[Cite as *MacFarlane v. MacFarlane*, 2009-Ohio-6647.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93012

WILLIAM N. MACFARLANE

PLAINTIFF-APPELLEE

vs.

MARIE CHRISTINE MACFARLANE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART; REVERSED
IN PART AND REMANDED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Domestic Relations Division
Case No. CV D-294327

BEFORE: Sweeney, J., Gallagher, P.J., and Celebrezze, J.
RELEASED: December 17, 2009

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), is filed within ten (10) 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. II, Section 2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Marie Christine Macfarlane ("wife"), appeals pro se the trial court order modifying child support payments she makes to plaintiff-appellee, William N. Macfarlane ("husband"). After reviewing the facts of the case and pertinent law, we affirm in part, reverse in part, and remand for further proceedings.

{¶ 2} Husband and wife divorced on July 11, 2005, after more than 14 years of marriage. The couple have four children. In the divorce proceedings, the court granted custody of the children to husband, and ordered wife to pay child support of $51 per month until January 2007. The court reasoned that minimal child support was appropriate to allow wife, who had not held a traditional job in over 14 years, "to get on her feet * * * support herself and contribute to the support of her children." We affirmed the divorce judgment in *Macfarlane v. Macfarlane,* Cuyahoga App. No. 86835, 2006-Ohio-3155 ("*Macfarlane I*").

{¶ 3} On January 10, 2007, husband filed a motion to modify child support. After a hearing, the magistrate made the following findings: Husband's annual gross income was $103,500. Wife has a bachelor's degree in mechanical engineering, although she has not worked in that field since 1991. Wife was given an opportunity to update her education and seek employment; however, she failed to do this, claiming that her religious convictions obligated her to be a stay-at-home mom and home school her children. Based on these findings, the magistrate concluded that wife was voluntarily unemployed and imputed to her a

$54,500 income. Using the basic child support worksheet, the magistrate calculated a monthly payment to husband of $836.48. However, the magistrate modified this amount downward to $323.85, based on the disparity in income between husband and wife and the fact that wife's income was imputed rather than actual.

{¶ 4} Both parties filed objections to the magistrate's decision. Husband argued that a downward deviation in child support was inappropriate because "the disparity in the parties' incomes is caused by [wife's] decision not to work." Wife, on the other hand, argued that her potential or imputed income should be closer to $20,000 annually, because her religious convictions allowed her to work part- time, at most, while still properly raising her children during scheduled visitation times.

{¶ 5} On September 12, 2007, the court overruled both parties' objections, adopted the magistrate's decision, and granted husband's motion to modify child support, ordering wife to pay husband $323.85 per month.

{¶ 6} On May 14, 2008, wife filed a motion to modify child support due to a change in circumstances, asserting that husband's income had increased and her actual income was less than the income imputed to her by the court. On September 3, 2008, the court held a hearing. Evidence was presented that wife found part-time employment earning $28,200 annually. Additionally, husband testified that his annual gross income was $124,000. Using the basic child support worksheet, the magistrate calculated a monthly payment to husband of

$447.98. However, on October 1, 2008, the magistrate issued a decision again modifying this amount downward to $51 per month, based on a "significant disparity of income."

{¶ 7} Both parties filed objections to this decision. Husband argued that it was unjust or inappropriate for the court to decrease wife's support obligation to the same amount it was in 2005, when she was newly divorced and unemployed. Husband further argued that wife has had three years to find full-time employment, yet she voluntarily chose to work only part-time. Husband requested that wife be ordered to pay increased child support "to help towards the extra expense of educating the four boys in private, Catholic schools." Wife objected to the magistrate's decision for various reasons, ultimately requesting that husband be ordered to pay her child support.

{¶ 8} On February 9, 2009, the court sustained husband's objections, overruled wife's objections, and ordered the magistrate to issue an amended/supplemental decision.

{¶ 9} On February 19, 2009, the magistrate issued an amended decision, increasing wife's child support obligation to $460.70 per month, based on "the standard that the four minor children attend private Catholic school, which both parties prefer over public school." Husband and wife again filed objections. Husband argued that the amount should be higher to properly reflect wife's share of the private schooling cost. Wife objected for various reasons and again requested the court to order husband to pay her child support.

