[Cite as *Grein v. Grein*, 2010-Ohio-2681.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

MICHELE M. GREIN,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-L-145**
- vs -	:	
DANIEL R. GREIN,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 07 DR 000308.

Judgment: Affirmed.

Robert E. Somogyi, Hans C. Kuenzi Co., L.P.A., Skylight Office Tower, #410, 1660 West Second Street, Cleveland, OH 44113 (For Plaintiff-Appellee).

Sandra A. Dray, Sandra A. Dray Co., L.P.A., 1111 Mentor Avenue, Painesville, OH 44077 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Daniel R. Grein, appeals the judgment of divorce entered by the Lake County Court of Common Pleas, Domestic Relations Division, in favor of appellee, Michele M. Grein. At issue is whether the trial court abused its discretion in adopting Michele's proposed shared parenting plan; in awarding Michele $3,000 in attorney fees; in not vacating its award of temporary spousal support in favor of Michele; and in denying Daniel's motion to reopen the trial. For the reasons that follow, we affirm.

{¶2} The parties were married on October 18, 2003. One child was born as issue of the marriage, Daniel, Jr., born August 19, 2005.

{¶3} On April 23, 2007, Michele filed a complaint for divorce, a motion for temporary residential parenting, temporary child support, and temporary spousal support. Daniel filed his answer and counterclaim for divorce on May 22, 2007.

{¶4} After nearly four years of marriage, the parties separated in July 2007. Daniel remained in the marital residence, which is a five-bedroom, single-family residence located on 20 acres in Leroy Township in Lake County, and Michele moved into an apartment in nearby Madison with Daniel, Jr.

{¶5} Following a hearing on Michele's motions, on August 17, 2007, the magistrate ordered appellant to pay $1,250 per month as temporary spousal support, retroactive to August 1, 2007. Daniel objected due to the existence of a prenuptial agreement in which the parties waived their right to spousal support. However, after a second hearing, on September 28, 2007, the magistrate found that, based on case-law authority, the existence of the prenuptial agreement does not preclude an award of temporary spousal support, and reinstated the previous temporary spousal support order. After a third hearing on the same issue, on January 10, 2008, the magistrate reaffirmed his award of temporary spousal support due to the great disparity in income between the parties, but reduced the amount retroactively to August 1, 2007, to $1,100 per month.

{¶6} While the case was pending, Michele and Daniel filed separate motions for psychological evaluations of the parties by Sandra McPherson, Ph.D (at Daniel's request) and Michael Leach, Ph.D. (at Michele's request) to assist the court in

determining the allocation of parental rights and responsibilities. The magistrate granted the motions.

{¶7} The parties also filed separate motions for shared parenting with a proposed shared parenting plan attached to each motion. Both parents requested to be designated residential parent for school purposes.

{¶8} On July 1, 2008, Daniel filed a motion to terminate the magistrate's temporary spousal support award, which had been in effect since August 1, 2007. The magistrate ordered that the motion would be determined at trial.

{¶9} The case proceeded to trial on October 2, 2008; October 3, 2008; and November 3, 2008. On October 3, 2008, the parties agreed that Daniel's temporary spousal support obligation would cease effective October 1, 2008, unless the court decided to terminate it earlier in ruling on Daniel's motion to terminate temporary spousal support.

{¶10} At trial, both parties testified they were incompatible and stipulated to a divorce on that ground. They also agreed to incorporate into the divorce decree a separation agreement that addressed property division. They also stipulated that Daniel's annual income was $70,625, and that Michele's income was $14,248 for child support purposes.

{¶11} Both parties testified. They met through an internet dating website. At the time Michele resided in Hubbard Township in Trumbull County. She is originally from the Youngstown area and her family still resides there. Daniel has resided in Leroy Township in Lake County for 40 years. Michele had no previous ties to Lake County. She moved there in order to live with Daniel after their marriage. Daniel's mother and

stepfather live next door to the parties' marital residence. Since his birth, Daniel, Jr. has had regular contact and a close relationship with his maternal and paternal relatives.

