

[Cite as *In re C.L.*, 2010-Ohio-682.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93720

IN RE: C.L.
A Minor Child

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. SU 08740648

BEFORE: Boyle, J., Gallagher, A.J., and Blackmon, J.

RELEASED: February 25, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Plaintiff-appellant, Philip Lewis, appeals from the judgment of the Cuyahoga County Common Pleas Court, Juvenile Division, overruling his objections and adopting the magistrate's decision, which reduced his child support obligation but not to his satisfaction. Finding no merit to the appeal, we affirm.

Procedural History and Facts

{¶ 2} The record reflects that on October 24, 2008, the Cuyahoga Support Enforcement Agency ("CSEA") ordered Lewis to pay defendant-appellee, Cherice Jones, \$274.94 per month for support of the parties' minor child. Lewis subsequently filed an objection to the CSEA order and an application to determine support pursuant to R.C. 2151.231. Lewis challenged the order, arguing that he should not be required to pay any support because the order (1) failed to appreciate his involvement in his daughter's life, including the amount of time that he spends with her under the shared parenting order and the amount of out-of-pocket expenses that he incurs, (2) understated his childcare costs, and (3) wrongly calculated Jones's income based on a questionable deduction. He further argued that, once Jones completes school and starts working full-time, the parties' incomes will be nearly identical and therefore relieving the need for him to pay support.

{¶ 3} On March 26, 2009, a hearing was held on the matter before a magistrate. Three days following the hearing, the magistrate issued her decision sustaining Lewis's objections, finding in his favor, and reducing the amount of child support based on the additional time that his daughter is under his care and custody. The magistrate reduced the overall amount of child support to \$227.90 per month plus two-percent processing fee (i.e., \$232.46) based on the current arrangement of Lewis providing health insurance. The magistrate further found that no evidence was submitted at the hearing to rebut the presumption that the custodial parent is entitled to claim the child as a dependent; therefore, the court ordered that only Jones, who is named as the custodial and residential parent, may do so for purposes of federal income tax.

{¶ 4} Lewis filed objections to the magistrate's decision, arguing that the court should further reduce the child support payment for the following reasons: (1) he spends additional time with his daughter in the summer, namely, ten days, that the magistrate failed to include; (2) his portion of day care costs has increased because his daughter's former day care closed and the new day care is more expensive; and (3) the right to claim his daughter as a dependent for tax purposes should be alternated between parents. Although Lewis attached numerous documents to his objections, he failed to

submit a transcript of the proceedings held before the magistrate or, alternatively, an affidavit of the proceedings.

{¶ 5} The trial court subsequently overruled his objections, adopted the magistrate's decision, and ordered that Lewis pay the reduced amount of child support calculated by the magistrate. The trial court, however, also granted Lewis leave to file a "motion to modify child support to allege a change of circumstances regarding the costs of childcare and to present evidence on the issue of the child dependency exemptions."

{¶ 6} Lewis never filed a motion to modify child support. Instead, he filed the instant appeal, challenging the trial court's decision overruling his objections and affirming the magistrate's decision.

Standard of Review

{¶ 7} Under Civ.R. 53, the trial court must conduct an independent review of the facts and conclusions contained in the magistrate's report and enter its own judgment. *Dayton v. Whiting* (1996), 110 Ohio App.3d 115, 118, 673 N.E.2d 671. The trial court, therefore, conducts a de novo standard of review in examining a magistrate's decision.

{¶ 8} A party who files an objection to a magistrate's factual finding is required to support the objection with the filing of a "transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit

of that evidence if a transcript is not available.” Civ.R. 53(D)(3)(b)(iii). Absent a transcript of proceedings, or appropriate affidavit as provided in the rule, a trial court is limited to an examination of the magistrate’s conclusions of law and recommendations, accepting the magistrate’s findings of fact, unless the trial court elects to hold further hearings. *Wade v. Wade* (1996), 113 Ohio App.3d 414, 418; see, also, *Moore v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 05AP-53, 2005-Ohio-3939; *Weitzel v. Way*, 9th Dist. No. 21539, 2003-Ohio-6822, ¶19. A trial court, however, may refuse to hear additional evidence “unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.” Civ.R. 53(D)(4)(d).

{¶ 9} Because the ultimate authority and responsibility over the magistrate’s findings and rulings is vested with the trial court, a decision to modify, affirm, or reverse a magistrate’s decision lies within the sound discretion of the trial court. *Mullins-Nessle v. Cardin*, 12th Dist. No. CA2009-07-036, 2009-Ohio-6748. We therefore review a trial court’s decision to affirm a magistrate’s decision under an abuse of discretion. *In re Estate of Mason*, 8th Dist. No. 92693, 2009-Ohio-5494, ¶34. “Abuse of discretion” connotes more than an error of law or judgment; it implies that the court’s

attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 10} Applying the requisite standard of review, we cannot say that the trial court abused its discretion in overruling Lewis's objections and affirming the magistrate's decision.

Trial Court's Order

{¶ 11} In his two assignments of error, Lewis attacks the trial court's order adopting the magistrate's decision on the following grounds: (1) his day care costs have increased due to a change in day cares, thereby warranting a reduction in his child support payment, which would result in at least a ten-percent deviation from the current child support order, and (2) he should be entitled to claim his daughter as a dependent for income tax purposes because it would serve her best interests. Although we recognize that Lewis raises arguments that may be compelling, the instant appeal is not the avenue to provide him with the relief that he seeks.

{¶ 12} Initially, we note that Lewis did not include a transcript or submit an affidavit along with his objections, and therefore the trial court was bound to accept the magistrate's factual findings. *Wade*, 113 Ohio App.3d at 418. Furthermore, Lewis failed to raise before the magistrate either issue that he later made the basis of his objections. Indeed, the first time

that he attempted to offer any evidence concerning either issue was when he filed his objections. The record reveals, however, that the information (i.e., increased day care costs and claim for tax exemption) was available to Lewis at the time of the hearing. And while we recognize that the trial court could have ordered to hear more evidence once Lewis objected to the magistrate's decision and raised matters that had not yet been heard, the trial court was not required to do so because Lewis could have presented the evidence at the March 2009 hearing. See Civ.R. 53(D)(4)(d). Therefore, based on the record before the trial court, and Lewis's failure to present the evidence at the hearing despite being able to do so, we cannot say that the trial court abused its discretion in overruling Lewis's objections and adopting the magistrate's decision.

{¶ 13} We do note, however, that Lewis is not precluded from having the trial court consider the issues that he is raising on appeal. Indeed, the trial court expressly granted Lewis leave to present these arguments in a motion to modify child support based on a change of circumstances. And although Lewis raises an argument on appeal regarding a ten-percent deviation in child support if recalculated, as required for a modification under R.C. 3119.79, he must first submit this argument to the trial court pursuant to a motion to modify based on a change of circumstances.

{¶ 14} Accordingly, Lewis's two assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

SEAN C. GALLAGHER, A.J., and
PATRICIA ANN BLACKMON, J., CONCUR