{¶ 10} On March 18, 2009, the court overruled both parties' objections and adopted the magistrate's decision, ordering wife to pay husband $460.70 per month in child support. It is from this order that wife appeals, and raises six assignments of error for our review. We address assignments of error one and two together:

{¶ 11} "I. The trial court erred as a matter of law when it increased child support without sufficient factual findings supported by substantial evidence showing a change in circumstances meriting said increase; and when it disregarded both the magistrate's factual finding of a substantial disparity of income between the parents and his conclusion of law that the disparity should be minimized by lowering the amount of child support obligation of [wife].

{¶ 12} "II. The court was wrong as a matter of law and abused its discretion by ignoring statutory provisions for deviating from child support calculation considering the amount of time [wife] spends with her children, their needs, the parents' relative financial resources, and the importance of maintaining for the children circumstances and a standard of living similar to that experienced before [husband] filed for divorce."

{¶ 13} We first address our standard of review in the instant case. The Ohio Supreme Court has stated that "[i]t is well established that a trial court's decision regarding child support obligations falls within the discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion." *Pauly v. Pauly* (1997), 80 Ohio St.3d 386, 390, citing *Booth v. Booth* (1989), 44 Ohio St.3d 142,

144. While the trial court, when ruling on a magistrate's decision, "shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law," an appellate court reviews a trial court's determination in divorce cases for an abuse of discretion. Civ.R. 53(D)(4)(d). "The term '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 (internal citations omitted).

{¶ 14} Pursuant to R.C. 3119.79, when a party requests a child support modification, in a case where the parents' combined gross income is between $6,600 and $150,000 annually, the court must recalculate the child support amount using the applicable statutory guidelines, schedules, and worksheets. A recalculated amount that varies more than ten percent from the existing amount "shall be considered by the court as a change of circumstance substantial enough to require a modification of the child support amount." R.C. 3119.79(A). See, also, R.C. 3119.21, 3119.22, 3119.23.

{¶ 15} R.C. 3119.04(B) applies to child support obligation cases in which the "combined gross income of both parents is greater than one hundred fifty thousand dollars per year." R.C. 3119.01(C)(7) defines "gross income" as "the total of all earned and unearned income from all sources * * *."

{¶ 16} If it is determined that the combined gross income of both parents is over $150,000, R.C. 3119.04(B) states that the court "shall determine the amount

of the obligor's child support obligation on a case-by-case basis and shall consider the needs and the standard of living of the children who are the subject of the child support order and of the parents. The court or agency shall compute a basic combined child support obligation that is no less than the obligation that would have been computed under the basic child support schedule and applicable worksheet for a combined gross income of one hundred fifty thousand dollars, unless the court or agency determines that it would be unjust or inappropriate and would not be in the best interest of the child, obligor, or obligee to order that amount. If the court or agency makes such a determination, it shall enter in the journal the figure, determination, and findings."

{¶ 17} As evidenced by R.C. 3119.04, domestic relations courts have more discretion in computing child support when the parents' combined income is greater than $150,000 annually. "[T]he statute leaves the determination entirely to the court's discretion, unless the court awards less than the amount of child support listed for combined incomes of $150,000. * * * However, in making its determination, the court is required to 'consider the needs and the standard of living of the children who are the subject of the child support order and of the parents.'" *Cyr v. Cyr*, Cuyahoga App. No. 84255, 2005-Ohio-504, at ¶54, citing R.C. 3119.04(B).

{¶ 18} Although the court is not required to factor into its decision the deviation standards found in R.C. 3119.22 and 3119.23 in high income cases, the court certainly may take these standards into consideration. See *Siebert v.*

Tavarez, Cuyahoga App. No. 88310, 2007-Ohio-2643 (holding that "because R.C. 3119.04(B) gives the trial court broad discretion to determine the appropriate amount of child support, we likewise cannot say that availing oneself of the factors for some guidance is improper").

