[Cite as *In re J.C.*, 2021-Ohio-2450.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE J.C., ET AL.	:	
[Appeal by Father, J.V.C.]	:	Nos. 109745 and 109746

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 15, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. CU16101850 and CU16101851

Appearances:

Hans C. Kuenzi, Co., L.P.A., and Hans C. Kuenzi, *for appellant.*

Jay F. Crook, Attorney at Law, L.L.C., and Jay F. Crook, *for appellee.*

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Plaintiff-appellant, J.V.C. ("Father"), appeals from the trial court's judgment that granted the motions of defendant-appellee, S.Y.C. ("Mother"), to waive or recalculate child support and to share federal tax credits. We affirm.

I. Background

{¶ 2} J.V.C. ("Father") and S.Y.C. ("Mother") have two minor children: J.C. and G.C. Father was designated the residential parent and legal custodian of the children by order of the Lake County Juvenile Court on December 22, 2009. Mother was awarded a modified version of standard visitation with the children and ordered to pay child support to Father.

{¶ 3} Mother subsequently filed motions to modify parenting time and child support in the Lake County Juvenile Court. On September 6, 2013, the juvenile court adopted the magistrate's decision of May 1, 2013, and awarded Mother equal visitation with the children on an alternate weekly basis. It also issued a revised child support order. The trial court's judgment entry ordered that if Mother provided health insurance for the children, she was to pay "$626.23 per month, per child," plus a processing fee, as support for the children. However, the child support computation worksheet attached to the magistrate's decision, which the trial court adopted, reflected that Mother's annual support obligation for the two children when she provided health insurance was $7,514.78, which equates to $626.23 per month for the two children, not $626.23 per month per child. Both Father and Mother concede that Mother has paid, and Father has received, $626.23 per month, exclusive of a processing fee, in child support since the September 2013 order.

{¶ 4} On October 16, 2015, Mother filed motions to waive and/or recalculate child support and to share federal tax credits in the Lake County Juvenile Court case. On January 12, 2016, while the motions were pending, the Lake County Juvenile

Court transferred all proceedings to the Cuyahoga County Juvenile Court, and in August 2016, Mother refiled her motions.

{¶ 5} The Cuyahoga County Juvenile Court held a hearing on Mother's motions on December 5, 2018. On April 13, 2020, the trial court issued its written judgments regarding the motions.

{¶ 6} The trial court found that on September 6, 2013, the Lake County Juvenile Court had modified its original orders, increasing Mother's parenting time to alternating weekly time with the children, and granting Mother's motion to recalculate child support. The trial court found that the Lake County Juvenile Court had ordered Mother to pay "$626.23 per month per child" for support of the parties' minor children, and designated Mother as the health insurance obligor. The trial court further found that contrary to the Lake County Juvenile Court's order, the annual sum of $7,514.78 to be paid by Mother as child support, divided by 12 months and two children, equaled $313.12 per month per child, and therefore, "the wage withholding order should have reflected a monthly total of $626.23 per month exclusive of processing fee or charge."

{¶ 7} The trial court also found "that by 2015, the parties had become fully employed, each parent's income had significantly increased such that their combined annual earnings began to and continue to exceed the maximum annual incomes provided in the basic child support schedule established pursuant to R.C. 3119.021." The court found that J.C. and G.C. had each reached mandatory school age prior to 2016, Mother is married and has two minor children from the marriage who live with her, and Father lives with his girlfriend and one child from that

relationship. The court also found that Mother pays for private health insurance for J.C. and G.C.

{¶ 8} The court stated that it had prepared a child support computation worksheet, and that based on the calculations in the worksheet, there was a 10 percent change in the current child support order. Thus, the court concluded "there is a change of circumstances as defined under R.C. 3119.79." The court stated:

> R.C. 3119.04(B) is applicable herein, and this court further considered the needs and standard of living of the child(ren); the ability of the parents to meet the needs and maintain the standard of living of the child(ren) with or without the support of the other parent; the amount of time the child(ren) spends with each parent (26 weeks per year per parent); extracurricular activities for the child(ren); and the ability of each parent to maintain adequate housing for the child(ren); disparity in income between the parents (obligee's income is nearly double obligor's income).