{¶12} Michele worked for the Ohio State Highway Patrol as a trooper and was on disability leave at the time of the parties' marriage. Her injury resulted from a car crash while she was on duty. She left her employment with the Ohio State Highway Patrol to concentrate on her child care responsibilities after Daniel, Jr.'s birth. Since his birth, due to Daniel's full-time employment as a police officer with the Beachwood Police Department, the parties agreed that Michele would be a stay-at-home mother and be primarily responsible for Daniel, Jr.'s care. Both parties have actively participated in Daniel, Jr.'s care since birth, although Daniel's full-time employment in Beachwood does not allow him to care for the child during work hours.

{¶13} During the marriage, Michele had various part-time jobs. In the spring of 2008, she and a partner invested in a pet kennel in Tallmadge, Ohio. Her partner is responsible for the day-to-day operations, and, at the time of trial, Michele worked on an as-needed basis, and the extent of her services was yet to be determined. Michele had $170,000 of separate property, which she received as compensation from her work-related car crash. She invested $100,000 in the pet kennel.

{¶14} The parties have conflicting views about pre-school and their need to reside in close proximity to each other to allow Daniel to maintain a close relationship with Daniel, Jr. Daniel believes his son should be in pre-school, while Michele believes other educational programs in which he is enrolled are sufficient until Daniel, Jr. goes to kindergarten. Daniel believes he and Michele should live no more than a driving distance of 20 minutes apart, while Michele believes a driving distance between them of

one hour should be acceptable. She hopes to move to Tallmadge, which would be closer to her pet kennel and her family. Tallmadge is about a one-hour drive from Leroy. Further, Daniel believes each parent should have the child 50 per cent of the time, with each having the child three and one-half days each week. Daniel wants to have Daniel, Jr. from Sunday morning to Wednesday afternoon, although he works on Tuesdays and Wednesdays during the day. In contrast, Michele believes Daniel should have the child overnight only on weekends when he is not working and one evening during the week.

{¶15} Dr. Leach, who had been chosen by Michele, stated that both parents were concerned for the child's well-being. He recommended a shared parenting plan and that Michele be named the residential parent for school purposes because she had been Daniel, Jr.'s primary caregiver since birth. He believes Daniel should have the child on weekends and one evening during the week. Dr. McPherson, chosen by Daniel, agreed that a shared parenting plan should be established. She recommended that visitation be split equally between the parties, with Daniel having the child three and one-half days each week from Sunday morning until Wednesday at noon and with Michele having the child the rest of the week. She also recommended that if Michele resides in Lake or Geauga County, she should be designated the residential parent for school purposes.

{¶16} On December 8, 2008, the magistrate filed his decision, which ruled on the allocation of parental rights and responsibilities, child support, and attorney fees. The magistrate found that shared parenting was in the child's best interest and that Michele should be designated the residential parent for school purposes as long as she

resides in Lake County and adjoining counties with Cuyahoga County being restricted to east of the Cuyahoga River. The magistrate selected Michele's shared parenting plan, and found it would be in the child's best interest if Michele submitted the changes regarding Daniel's parenting time, which the magistrate outlined in his decision. These provisions essentially allowed Daniel to have the child on weekends and every Wednesday evening and, during the summer months, three and one-half days each week. The decision provided that if Michele failed to incorporate these changes in her shared parenting plan, the magistrate would issue an amended decision. As to child support, the magistrate used the parties' annual incomes and deviated downward by 15 per cent in light of the extended parenting time Daniel would be exercising under Michele's shared parenting plan as modified, resulting in monthly child support of $592. Further, as to Michele's attorney fees of approximately $9,000, the magistrate found that, due to the great difference in the parties' annual incomes, Daniel should pay one-third of this amount, or $3,000.