{¶ 19} In the instant case, the combined gross income of husband and wife is $152,700,[1] therefore, child support determinations fall under the ambit of R.C. 3119.04(B). In the October 1, 2008 decision, the magistrate used the basic child support computation worksheet to find that wife, as the non-residential parent, or "obligor," had an annual child support obligation of $5,369, or $447.98 per month. The magistrate then made an adjustment related to health insurance, which brought wife's annual obligation to $4,367. Line 27a of the worksheet calls for a "[d]eviation from * * * support amount * * * if amount would be unjust or inappropriate." The magistrate indicated that a deviation was appropriate due to "disparity in income" and subtracted $3,767 from wife's adjusted child support obligation. The deviation brought wife's final obligation to $600 annually, or $51 per month, including the processing fee.

{¶ 20} On objection, the court rejected this decision and required the magistrate to issue an amended decision.

{¶ 21} In the February 19, 2009 amended decision, the magistrate again used the basic child support computation worksheet to find that wife had an

[1]The October 1, 2008 magistrate's decision lists husband's gross income at $124,000 and wife's gross income as $28,700.

annual child support obligation of $5,420, or $460.70 per month, including the processing charge. No adjustments were made relating to health insurance.[2] Additionally, line item 24a, labeled "[d]eviation from * * * support amount * * * if amount would be unjust or inappropriate" was left blank. The magistrate's amended decision reflects no deviation from the basic child support obligation, and finds the following: "After considering the needs and the standard of living of the children who are the subject of this child support order, and of the parents, specifically the standard that the four minor children attend private Catholic school which both parties prefer over public school, the Court finds that child support of [$460.70] per month is not unjust or [in]appropriate and would be in the best interest of the children, the Plaintiff, and the Defendant."

{¶ 22} The only factor that the court took into consideration in ordering wife to pay $460.70 in child support was the "standard of living" that the children attend private school. Notably, what the court did not take into consideration was the disparity in income between husband and wife. The court found that husband's income was $124,000 and wife's income was $28,200. In other

[2]The slight difference in obligation between the October 1, 2008 amount of $5,369 and the February 19, 2009 amended amount of $5,420 presumably can be attributed to two things: First, the original worksheet listed wife's "other taxable income" at $4,500 for half of the royalties from books husband authored. However, the amended worksheet listed this same item at $4,000. Second, the original computations were made from a worksheet that was revised and in use as of August 2008. However, the amended computations were made from an older version of the worksheet that was revised in April 2002. The April 2002 worksheet does not include the same health insurance related line item adjustments that are included in the August 2008 worksheet.

words, wife earns less than one quarter of what husband earns. In what can be said to be a somewhat unique aspect of this case, it is the lower income earning parent who is being ordered to pay child support to the higher income earning parent. The magistrate's modified decision increased wife's payments, despite the fact that she made less money per year, and husband made more money per year, since the previous modification.

{¶ 23} Although the court was not required to justify its decision under R.C. 3119.04 because it ordered the basic calculated amount of $460.70, it stated that the amount was "not unjust" because the parties preferred private school over public school, which added an expense in raising the children. However, a review of the record shows that wife was reluctant to enroll the children in private school. Given her preference, wife would home school her four children. During the September 3, 2008 hearing on wife's motion to modify child support, she stated, "It's an offense against me to say that our children need to be in Catholic schools when the records will show that the only reason the children are in those schools is because the children were taken away from me where they were happily being home-schooled."

{¶ 24} A central dispute between husband and wife, dating back to the original divorce proceedings, has been the issue of home schooling. In the July 11, 2005 divorce decree, which is 47 pages, the court made the following findings of fact and conclusions of law regarding home schooling: "[Wife], from the beginning of these discussions, was adamant that she did not want her children

in a structured school. She felt so strongly and passionately about the benefits of home schooling that she and [husband] went head-to-head in disagreement with respect to home schooling. * * * [Wife] has maintained throughout these proceedings that this custody/allocation of parental rights and responsibilities matter is a home schooling case. Unfortunately, [wife] has never been able to comprehend that home schooling was only a part of this case — that there are other important factors the Court must consider in a custody/parenting case. Her crusade and cause for home schooling, unfortunately, has had priority over the needs of her children. * * * When a Court is faced with two parents fighting as bitterly as these parents have over such an issue, it must seek to lessen the stress on the children rather than feed the controversy. The Court, as a result, believes that putting these children in a structured school setting is in their best interest." See, also, *Macfarlane I*, supra, at ¶29 (quoting the trial court's reasoning, in part, for awarding custody of the children to husband: "'[wife's] violation of a court order in the name of home schooling left this court no other choice. * * * The needs of her children were not the driving force; rather it was her anger at [husband] and her home schooling crusade that were the compelling forces of her actions'").

