

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CRYSTAL VEAL

Appellee

v.

DAVID DILAURO

Appellant

C. A. No. 24620

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2008-09-2904

DECISION AND JOURNAL ENTRY

Dated: October 28, 2009

BELFANCE, Judge.

{¶1} Appellant, David DiLauro, appeals the judgment of the Summit County Court of Common Pleas, Domestic Relations Division, that increased his child support obligation for the children he shares with Appellee, Crystal Veal. For the reasoning set forth below, this Court reverses.

I.

{¶2} In July 2008, David DiLauro was determined to be the father of twin girls born to Crystal Veal in April 2007. DiLauro and Veal were never married. Following an administrative hearing in September 2008, the Summit County Child Support Enforcement Agency (“CSEA”), determined that DiLauro should pay child support for the girls in the amount of \$757.73 per month.

{¶3} On September 24, 2008, DiLauro filed an objection to the CSEA order; he alleged that various figures used to calculate his support obligation were incorrect. A hearing before a

magistrate revealed, inter alia, that Veal's credit for her other children living with her was not reduced by the amount of child support she receives for one of the children; that DiLauro was given credit for one child who was not actually living with him; that CSEA used the wrong figure for work-related child care costs; and, that both parties' union dues were omitted from the calculation. In his ruling of December 10, 2008, the magistrate recalculated the support order using the appropriate figures and determined that DiLauro would pay \$1,010.92 per month in support.

{¶4} On December 23, 2008, DiLauro filed an objection to the magistrate's decision. He again argued that figures used to calculate his support obligation were incorrect. DiLauro did not request nor submit a transcript of the magistrate's hearing.

{¶5} On December 26, 2008, Veal filed a letter with the court addressing DiLauro's objection. In her letter, Veal also raised issues relating to whether or not DiLauro continues to pay child support for another child and whether he receives income from sources not previously disclosed. Veal also did not request nor file a transcript of the magistrate's hearing.

{¶6} The trial court construed each pleading filed by DiLauro and Veal as objections and reviewed the magistrate's decision in light of the issues raised by each party. On January 8, 2009, the trial court issued a decision sustaining one of Veal's objections. The court ruled that DiLauro would not receive a credit for child support that he no longer pays and ultimately adjusted DiLauro's support amount for the children he shares with Veal to \$1,055.58 per month.

{¶7} DiLauro appealed the trial court's ruling to this Court.

II.

{¶8} DiLauro assigns the following two errors on appeal: (1) the trial court erred by sustaining Veal's objection to a factual finding in the magistrate's decision when the trial court

did not have a transcript of the hearing; and, (2) that the trial court erred in omitting some of DiLauro's expenses that had been included in the magistrate's calculation of support.

RULING ON MAGISTRATE'S DECISION

{¶9} DiLauro first argues that the trial court erred by sustaining one of Veal's objections to the magistrate's decision without a transcript of the magistrate's hearing. We agree.

{¶10} Civil Rule 53 permits parties to file objections to a magistrate's decision. Civ.R. 53(D)(3)(b). The rule further provides: "An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), *shall be supported by 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.*" (Emphasis added.) Civ.R. 53(D)(3)(b)(iii). The party who files an objection to the magistrate's decision has the duty to provide the transcript or, if one is not available, an affidavit of the evidence. *Weitzel v. Way*, 9th Dist. No. 21539, 2003-Ohio-6822, at ¶17.

{¶11} Generally, upon submission of the objections to the trial court, the trial court is permitted to modify a magistrate's decision, adopt it in whole or in part, re-hear the matter, take additional evidence, or refer the matter back to the magistrate. Civ.R. 53(D)(4)(b). However, if the objecting party objects to the magistrate's factual findings, and does not provide the trial court with a transcript or an affidavit of the evidence, the "trial court's review is limited to the legal conclusions in light of the facts found by the magistrate, unless the trial court holds further hearings." *Chester v. Chester*, 9th Dist. No. 22072, 2004-Ohio-6264, at ¶23. Thus, in the absence of a transcript, the trial court must accept the magistrate's findings of fact as correct, despite any objections, and may only rule on whether the legal conclusions drawn from those

facts were accurate. *Galewood v. Terry Lumber & Supply Co.* (Mar. 6, 2002), 9th Dist. No. 20770, at *1.

{¶12} In the present matter, both DiLauro and Veal filed pleadings that the trial court considered as objections to the magistrate's decision. However, neither party filed a transcript of the hearing nor an affidavit as to the evidence presented to the magistrate. DiLauro argued in his objection that the magistrate utilized incorrect figures to calculate his child support order with respect to Veal's twins. Veal argued in her objection that DiLauro was improperly credited for child support to another child that he no longer pays due to the child reaching the age of majority. Both contentions relate to the magistrate's factual findings.

{¶13} Without the benefit of a transcript or conducting a new hearing on the matter, the trial court removed DiLauro's credit for child support paid for other children and recalculated the annual support obligation. In its recalculation, the trial court inexplicably adjusted other figures found by the magistrate and included on the Child Support Computation Worksheet. For example, the magistrate found that DiLauro was required to pay \$728 per year in mandatory work-related deductions and that Veal's deduction for this item was \$390 per year. However, the trial court entered "0" for each party for this expense in its support worksheet. With respect to the amount of local income taxes paid or estimated to be paid, the magistrate found that the appropriate figure for DiLauro was \$1,147 and the appropriate figure for Veal was \$649. The trial court changed those figures to \$1,275 for DiLauro and \$721 for Veal. Lastly, for the lines on the worksheet referencing federal and state child care tax credits, the magistrate entered "0" on each for Veal, but the trial court instead entered \$1,035 and \$291 respectively.

{¶14} Since neither party provided a transcript and the trial court did not hold a new hearing, the court was not permitted to modify the magistrate's findings of fact with respect to

the figures used to calculate the parties' incomes. See *Weitzel* at ¶18; *Galewood*, at *1. Rather, the trial court was required to accept the factual findings as to these amounts and only review the magistrate's conclusions of law. *Galewood* at *1. Accordingly, the trial court committed reversible error by adjusting the parties' income figures and recalculating DiLauro's support obligation based on the new figures. See *Bartell v. Rainieri*, 9th Dist. No. 22080, 2005-Ohio-258, ¶¶18-20 (in ruling on mother's objection as to magistrate's determination that father's income fluctuated for purposes of calculating child support, trial court was not permitted to instead find that father's income decreased rather than fluctuated when mother did not submit transcript of magistrate's hearing); *Weitzel* at ¶22 (without transcript, trial court could not adjust child support order when father objected to magistrate's finding that father's income should be based on an 80-hour work week). DiLauro's first assignment of error is sustained.

{¶15} In light of our ruling on the first assignment of error, we need not address DiLauro's second assignment of error.

III.

{¶16} We sustain DiLauro's first assignment of error and need not address his remaining assignment of error. The judgment of the trial court is reversed and the matter remanded for proceedings consistent with this decision.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

EVE V. BELFANCE
FOR THE COURT

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

DAVID DILAURO, pro se, Appellant.

EDMUND M. SAWAN, Attorney at Law, for Appellee.