{¶17} On December 10, 2008, the magistrate ruled on Daniel's motion to terminate temporary spousal support. The magistrate found it would be more fair to terminate the award from the date the motion to terminate was filed, i.e., on July 1, 2008, rather than from the date of the parties' agreement to terminate on October 1, 2008, thus reducing Daniel's obligation by three months, or $3,300.

{¶18} Daniel filed objections to the magistrate's December 8, 2008 decision and a motion to set aside the magistrate's December 10, 2008 decision regarding temporary spousal support. Michele also filed objections to these decisions. The trial court held an oral hearing on the parties' objections. By its judgment entry, dated August 10,

2009, the court denied all of the parties' objections, except for one: the court further reduced Daniel's temporary spousal support obligation from $1,100 to $900, resulting in an additional savings of $2,200 to Daniel based on the amount owed from August 2007 to July 2008. The court found that it was in the child's best interest that Michele be designated the residential parent for school purposes; that Michele's shared parenting plan was in the child's best interest if modified as recommended by the magistrate; and that the award of attorney fees of $3,000 was fair and equitable. The trial court adopted the balance of the magistrate's decision. The court ordered Michele's counsel to prepare and circulate for signature a final judgment entry of divorce and the shared parenting plan as modified.

{¶19} On January 30, 2009, Daniel filed a motion to reopen the trial to submit newly discovered evidence related to Michele working what he believed amounted to excessive hours at her pet kennel. That motion was denied on March 2, 2009. Then, on August 12, 2009, Daniel filed a second motion to reopen the trial to submit alleged newly discovered evidence, this time alleging that Michele had obtained a position as a police dispatcher that would involve rotating shifts. Daniel moved to stay the trial court's entry of final judgment of divorce until the court ruled on his second request to reopen the trial. He and his attorney also refused to sign the divorce decree as ordered by the trial court. Despite Daniel's refusal to sign the divorce decree, the trial court entered it on September 25, 2009. The court attached the separation agreement previously entered by the parties, the shared parenting plan as modified by Michele, and the child support worksheet. In the divorce decree, the trial court dismissed all pending motions, thus denying Daniel's second motion to reopen the trial.

{¶20} Daniel appeals the trial court's judgment entry of divorce, asserting five assignments of error. Alleging that his first two assigned errors are interrelated, Daniel argues them together. Because they are interrelated, we shall consider them together. They allege:

{¶21} "[1.] The trial court abused its discretion when it adopted the appellee's shared parenting plan and failed to make findings relative to appellant's shared parenting plan.

{¶22} "[2.] The trial court erred in failing to order both parties to submit appropriate changes to the shared parenting plan and by failing to issue an amended magistrate's decision when a revised plan was not submitted."

{¶23} A trial court's decision to adopt or reject a magistrate's decision will be reversed on appeal only for an abuse of discretion. *In re Ratliffe*, 11th Dist. Nos. 2001-P-0142 and 2001-P-0143, 2002-Ohio-6586, at ¶14. An abuse of discretion "connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. On the other hand, purely legal issues are reviewed de novo by this court. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm*. (1996), 76 Ohio St.3d 521, 523. When appellate courts apply the abuse of discretion standard, they must not simply substitute their judgment for that of the trial court. See *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 732, 1995-Ohio-272; *In re Jane Doe 1* (1991), 57 Ohio St.3d 135, 137-138; *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169. Moreover, to establish an abuse of discretion, the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but the

perversity of will, not the exercise of judgment but the defiance of judgment, and not the exercise of reason but instead passion or bias. *Nakoff v. Fairview Gen. Hosp*., 75 Ohio St.3d 254, 256, 1996-Ohio-159; see, also, *Bragg v. Hatfield*, 152 Ohio App.3d 174, 183, 2003-Ohio-1441.

{¶24} First, appellant argues that, in adopting Michele's proposed shared parenting plan, the magistrate violated R.C. 3109.04(D)(1)(a)(ii). That section provides:

{¶25} "If each parent *** files a motion and each also files a separate [shared parenting] plan, the court shall review each plan filed to determine if either is in the best interest of the children. *** If the court determines that neither filed plan is in the best interest of the children, the court may *** select one of the filed plans and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court may approve the plan with the changes. *** If the court approves a plan under this division, either as originally filed or with submitted changes, or if the court *** denies [the parties'] motions requesting shared parenting ***, the court shall enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or the *** denial."