{¶ 25} It seems unjust and inappropriate to require wife to pay for private schooling when enrolling the children in a traditional school, be it private or public, was clearly not her preference. Rather, the court ordered the children to be enrolled in a traditional school, and husband chose a private school involving

tuition. Coupled with the fact that husband's income is substantially greater than wife's, this weighs in favor of child support payments that are less than the basic calculated amount. With R.C. 3119.04(B) in mind, and given the tortured history of home schooling in the instant case, we find it is in the best interest of the children and the parents to not factor tuition into the child support calculation. As the trial court aptly put it in the original divorce decree, we "must seek to lessen the stress on the children rather than feed the controversy."

{¶ 26} Accordingly, the trial court erred in adopting the magistrate's decision, insomuch as that decision is inconsistent with the purpose of R.C. 3119.04, to protect the best interests of the children and the parents. Wife's first and second assignments of error are sustained.

{¶ 27} In wife's third assignment of error, she argues as follows:

{¶ 28} "III. The trial court erred as a matter of law when the magistrate asserted that the court was forbidden to order a residential parent to pay the non-residential parent child support."

{¶ 29} This assignment of error is somewhat misleading as nowhere in the record does the magistrate "assert" that a residential parent is "forbidden" to pay child support. The magistrate noted that "the statutory child support scheme in no [way] contemplates a residential parent paying a non-residential parent child support, absent a spousal support set-off." Furthermore, this Court has previously affirmed a child support award to a non-residential parent when the

award was in the best interests of the child. See *Kanel v. Kanel* (Oct. 19, 1989), Cuyahoga App. No. 56013.

{¶ 30} Accordingly, wife's third assignment of error is overruled.

{¶ 31} Wife's fourth assignment of error states:

{¶ 32} "IV. The trial court erred as a matter of law when it failed to undertake an independent review of objected matters; the court made no determination whether there was an error of law or other defect evident on the face of the magistrate's decision."

{¶ 33} Because we found that the court abused its discretion in adopting the magistrate's decision, this assignment of error is moot. See App.R. 12(A)(1)(c).

{¶ 34} Wife's fifth assignment of error states:

{¶ 35} "V. The trial court erred as a matter of law and abused its discretion when, without good cause, it extended [husband's] time to file objections to [the] magistrate's Oct. 1, 2008 decision."

{¶ 36} A trial court has broad discretion in determining whether to grant a motion for an extension of time and the court's decision will not be reversed on appeal absent an abuse of discretion. *Miller v. Lint* (1980), 62 Ohio St.2d 209, 213-14. In addition, Civ.R. 53(C)(5) states that the court shall allow an extension of time for a party to object to a magistrate's decision for good cause.

{¶ 37} In the instant case, husband filed a motion to extend time to file objections to the magistrate's decision on October 8, 2008, based on the availability of the transcript from the September 3, 2008 hearing. On October 16,

2008, the court granted husband's motion, allowing him 30 days after the transcript became available to file his objections. On November 21, 2008, wife filed a motion to limit the time within which plaintiff could file his objections. On December 2, 2008, the court granted wife's motion, requiring husband to file his objections by January 15, 2009. Husband filed his objections to the magistrate's decision on January 13, 2009.

{¶ 38} Wife argues that additional time to obtain the transcripts does not qualify as "good cause" because a transcript is "irrelevant to filing objections." On the contrary, objections to factual findings by a magistrate must "be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding * * *." Civ.R. 53(D)(3)(b)(iii). Accordingly, the court did not abuse its discretion when it granted husband's motion for extension of time to file objections to the magistrate's decision and wife's fifth assignment of error is overruled.

{¶ 39} In wife's sixth and final assignment of error, she argues as follows:

{¶ 40} "VI. The trial court erred as a matter of law when it prevented questioning of [husband] regarding his voluntary adherences [sic] to his religion (as shared parents and children) which included doctrines and teachings regarding both their obligations toward each other and their children."

