

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

SHANNON SHONEBARGER,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-04-032
- vs -	:	<u>OPINION</u>
	:	1/30/2012
JENIFER NELSON,	:	
Defendant-Appellant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 09-P01212

Batsche and Batsche Law Firm, D. Andrew Batsche, 300 West Main Street, P.O. Box 75, Mason, Ohio 45040, for plaintiff-appellee

The Law Office of Marlene Guth Gressly, Marlene Guth Gressly, 12 East Warren Street, Lebanon, Ohio 45036, for defendant-appellant

POWELL, P.J.

{¶ 1} Defendant-appellant, Jenifer Nelson, appeals from a decision of the Warren County Common Pleas Court, Juvenile Division, denying her request that plaintiff-appellee, Shannon Shonebarger, be ordered to pay child support for the parties' two minor children retroactive to the date of the children's birth. We affirm.

{¶ 2} Nelson ("Mother") has been married to Chuck Nelson ("Mother's husband")

since 1999. During this time, Mother had an intermittent, extramarital affair with Shannon Shonebarger ("Father"), which resulted in Mother becoming pregnant twice and having two children: R.K.N.-S., born in 2004, and C.S.N.-S., born in 2007. Shortly before C.S.N.-S.'s birth, the parties rented a house in North Carolina to live together, but Mother eventually chose to reunite with her husband, instead. As a result, she and R.K.N.-S. returned to Mason, Ohio.

{¶ 3} In 2009, Father filed a complaint in the Warren County Juvenile Court to determine parentage of the parties' two children. Mother filed a counterclaim requesting that Father be ordered to pay child support retroactive to the date of the children's birth. The magistrate issued a decision finding that Father was the biological father of the parties' two children, but denying Mother's request to order Father to pay child support retroactive to the date of the children's birth.

{¶ 4} In response to one of Mother's objections to the magistrate's decision, the trial court remanded the matter with instructions for the magistrate to determine if Father would be materially prejudiced by an order requiring him to pay retroactive child support, which would entitle him to raise a laches defense to Mother's claim for such support. On remand, however, it was discovered that Father never filed a timely reply to Mother's counterclaim for retroactive support. Consequently, Father filed a reply out of time to Mother's counterclaim, but the magistrate struck the untimely reply at Mother's request.

{¶ 5} In 2011, the trial court overruled Father's objection to the magistrate's decision to strike his late reply to Mother's counterclaim, finding that Father had failed to show that his untimely filing was the result of excusable neglect. However, the trial court also overruled Mother's objection to the magistrate's decision denying her request for retroactive child support, finding that the General Assembly could have mandated an award of retroactive child support in all cases other than those in which such an award would be prohibited by

R.C. 3111.13(F)(3), but did not, and that "[u]nder the distinctive circumstances of this case * *
* Father should be responsible for child support retroactive to February 26, 2009, the date
Father filed this parentage action."

{¶ 6} Mother now appeals, assigning the following as error:

{¶ 7} THE DECISION OF THE MAGISTRATE NOT TO AWARD CHILD SUPPORT
RETROACTIVE TO THE DATE OF THE PARTIES' CHILDREN'S BIRTH, AND THE
DECISION OF THE TRIAL COURT TO OVERRULE MOTHER'S OBJECTIONS THERETO,
ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.

{¶ 8} Mother argues the trial court erred in denying her request that Father be
ordered to pay child support retroactive to the date of the children's birth, because the
decision is against the manifest weight of the evidence and contrary to law. We disagree.

{¶ 9} Trial courts enjoy considerable discretion on child support issues, *Rainey v.*
Rainey, 12 Dist. No. CA2010-10-083, 2011-Ohio-4343, ¶ 30, and their decisions on such
matters will not be reversed absent an abuse of discretion, i.e., the decision is arbitrary,
unconscionable, or unreasonable. *York v. York*, 12th Dist. No. CA2011-03-016, 2011-Ohio-
5872, ¶ 8. A trial court's judgment is unreasonable when it lacks a rational basis, or there is
no sound reasoning process to support it. *Id.*

{¶ 10} R.C. 3111.13(F) states in relevant part:

(2) When a court determines whether to require a parent
to pay an amount for that parent's failure to support a child prior
to the date the court issues an order requiring that parent to pay
an amount for the current support of that child, it shall consider
all relevant factors, including, but not limited to, any monetary
contribution either parent of the child made to the support of the
child prior to the court issuing the order requiring the parent to
pay an amount for the current support of the child.

(3)(a) A court shall not require a parent to pay an amount
for that parent's failure to support a child prior to the date the
court issues an order requiring that parent to pay an amount for
the current support of that child or to pay all or any part of the
reasonable expenses of the mother's pregnancy and

confinement, if both of the following apply:

(i) At the time of the initial filing of an action to determine the existence of the parent and child relationship with respect to that parent, the child was over three years of age.

(ii) Prior to the initial filing of an action to determine the existence of the parent and child relationship with respect to that parent, the alleged father had no knowledge and had no reason to have knowledge of his alleged paternity of the child.

{¶ 11} In this case, the evidence shows that at the time Father filed his parentage action, C.S.N.-S. was under the age of three. Moreover, while R.K.N.-S. was over the age of three at this time, Father knew, by virtue of a paternity test, that R.K.N.-S. was his son by August 2004. Thus, R.C. 3111.13(F)(3)(a) would not have prohibited the trial court from ordering Father to pay child support for the parties' children retroactive to the date of the children's birth. Nonetheless, the question remains as to whether the trial court abused its discretion by not ordering Father to pay retroactive child support under the circumstances of this case.

{¶ 12} A father has a duty to support his marital and nonmarital children, alike. R.C. 3103.031; *Johnson v. Norman*, 66 Ohio St.2d 186, 188-189 (1981). A father may be ordered to pay child support from the date of the child's birth. R.C. 3111.13 and 3111.15; *Beach v. Poole*, 111 Ohio App.3d 710, 712 (5th Dist.1996). However, as the trial court noted, the General Assembly could have mandated an award of retroactive child support in all cases other than those in which such an award is prohibited by R.C. 3111.13(F)(3), but did not. We conclude that under the "distinctive circumstances" of this case, the trial court did not abuse its discretion in refusing to order Father to pay child support retroactive to the date of the children's birth. The distinctive circumstances of this case include the facts that Mother led Father to believe she would leave her husband and join Father; that Mother's husband accepted the children as his, even after he learned that Father was their biological father; and that Mother's actions often kept the children away from Father, and it does not appear

that Mother's husband objected to this.

{¶ 13} Furthermore, as the magistrate noted in denying Mother's request for retroactive child support, "Mother was married to another man at the time of both children's birth and repeatedly testified that her husband is their father. Mother could have requested support of Father at any time but instead allowed another man to provide 100% of the children's financial support." Finally, the evidence shows that the children's needs for support, including healthcare insurance, were fully met between the date of the children's birth and the date Father filed his parentage action.

{¶ 14} In light of the unusual circumstances of this case, we are unwilling to conclude that the trial court abused its discretion by not ordering Father to pay child support retroactive to the date of the children's birth.

{¶ 15} In light of the foregoing, Mother's sole assignment of error is overruled.

{¶ 16} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.