{¶26} Daniel argues the magistrate, in his December 8, 2008 decision, failed to make findings of fact as to why his plan was not in the best interest of the child. However, R.C. 3109.04(D)(1)(a)(ii) requires findings of fact as to the reasons for the approval of a shared parenting plan *or* for the denial of the parties' shared parenting plans. In the event the court approves a shared parenting plan with or without changes,

the court is only required to make findings of fact as to the court's reasons for the approval of the plan, not for the denial of the parties' plans. This court in *In re Spence*, 11th Dist. No. 2007-P-0070, 2008-Ohio-2127 held: "*** R.C. 3109.04 (D)(1)(a)(ii) expressly requires a trial court to enter in the record findings of fact and conclusions of law as to the reasons for approving a shared parenting plan *or* for refusing to order shared parenting ***." (Emphasis added.) Id. at ¶35.

{¶27} As discussed below, the trial court made extensive findings of fact and conclusions of law as to why Michele's shared parenting plan as modified was in the child's best interest.

{¶28} Next, contrary to Daniel's argument, the fact that the magistrate ordered Michele, rather than both parties, to submit changes to her shared parenting plan to meet the court's objections did not violate R.C. 3109.04(D)(1)(a)(ii) for three reasons. First, this section states the court "*may *** select one of the filed plans and order each parent to submit appropriate changes to the selected plan to meet the court's objections*." (Emphasis added.) Since the statute uses the phrase "may *** order each parent," the statute is permissive rather than mandatory, and the magistrate was therefore not obligated to order both parties to submit changes to the selected plan. Second, since the magistrate had selected Michele's plan, it made sense that the magistrate should order her to make the necessary changes. Third, because the magistrate explicitly set forth in his decision the changes that would be required regarding Daniel's parenting time for the plan to be in the child's best interest, it made no difference whether the magistrate had Michele or both parties submit the changes.

We note that Michele's shared parenting plan incorporated the magistrate's changes essentially verbatim.

{¶29} We also note that Daniel did not indicate below or on appeal what changes he would have submitted to the selected plan if given the opportunity. Thus, even if the court erred in this regard, Daniel has failed to demonstrate any prejudice.

{¶30} Further, Daniel argues that Michele failed to submit a modified shared parenting plan. However, the record does not support this argument. To the contrary, the record reveals that Michele submitted a modified shared parenting plan that incorporated the changes required by the magistrate. First, on August 28, 2009, Michele's attorney filed a "certification" with the court certifying that on August 26, 2009, he had served Daniel's attorney with the draft judgment entry of divorce, which included the modified shared parenting plan, for her approval. Michele cites this certification as proof that her attorney submitted the modified shared parenting plan, and Daniel does not dispute this argument. We also note that the trial court in the judgment entry of divorce, dated September 25, 2009, stated: "The Court finds that the shared parenting plan submitted by [Michele], and subsequently modified by [her], to be in the best interests of the parties' minor child." This judgment entry also provides that the shared parenting plan as modified is attached to the judgment entry. Thus, Daniel is incorrect when he argues that Michele failed to submit a modified plan.

{¶31} As noted above, according to the magistrate's decision, if Michele failed to incorporate his changes, the magistrate would issue an amended decision. Daniel argues the trial court erred in not issuing an amended magistrate's decision when Michele failed to submit a modified shared parenting plan. However, because Michele

submitted a modified shared parenting plan, the trial court was not required to issue an amended magistrate's decision. In any event, since Daniel filed objections to the magistrate's decision, the matter was determined by the court and there was no need for an amended magistrate's decision.

{¶32} We therefore hold the trial court did not err in not making findings of fact concerning its rejection of Daniel's shared parenting plan and in not ordering both parties to submit changes to Michele's plan.