{¶ 41} Specifically, wife argues that there are "extraordinary obligations" that she and husband have toward their children based on their shared faith in the Catholic Church. She argues that these obligations are part of an ongoing

agreement between her and husband, and that evidence of this agreement should have been admissible at the hearing on her motion to modify child support.

{¶ 42} At the September 3, 2008 hearing before the magistrate, wife attempted to establish, via testimony from husband, that as part of their family's religious convictions, she should not work outside the home. The magistrate ruled that evidence inadmissible, stating that generally, "matters of religious conviction are not something that this Court could inquire into." The magistrate further noted that wife previously attempted to introduce religious issues into these proceedings, and the court previously ruled them inadmissible; thus, the court concluded that these issues were inadmissible in the instant case under the doctrines of res judicata and stare decisis. The standard of review for admissibility of evidence is abuse of discretion. See *Peters v. Ohio State Lottery Comm*. (1992), 63 Ohio St.3d 296. While parents have the right to control the religious upbringing of their children, a parent's religious beliefs should not be a motivating factor in determining child custody issues. *deLevie v. deLevie* (1993), 86 Ohio App.3d 531. Rather, child custody issues, similar to the child support issue central to this case, are based on what is in the best interests of the children. Put in other words, the Ninth District Court of Appeals of Ohio has held the following:

{¶ 43} "[W]hile the court may never engage in defining the contours of, or evaluating the merits of, religious doctrine, it 'may consider the religious practice

of the parents in order to protect the best interests of a child.' The crucial distinction lies between the court's treatment of religious belief and its inquiry into religiously motivated actions. The court may not burden a parent's choice of religious belief or association by refusing to award custody on that basis, but neither may a parent shield her actions from the court's scrutiny by claiming religious motivation for those actions. " *Tsolumba v. Tsolumba* (June 21, 1995), Summit App. No. 16872, citing *Pater v. Pater* (1992), 63 Ohio St.3d 393, 395; *Birch v. Birch* (1984), 11 Ohio St.3d 85.

{¶ 44} Wife argues that by excluding her husband's religious beliefs from the record, the court unconstitutionally restricts her right to the free exercise of religion. Wife cites various court cases to support her position. However, none of these cases are on point with the issue before us, as they involve the role of our nation's legal system in disputes within or between various churches. See, e.g., *Jones v. Wolf* (1979), 443 U.S. 595 (holding that, generally, courts have the authority to resolve church property disputes); *State ex rel. Morrow v. Hill* (1977), 51 Ohio St.2d 74 (concerning a split within a church between a faction that remained aligned to the national organization and a faction that wished to disassociate itself from the national church); and *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976), 426 U.S. 696 (finding jurisdiction over a property and asset dispute between a church Diocese and a former Bishop).

{¶ 45} Furthermore, the law-of-the-case doctrine applies to this assignment of error. "The law of the case is a longstanding doctrine in Ohio jurisprudence.

'[T]he doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.'" *Hopkins v. Dyer*, 104 Ohio St.3d 461, 2004-Ohio-6769, at ¶15, citing *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3.

{¶ 46} In *Macfarlane I*, supra, we held that "[a]ny claimed agreement resulting from the Catholic marriage ceremony" is barred by the statute of frauds, "which states that agreements 'made upon consideration of marriage' must be in writing to be enforceable" and that "absent evidence in the record that the trial court's custody decision was motivated by a conviction that either parent's religious belief was in the best interest of the child, a trial court's custody decision does not implicate the Establishment Clause or the Free Exercise Clause of the First Amendment to the United States Constitution or the Religious Freedom Provision of the Ohio Constitution." Id. at ¶18 and 47.

{¶ 47} As the court's child support modification was a result of a subsequent proceeding at the trial level, the court was bound by the law of the case to rule evidence of the parties' alleged religious obligations inadmissible. Accordingly, the court did not abuse its discretion when it prevented wife from questioning husband regarding this issue, and wife's final assignment of error is overruled.

Judgment affirmed in part, reversed in part, and remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellant and appellee share equally the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas, Domestic Relations Division 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.

JAMES J. SWEENEY, JUDGE

SEAN C. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR