

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

ELIZABETH VREELAND,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-12-238
- vs -	:	<u>OPINION</u>
	:	9/17/2012
HURL A. VREELAND,	:	
Defendant-Appellant.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR11-03-0269

Elizabeth Vreeland, 4675 Booth Road, Apt. B., Oxford, Ohio 45056, plaintiff-appellee, pro se
Caparella-Kraemer and Associates LLC, Courtney N. Caparella-Kraemer, 4841 Rialto Road,
Suite A, West Chester, Ohio 45069, for defendant-appellant

PIPER, J.

{¶ 1} Defendant-appellant, Hurl Vreeland, appeals a decision of the Butler County Court of Common Pleas, Domestic Relations Division, ordering spousal and child support.

{¶ 2} Hurl married plaintiff-appellee, Elizabeth Vreeland, in April 1999, and the couple had two children born issue of the marriage. The parties ultimately separated in January 2011 when Elizabeth left the marital home with the children. However, between 2007 and

2011, the parties lived separately four different times, and Elizabeth had a child with another man during one of the separations. During the periods of separation, Hurl paid child support according to an administrative child support order. Upon the parties' reconciliation, the order was suspended, only to be reinstated after additional separations. The parties moved forward with divorce proceedings in February and March 2011 by filing two separate complaints, which were then consolidated by the court.

{¶ 3} The parties resolved all property issues prior to the hearing before the trial court, so that the court heard evidence on parenting issues and spousal support only. At the time of the hearing, Hurl had overnight parenting time with the children on Mondays and Wednesday until the following mornings, as well as Fridays from 5:00 p.m. to Saturday at 5:00 p.m.

{¶ 4} The trial court named Elizabeth the residential parent, and ordered that the visitation schedule in place at the time of the hearing continue, with Hurl providing transportation after his visitation with the children on weekday overnights. The trial court also ordered Hurl to pay \$879.16 per month in child support for the children, as well as \$675 per month in spousal support for 48 months. Hurl now appeals the decision of the trial court setting child and spousal support, raising the following assignments of error:

{¶ 5} Assignment of Error No. 1:

{¶ 6} IT IS IN THE BEST INTEREST OF THE MINOR CHILDREN FOR A FATHER TO RECEIVE A DEVIATION FROM OHIO GUIDELINE CHILD SUPPORT WHEN HE HAS SIGNIFICANT PARENTING TIME WITH THE CHILDREN AND TO IMPUTE INCOME TO MOTHER WHEN SHE IS AVAILABLE TO BE EMPLOYED.

{¶ 7} Hurl argues in his first assignment of error that the trial court erred in not deviating from the standard child support order because he has extended visitation with the children.

{¶ 8} "The trial court possesses considerable discretion in child support matters." *Pahls v. Pahls*, 12th Dist. No. CA2009-01-005, 2009-Ohio-6923, ¶ 10, quoting *Murray v. Murray*, 128 Ohio App.3d 662, 666 (12th Dist.1999). Therefore, "[m]atters involving child support are reviewed under the abuse of discretion standard." *Van Osdell v. Van Osdell*, 12th Dist. No. CA2007-10-123, 2008-Ohio-5843, ¶ 20. A trial court abuses its discretion if its decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 9} According to R.C. 3119.22, a trial court may deviate from the standard child support order if such order is "unjust or inappropriate and would not be in the best interest of the child." R.C. 3119.23 sets forth 16 factors a court may consider when determining if a deviation is in the child's best interest. One such factor is "extended parenting time or extraordinary costs associated with parenting time* * *." R.C. 3119.23(D).

{¶ 10} Hurl first argues that the trial court abused its discretion by not deviating from the standard child support order given his extended parenting time with the children, as well as the costs associated with transporting the children back to Elizabeth after his visitation. Second, Hurl argues that the trial court should have deviated from the standard order because the trial court elected not to impute additional income to Elizabeth for support order purposes.

{¶ 11} Despite Hurl's arguments, the trial court is not under a statutory duty to deviate from the standard order simply because he has more than the standard visitation order. As this court has previously stated, "although the trial court is permitted to deviate from the standard child support worksheet upon finding one or more of the factors listed in R.C. 3119.23 are present, 'one is not automatically entitled to a downward deviation merely because a factor is present.'" *Keith v. Keith*, 12th Dist. No. CA2010-12-335, 2011-Ohio-6532, ¶ 18, quoting *Mitchell v. Mitchell*, 11th Dist. No. 2009-L124, 2010-Ohio-2680, ¶ 28.

{¶ 12} While Hurl does receive additional parenting time, about two days more a month than the standard visitation schedule, these two days do not comprise a significant amount of extra visitation. Nor does the record indicate that the extra two days or the court-ordered transportation placed any burden on Hurl to demand any further consideration than the trial court gave. This is particularly true given the large income disparity between the parties. The record demonstrates that Hurl earns an income of \$67,277, while Elizabeth earns approximately \$9,360 a year. Therefore, the trial court's decision not to deviate downward from the customary child support order will allow Elizabeth, the residential parent, a greater opportunity to provide for the children's needs. See *Preece v. Stern*, 12th Dist. Nos. CA2008-09-024, CA2008-12-029, 2009-Ohio-2519 (affirming trial court's decision not to deviate from the standard child support order despite the father having additional parenting time because of a large disparity between the parent's income and the mother's needs to provide for the child while the child was in her care).

{¶ 13} Nor does the record indicate that the trial court abused its discretion by not giving more weight to its decision to not impute income to Elizabeth. Whether a person is voluntarily underemployed and the amount of income to be imputed "are matters to be determined by the trial court based upon the facts and circumstances of each case." *Theurer v. Theurer*, 12th Dist. Nos. CA2008-06-074, CA2008-06-083, 2009-Ohio-1457, ¶ 29, quoting *Rock v. Cabral*, 67 Ohio St.3d 108 (1993), paragraph one of the syllabus. A trial court's determination with respect to these matters will not be disturbed on appeal absent an abuse of discretion. *Williams v. Williams*, 12th Dist. No. CA2006-09-103, 2007-Ohio-2996, ¶ 24. R.C. 3119.01(B)(11)(a)(i)-(x) sets forth several factors used to determine whether to impute income, including the parent's prior employment experience and education, the parent's special skills and training, whether there is evidence that the parent has an ability to earn the imputed income, as well as the ages and special needs of the children for whom

child support is being calculated.

{¶ 14} The record indicates that Elizabeth, a high school graduate, earns approximately \$9,360 cleaning houses and providing child care. Elizabeth did not work in any other capacity during the marriage, and as a result, has minimal work experience. The trial court heard evidence that Elizabeth plans on taking courses at a local community college to better prepare herself for seeking work. Therefore, the court stated its *anticipation* that Elizabeth "will take steps to improve her earning ability and seek employment that fits into her schedule." However, there was no other evidence presented that Elizabeth has any current ability to earn more than the salary used to compute the child support obligation worksheet. Therefore, we cannot say that the trial court abused its discretion by not imputing income or by not deviating down from the standard child support order because it chose not to impute income to Elizabeth.

{¶ 15} Having found no abuse of discretion in the trial court's child support order, Hurl's first assignment of error is overruled.

{¶ 16} Assignment of Error No. 2:

{¶ 17} THE TRIAL COURT ERRED IN AWARDING THE AMOUNT AND DURATION OF SPOUSAL SUPPORT PAYABLE TO APPELLEE.

{¶ 18} Hurl argues in his second assignment of error that the trial court erred in awarding spousal support of \$675 a month for 48 months.

{¶ 19} According to R.C. 3105.18(C)(1),

In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors:

(a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;

- (b) The relative earning abilities of the parties;
- (c) The ages and the physical, mental, and emotional conditions of the parties;
- (d) The retirement benefits of the parties;
- (e) The duration of the marriage;
- (f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;
- (g) The standard of living of the parties established during the marriage;
- (h) The relative extent of education of the parties;
- (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;
- (j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;
- (k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;
- (l) The tax consequences, for each party, of an award of spousal support;
- (m) The lost income production capacity of either party that resulted from that party's marital responsibilities;
- (n) Any other factor that the court expressly finds to be relevant and equitable.

{¶ 20} "A trial court has broad discretion to determine the proper amount and duration of spousal support based on the facts and circumstances of each case, and a trial court's award of spousal support will not be disturbed absent an abuse of discretion." *Kedanis v. Kedanis*, 12th Dist. No. CA2012-01-015, 2012-Ohio-3533, ¶ 10, citing *Woodrome v.*

Woodrome, 12th Dist. No. CA2000-05-074 (Mar. 26, 2001); and *Gregory v. Kottman-Gregory*, 12th Dist. Nos. CA2004-11-039, CA2004-11-041, 2005-Ohio-6558.

{¶ 21} The trial court considered each of the factors as set forth in R.C. 3105.18(C)(1) before ordering Hurl to pay \$675 per month in spousal support for 48 months. After thoroughly reviewing the record, we cannot say that the trial court abused its discretion in ordering spousal support as it did.

{¶ 22} Based on the factors listed above, the trial court considered the following pertinent evidence. Hurl earns \$67,277 a year, while Elizabeth earns approximately \$9,360. Both parties are earning to their current ability, given Elizabeth's lack of training and relevant work experience. Elizabeth also cares for the parties' minor children, and therefore has a limited possible work schedule, especially because she will provide the majority of care during the after-school hours while Hurl is at work. The trial court found the decision that Elizabeth would provide care for the children rather than work outside the home to be a mutual decision made by both parties. The court also considered that Elizabeth desires to pursue further training and needs such training and education to support herself and the children.

{¶ 23} The trial court also considered that Hurl was 47 at the time of the hearing, while Elizabeth was 36, and that both parties are in good health. While Hurl was able to keep his 401K, with Elizabeth stipulating no claim to the small retirement fund, Elizabeth has no retirement benefits of her own. The parties were married for 12 years, but little evidence was submitted regarding the standard of living during the marriage. Nor did the court hear testimony regarding the property division, as the parties stipulated the property division before the hearing occurred.

{¶ 24} Hurl argues that the trial court's order is an abuse of discretion because of the various times the couple separated before ultimately divorcing, as well as the fact that

Elizabeth had a child with a different man during the marriage. However, the trial court balanced those factors against the fact that the parties were married for 12 years, have a large income disparity, and that Elizabeth will have to seek training before she can hope to provide support for herself and the children given the couple's mutual choice that she would provide care for the children rather than working outside the home. Taking all the circumstances of this case into consideration, we cannot say that the trial court's spousal support order was arbitrary, unreasonable, or unconscionable. Having found no abuse of discretion, Hurl's second assignment of error is overruled.

{¶ 25} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.