{¶33} Next, appellant argues the trial court abused its discretion in approving Michele's parenting plan as modified. Daniel argues that he, rather than Michele, should have been named as the residential parent for school purposes because he has resided in Lake County for 40 years and has a more stable career. However, as the trial court noted, Michele had lived in Mahoning and Trumbull Counties her entire life. She moved to Lake County to marry and reside with Daniel. As the trial court found in ruling on Daniel's objections to the magistrate's decision, "the Court cannot disregard Mother's residential evidence as to herself and her family prior to the parties' marriage pursuant to Revised Code 3109.04." Further, the magistrate found the parties had agreed that Michele would be a stay-at-home mother and act as Daniel, Jr.'s primary caregiver. We also note that both Dr. Leach, Michele's expert, and Dr. McPherson, Daniel's expert, recommended that Michele be designated as the residential parent for school purposes as long as she resided within a limited geographical area. Further, the magistrate found:

{¶34} "After considering the above [R.C. 3109.04(F)(1)] factors [for determining the best interest of the child], including *** the recommendations of Dr. McPherson and

Dr. Leach, the work schedules of the parents and available time to parent, the strong relationship each parent has with the child, and the willingness of each parent to make the necessary sacrifices in the best interest of the child, it is determined mother is designated residential parent for school purposes provided she reside in Lake and adjoining counties and Cuyahoga County is restricted to east of the Cuyahoga River."

{¶35} Next, Daniel argues the trial court should have given more weight to Dr. McPherson's report, which recommended a three and one-half day schedule for each parent, despite the fact that Daniel works on two of the days he requested. In not adopting Dr. McPherson's recommendation and instead ordering that Daniel have the child on weekends when he was not working and one evening during the week, the trial court obviously concluded that Dr. McPherson's recommendation in this regard was unrealistic and ultimately unacceptable. While Daniel might not agree with the trial court's decision, that does not mean it amounted to an abuse of discretion.

{¶36} Finally, we observe that the magistrate made extensive findings of fact in support of Michelle's shared parenting plan as modified, which the trial court adopted.

{¶37} In view of the foregoing, we cannot say the trial court abused its discretion in adopting Michele's shared parenting plan as modified.

{¶38} Daniel's first and second assignments of error are overruled.

{¶39} For his third assignment of error, Daniel contends:

{¶40} "The trial court abused its discretion when it awarded appellee $3,000 in attorney fees."

{¶41} Appellant argues the trial court abused its discretion in awarding Michele $3,000 in attorney fees. R.C. 3105.73(A) provides: "In an action for divorce, *** a court

may award all or part of reasonable attorney's fees *** to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate."

{¶42} An award of attorney's fees lies within the sound discretion of the trial court, and will not be disturbed absent an abuse of discretion. *Pearlstein v. Pearlstein*, 11th Dist. No. 2008-G-2837, 2009-Ohio-2191, at ¶153; *Rand v. Rand* (1985), 18 Ohio St.3d 356, 359. In *Godar v. Godar*, 5th Dist. No. 2005CA00260, 2006-Ohio-5994, the factors the court considered in determining the trial court did not abuse its discretion in awarding attorney fees to the wife included the great disparity between the incomes of the husband and the wife (the husband's income was $73,000 greater than the wife's) and the entire amount of attorney's fees was not awarded to her. Id. at ¶28. Contrary to Daniel's argument, in *Heyman v. Heyman*, 10th Dist. No. 06AP-1070, 2007-Ohio-2241, the court did *not* hold that a party's conduct must be frivolous, in bad faith, or unnecessarily prolong the litigation to warrant an award of attorney fees against him. Instead, the court merely noted that a party's misconduct is one factor a court may consider in deciding whether to award attorney fees. Id. at ¶9, quoting R.C. 3105.73(A).

{¶43} In the instant case, the magistrate found that Michele has limited income due to a relatively long period of part-time employment and starting a business. Daniel has income of approximately $75,000 per year. Michele's attorney fees up to and including trial totaled approximately $9,000. In the circumstances, the magistrate found

it was equitable to have Daniel pay to Michele $3,000 for her attorney fees. In denying Daniel's objection to the award of attorney fees, the trial court found:

{¶44} "As to Father's objection on the payment of attorney fees, the stipulated annual gross incomes of the parties shows Father earns over 400% more than Mother. Furthermore, the parties had two psychological evaluations completed during the case, along with extensive pretrial litigation as to objections to temporary orders. The Court finds the Magistrate's award of attorney fees in the sum of $3,000.00 to Mother equitable pursuant to Revised Code 3105.73."

{¶45} Since the trial court considered the statutory factors, including the respective incomes of the parties, and awarded only one-third of Michele's attorney fees, we cannot say the court abused its discretion in making its award of attorney fees.

{¶46} Daniel's third assignment of error is overruled.

{¶47} For his fourth assigned error, Daniel contends:

{¶48} "The trial court abused its discretion when it failed to vacate the award of temporary spousal support."

{¶49} Daniel argues that the trial court abused its discretion in not vacating its award of temporary spousal support. Although, as outlined above, the trial court twice reduced its award of temporary spousal support from $1,250 to $1,100 to $900 per month, in Daniel's view, Michele was not entitled to any temporary spousal support.

{¶50} First, Daniel argues: "Appellee had significant assets at her disposal from which she could maintain her lifestyle. Appellee chose to remove herself from the marital residence and rent an apartment, almost doubling the parties' living expenses. She then made no effort to find employment in eighteen (18) months prior to trial." We

observe that Daniel fails to cite the record in support of any of these allegations, in violation of App.R. 16(A)(7). It is well-settled that it is not the duty of an appellate court to comb the record in search of the evidence necessary to sustain an appellant's claimed error. *Kitchen v. Welsh Ohio, LLC*, 10th Dist. No. 01AP-1003, 2002-Ohio-4012, at ¶25. While we have reviewed the transcript, it is not the duty of this court to search the record to find support for the arguments asserted by Daniel. He has therefore failed to support this argument by reference to the record, and for this reason alone, his argument lacks merit.

{¶51} In any event, the reasons cited by the trial court in support of its award of temporary spousal support, discussed below, demonstrate the court did not abuse its discretion in making its award.

{¶52} Further, Daniel argues that, because the parties had a prenuptial agreement in which each party waived the right to spousal support, Michele was not entitled to any award of temporary spousal support.

{¶53} R.C. 3105.18(B) allows a court to award either party reasonable temporary spousal support during the pendency of any divorce proceeding. Reasonable support is the amount which an obligor has the ability to pay and which is sufficient to meet the obligee's present needs. *Norton v. Norton* (1924), 111 Ohio St. 262, 269-270. The purpose of awarding temporary spousal support is to preserve the status quo during the divorce proceeding. *Kahn v. Kahn* (1987), 42 Ohio App.3d 61, 68. Moreover, a trial court may award temporary spousal support during the pendency of a divorce action pursuant to R.C. 3105.18 despite the existence of a prenuptial agreement to the contrary. *Cangemi v. Cangemi*, 8th Dist. No. 86670, 2006-Ohio-2879, at ¶14,

discretionary appeal not allowed at 2006-Ohio-6171, 2006 Ohio LEXIS 3316; *Mulvey v. Mulvey* (Dec. 4, 1996), 9th Dist. No. 17707, 1996 Ohio App. LEXIS 5518, *7, citing *Fields v. Fields* (Apr. 8, 1992), 9th Dist. No. 15235, 1992 Ohio App. LEXIS 1878.

{¶54} There is no set formula under R.C.3105.18 to guide courts in arriving at an appropriate amount of temporary spousal support. *Gourash v. Gourash* (Sept. 2, 1999), 8th Dist. Nos. 71882 and 73971, 1999 Ohio App. LEXIS 4074, *18. The only explicit limitation in R.C. 3105.18(B) is that the award must be "reasonable." Id. Courts are given discretion in deciding what is reasonable support because that determination is dependent on the unique facts and circumstances of each case. *Gourash*, supra, citing *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128.

{¶55} It is undisputed that there was a substantial disparity between the parties' incomes that resulted from their decision that Michele would be a stay-at-home mother while Daniel continued his full-time employment. We agree with the following finding of the trial court in its August 10, 2009 judgment on the parties' objections to the magistrate's decision:

{¶56} "The Court finds it is within the discretion of the Court to award temporary spousal support notwithstanding the parties' execution of their prenuptial agreement ***. The Court notes Daniel, Jr. was not born at the time [the prenuptial agreement] was executed by the parties. Nor was Mother pregnant at the time [it] was signed. Mother remained at home after Daniel, Jr.'s birth. She had a modest business venture from home selling items on eBay. Pursuant to statute and case law, an award of temporary spousal support was appropriate as was determined by the Magistrate. However, the Court finds Father's objection is well taken as to the amount of support. The temporary

spousal support order is modified to the sum of $900.00 per month, effective August 1, 2007 through July 1, 2008. Inclusion of Mother's earnings through her home business warrants a modification. ***"

{¶57} It is worth noting that the amount of temporary spousal support covered only an 11-month period, although the entire litigation in the trial court lasted two and one-half years.

{¶58} We hold the trial court based its award of temporary spousal support on sound reasons, which it set forth in its judgment, and the award was therefore reasonable. As a result, we cannot say the trial court abused its discretion in making its award.

{¶59} Daniel's fourth assignment of error is overruled.

{¶60} For his fifth assignment of error, Daniel alleges:

{¶61} "The trial court erred and abused its discretion when it denied the appellant's motion to reopen the hearing."

{¶62} Daniel contends that the trial court erred in failing to grant his second motion to reopen the trial after the close of the evidence. This court has held that the decision whether to grant a motion to reopen a case is within the sound discretion of the trial court. *Longo v. Longo*, 11th Dist. No. 2004-G-2556, 2005-Ohio-2069, at ¶22, discretionary appeal not allowed at 106 Ohio St.3d 1555, 2005-Ohio-5531, 2005 Ohio LEXIS 2417; *Nozik v. Mentor Lagoons, Inc*. (May 6, 1994), 11th Dist. No. 93-L-057, 1994 Ohio App. LEXIS 1957, *6. Therefore, the trial court's judgment will not be reversed upon appeal save an abuse of discretion. Id.

{¶63} Daniel states in his affidavit filed in support of his motion that Michele has obtained a position as a police dispatcher working rotating shifts. He argues that because the magistrate's decision to designate Michele as residential parent for school purposes was based primarily on the fact that Michele was not going back to work, the trial court abused its discretion in not reopening the trial. However, the record does not support his argument. In support of this contention, appellant relies on the following statement of the magistrate: "This decision is based on the best interest of the child primarily based on the available time each parent has to parent the child." The magistrate never said his decision was based on the assumption that Michele would not go back to work. We also note that the magistrate found that Michele had a long history of part-time employment during the marriage. Further, the magistrate found that the extent of her services at the pet kennel was yet to be determined. The magistrate's decision, therefore, contemplated that Michele would work at least on a part-time basis.

{¶64} We further observe that in his affidavit, Daniel did not state that Michele's employment as a dispatcher was full-time. Moreover, he did not state when Michele began her employment; when he discovered it; or why he did not bring her employment to the court's attention during the three-day trial.

{¶65} Based on our thorough review of the record, in the circumstances presented, we cannot say the trial court abused its discretion in denying Daniel's second motion to reopen the trial.

{¶66} Appellant's fifth assignment of error is overruled.

{¶67} For the reasons stated in the Opinion of this court, the assignments of error are without merit. It is the judgment and order of this court that the judgment of the Lake County Court of Common Pleas, Domestic Relations Division, is affirmed.

MARY JANE TRAPP, P.J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.