{¶ 9} The court found that "modification/deviation of child support to $0 is in the best interest of the child[ren] as father's support obligation exceeds the mother's obligation." The court further found that

> it would be equitable to (1) modify and correct the prior calculation and order the obligee to return/repay the overpayment of child support which accrued between October 16, 2015, to December 4, 2018, in the amount of $313.12 for 37.50 months, which totals $11,742.00; (2) start the decrease in the child support order effective and retroactive to the date of hearing of the motion to modify child support to wit: 12/5/2018; (3) mother shall claim the child herein for federal tax dependency and credit purposes, while father shall continue to claim the federal tax dependency and credits for the child's sibling.

{¶ 10} Accordingly, the court granted Mother's motions to recalculate/modify child support and to share the federal tax credits, and ordered that effective December 5, 2018, Mother's child support obligation was reduced to $0. The trial court further ordered that Father was to repay to Mother within 30

days of the date of its order the overpayment of child support in the amount of $11,742 per child that had accrued between October 16, 2015, to December 4, 2018, and that Father was to repay Mother any overpayment of child support he received after December 5, 2018.

{¶ 11} The court also ordered that pursuant to R.C. 3119.30(B)(1), Mother and Father were to each carry private health insurance for the children to meet the medical needs of the children while in their custody. Finally, the court ordered that Mother may claim G.C. as a dependent for federal income tax purposes, beginning with tax year 2019, while Father may claim J.C. This appeal followed.[1]

II. Law and Analysis

A. A Substantial Change in Circumstances

{¶ 12} In his first assignment of error, Father contends that the trial court erred in modifying Mother's child support obligation in the absence of a substantial change in circumstances not contemplated by the parties when the 2013 child support order was issued.

{¶ 13} A trial court's decision regarding child support obligations falls within its discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). Thus, a reviewing court will reverse only for an abuse of that discretion. A trial court abuses its discretion when it acts unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

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[1] Mother's appeal of the trial court's judgments is addressed by this court in *In re J.C., et al.*, 8th Dist. Cuyahoga Nos. 109747 and 109748.

{¶ 14} R.C. 3119.02 states that for parents with a combined income of up to $150,000, a court shall issue a child support order by calculating the obligor's child support obligation in accordance with the guidelines set forth in R.C. 3119.021. If the parents have a combined income exceeding $150,000, the child support guidelines do not apply. Instead, R.C. 3119.04(B) states that where the parents' combined income exceeds $150,000, the court must establish the amount of child support on a "case-by-case basis," taking into consideration "the needs and the standard of living of the children who are the subject of the child support order and of the parents."

{¶ 15} R.C. 3119.79(A) permits either the obligor or the obligee under a child support order to request a modification of the amount of child support due to a substantial change in circumstances. When an existing child support order has been entered using the R.C. 3119.02 child support guidelines, the court is required to recalculate the amount of child support owing under the guidelines. If the recalculated amount of child support exceeds the existing order by ten percent or is ten percent less than the existing order, the court shall consider the ten percent difference as a substantial change in circumstances warranting modification. R.C. 3119.79(A).

{¶ 16} However, as this court found in *Phelps v. Saffian*, 8th Dist. Cuyahoga No. 103549, 2016-Ohio-5514, "when the parties to a child support order collectively earn more than $150,000, what constitutes a substantial change of circumstances from the original support order is unclear. R.C. 3119.04 is silent on the matter." *Id.* at ¶ 13. Nevertheless, the *Phelps* court enumerated certain considerations to guide

courts in determining what constitutes a substantial change of circumstances sufficient to justify modification of child support when the parents' combined income exceeds $150,000:

> First, consistent with R.C. 3119.04(B), from which an original child support order would issue, the court must consider the needs and the standard of living of the child and the parents. With the exception of extraordinary individual medical or developmental issues, * * * the "needs" of a child are necessaries like food, clothing, shelter, medical care, and education. * * *
>
> Second, the court should be careful to give meaning to the word "substantial" as applied to what constitutes a change in circumstances warranting modification of child support. The word "substantial" means "drastic," "material," or "significant." * * *
>
> Third, the change in circumstances must be one that the parties did not contemplate at the time the court issued the original child support order. * * *
>
> Fourth, the court should be careful to separate child support from spousal support. * * * While an obligee parent's standard of living is a consideration under R.C. 3119.04(B), the court must not modify child support solely to offer the obligee parent a better standard of living.

