

[Cite as *Kraft v. Hetrick*, 2009-Ohio-3665.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NATHAN AMON KRAFT	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	Case No. 2008-CA-00235
SUMMER HETRICK, FKA KRAFT	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Stark County Court of Common Pleas, Domestic Relations Division, Case No. 2001DR006600

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: July 27, 2009

APPEARANCES:

For Plaintiff-Appellee

REX E. PAYNE
P.O. Box 1622
Akron, OH 44309

For Defendant-Appellant

DON E. CAPLEA
116 Cleveland Avenue N.W., Suite 500
Canton, OH 44702

Gwin, P.J.

{¶1} Defendant-appellant Summer Hetrick, fka Kraft, appeals a judgment of the Court of Common Pleas, Domestic Relations, of Stark County, Ohio, which overruled her motion to reallocate the parental rights and responsibilities she and plaintiff-appellee Nathan Kraft share with respect to their minor daughter. The court also affirmed the Stark County Child Support Enforcement Agency’s administrative decision to modify appellant’s child support obligation. Appellant assigns two errors to the trial court:

{¶2} “I. THE COURT ERRED IN DISMISSING HETRICK’S MOTION TO REALLOCATE PARENTAL RIGHTS AND RESPONSIBILITIES, WHICH ALLEGED A CHANGE IN CIRCUMSTANCES, WITHOUT HOLDING A HEARING.

{¶3} “II. THE COURT ERRED IN APPROVING THE ADMINISTRATIVE MODIFICATION OF HETRICK’S CHILD SUPPORT OBLIGATION WITHOUT HOLDING A HEARING AND WITHOUT MAKING ANY FINDINGS THAT THE PREVIOUS ORDER SHOULD BE REVISED AND THAT THE MODIFIED AMOUNT WAS APPROPRIATE.”

{¶4} This is the third time this case has come before us, and the procedural history is complicated. The record indicates the parties were married approximately three years, and produced one daughter.

{¶5} Originally, the parties entered into a shared-parenting plan which, after some amendment, was approved by the trial court. Approximately a year later, appellant moved the court to award her residential parent status and legal custody of the child. After some delays, the court granted custody to appellant, and appellee appealed the matter to us.

{¶6} In *Kraft v. Regan*, Stark App. No. 2003-CA-00074, 2003-Ohio-5632, this court remanded the matter for completion of any intended presentation of evidence. While the matter was pending before us, appellee moved the court for an immediate review hearing, and the court referred the matter to the Stark County Department of Job and Family Services for investigation.

{¶7} Shortly after our first opinion was filed, the trial court issued a new order, awarding custody of the child to the appellee on an interim basis. Ultimately, the parties entered into another agreed shared parenting plan which granted residential parent status to appellee with appellant receiving visitation.

{¶8} Four months later, appellant filed a motion to modify, which she later amended, citing concerns about a change in the appellee's visitation with his children from another marriage. A magistrate heard the matter, and issued an eight page decision awarding custody of the child to appellee with standard visitation to appellant. Appellant objected, and the court overruled her objection and adopted the magistrate's decision. She brought the matter before us, and in *Kraft v. Regan*, Stark App. No. 2006-CA-00362, 2007-Ohio-6113, we affirmed the trial court's decision, finding the court's decision had not essentially changed the status quo.

{¶9} Seven months later, appellant filed several pleadings which comprise the present case. Appellant moved for declaratory judgment on June 17, 2008, which sought to modify the magistrate's 2006 decision. The magistrate overruled the motion, and on July 10, 2008, appellant filed objections with the trial court. Before the court could hear the objections, appellant filed a motion for reallocation of parental rights and other relief on August 29, 2008.

{¶10} Meanwhile, the Child Support Enforcement Agency modified appellant's child support obligation. The trial court heard the matter in conjunction with appellant's other filings, and overruled appellant's objections to the modification of child support, as well as the motion for change in residential status and other relief. It is in this posture the matter comes before us again.

