

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