{¶11} Our standard of reviewing decisions of a domestic relations court is generally the abuse of discretion standard, see *Booth v. Booth* (1989), 44 Ohio St. 3d 142. The Supreme Court made the abuse of discretion standard applicable to alimony orders in *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217; to property divisions in *Martin v. Martin* (1985), 18 Ohio St. 3d 292; to custody proceedings in *Miller v. Miller* (1988), 37 Ohio St. 3d 71; and to decisions calculating child support, see *Dunbar v. Dunbar*, 68 Ohio St 3d 369, 533-534, 1994-Ohio-509, 627 N.E. 2d 532. The Supreme Court has repeatedly held the term abuse of discretion implies the court's attitude is unreasonable, arbitrary or unconscionable, *Blakemore*, supra, at 219. When applying the abuse of discretion standard, this court may not substitute our judgment for that of the trial court, *Pons v. Ohio State Med. Board*, (1993), 66 Ohio St.3d 619, 621.

I

{¶12} In her first assignment of error, appellant argues the court erred in dismissing her motion to reallocate parental rights and responsibilities, which alleged a change in circumstances, without holding a hearing.

{¶13} We have reviewed the docket, and we find a July 10, 2008 notice of hearing on September 22, 2008 on appellant's objections to the magistrate's decision and the motion for relief from judgment. The record also contains a judgment entry filed

July 16, 2008, setting a hearing on the issues of residential parenting, the magistrate's ruling on the declaratory judgment, and the objection to the administrative modification of the child support all for September 22, 2008. Appellant's motion for reallocation of parental rights and other relief was filed August 29, 2008, and contains a notice that this matter would be heard on September 22, 2008.

{¶14} The record also contains a transcript of the hearing of September 22, 2008, which was filed on November 25, 2008. The transcript shows the court called the matter for hearing and said "This is the matter of Kraft and Hetrick, Case No. 2001DR660. Present here in the courtroom are the parties and their counsel. *** Also the defendant is present and represented by Mr. Caplea who has filed um objection on May 21 of findings and recommendation of the administrative hearing and the second objection on July 10th, to the magistrate's decision regarding um declaratory judgment that he had filed and there was also a motion for relief from judgment and also now on August 29, the defendant has filed um a new motion for reallocation of parental rights. I believe those are the things that are pending here today. So if I am correct about that and you are prepared to proceed then you may." Transcript of Proceedings, Pg. 3.

{¶15} It is clear from the record the court did conduct a hearing and invited the parties to present evidence on any of the pending issues.

{¶16} Appellee informed the court the Child Support Enforcement Agency made the best decision it could based upon the information appellant had provided. Thereupon, appellant requested the matter be set for a further evidentiary hearing to tie up what counsel referred to as "a lot of loose ends". The court declined to set the

matter for further evidence, finding the magistrate's and the agency's determinations were proper, and appellant's desire to continue the litigation is harmful to the child.

{¶17} Appellant had alleged a change in circumstances in support of her motion for modification of the shared parenting plan. In support, appellant filed a lengthy affidavit listing numerous instances in which she alleges appellee has failed to comply with the court's prior orders. The trial court's judgment entry found some of the issues were predicated on events which occurred between 2004 and 2006, and had already been litigated fully. The court found the more recent issues are all in the nature of contempt allegations, and do not constitute a change in circumstances. We agree.

{¶18} Based upon the record before us, we find the trial court conducted a hearing, and gave appellant the opportunity to present evidence on any of the issues she had raised in her various filings. Further, we find the trial court did not err in finding appellant had not presented evidence of a change in circumstances since the court's prior order.

{¶19} The first assignment of error is overruled.

II

{¶20} In her second assignment of error, appellant argues the court erred in approving the administrative modification of her child support obligation without holding a hearing and without making any findings the modified amount was appropriate.

{¶21} Contrary to appellant's assertions, the matter was presented at the September 22, 2008 hearing, although as stated in I, supra, the court declined to reschedule the hearing for more evidence.

{¶22} Essentially, the administrative hearing officer found appellant had not submitted sufficient evidence of her income, and as a result calculated the average of the 2005, 2006, and 2007 wages appellant earned.

{¶23} At the hearing, appellant focused on a question in appellee's financial disclosure. She did not contest the findings regarding her own income or offer any evidence the modification of support was not appropriate. We find the trial court did not abuse its discretion or err in modifying appellant's child-support obligation.

{¶24} The second assignment of error is overruled.

{¶25} For the foregoing reasons, the judgment of the Court of Common Pleas, Domestic Relations Division of Stark County, Ohio, is affirmed.

By Gwin, P.J.,

Hoffman, J., and

Wise, J., concur

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