Id. at ¶ 18-23.

{¶ 17} The trial court properly found there was a substantial change in circumstances after the 2013 child support order that justified a modification in Mother's child support obligation. Father's argument that the trial court incorrectly found a change in circumstances based solely on the over-ten-percent change in child support obligation determined from calculations on the child support worksheet has no merit, because the record reflects that the trial court also considered the *Phelps* factors in concluding that there had been a substantial change in circumstances to warrant modification of Mother's support obligation.

Specifically, the trial court found that there had been no change in Mother's child support obligation after 2013 despite the significant increase to Mother's parenting time in 2013 (alternating weekly time with the children). The trial court also found that by 2015, both Father and Mother were fully employed, and each parent's income had increased significantly such that their combined incomes exceeded $150,000; each child had reached mandatory school age prior to 2016; Mother was now married and had two children from the marriage who lived in her home; and Father lived with his girlfriend and one child from that relationship.

{¶ 18} The evidence produced at trial supported the trial court's judgment that these changes in circumstances were a substantial change that warranted modification of Mother's child support obligation. Mother's Exhibit II, the magistrate's decision relied upon by the Lake County Juvenile Court in ordering Mother's revised child support obligation in September 2013, indicated that Father's income in 2012 was $55,000, with an additional $60,000 from consulting fees, but that Father testified he would not earn that much from consulting in future years. Apparently, both Father and the Lake County Juvenile Court contemplated in 2013 that Father would make less money in the future. At trial in 2018, however, the evidence was clear that Father had earned well over $400,000 annually in recent years, while Mother earned around $250,000 per year. The evidence demonstrated that the average income disparity between Mother and Father's income over the three years for which W-2's were provided to the trial court (2015, 2016, and 2017) was over $225,000 per year, more than triple the income disparity between the

parties in 2013. In light of this evidence, Father's assertion that "very little" had changed between the parties since 2013 is specious.

{¶ 19} The trial court did not abuse its discretion in finding there was a substantial change not contemplated by the parties in 2013 that warranted modifying Mother's child support obligation. The first assignment of error is overruled.

B. A Child Support Obligation of $0

{¶ 20} In his second assignment of error, Father contends that even if there were a substantial change in circumstances sufficient to warrant modifying Mother's child support obligation, the trial court nevertheless abused its discretion by modifying Mother's support obligation to $0.

{¶ 21} It is undisputed that the parties' combined yearly gross income exceeds $150,000. The trial court has broad discretion under R.C. 3119.04(B) in determining the amount of child support where the combined income exceeds $150,000. *J.R. v. K.R.*, 8th Dist. Cuyahoga No. 106978, 2019-Ohio-1765, ¶ 14. Under the version of R.C. 3119.04(B) in effect when the parties litigated Mother's motions in 2018,[2] if the combined gross income of both parents is greater than $150,000 per year, in determining a court child support order, 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

[2] R.C. 3119.04 was modified effective March 28, 2019.

the subject of the child support order and of the parents." The statute further provides that

> [t]he court * * * shall compute a basic combined child support obligation that is not 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 * * * 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*."

(Emphasis added.) Former R.C. 3119.04(B).

{¶ 22} Thus, former R.C. 3119.04(B) requires the court to:

> (1) set the child support amount based on the qualitative needs and standard of living of the children and parents; (2) ensure that the amount set is not less than the $150,000-equivalent, unless awarding the $150,000-equivalent is inappropriate or unjust (i.e., would be too much); and (3) if it decides the $150,000-equivalent is inappropriate or unjust (i.e., awards less), then journalize the justification for that decision.

Siebert v. Tavarez, 8th Dist. Cuyahoga No. 88310, 2007-Ohio-2643, ¶ 30.

{¶ 23} Father contends that "by law, the trial court should have calculated Mother's child support as nothing less than her share of the maximum annual amount listed on the child support schedule." But this argument ignores the express language of former R.C. 3119.04(B) that the trial court may decide that the worksheet calculations for the $150,000-equivalent is "inappropriate or unjust" and not award that amount of support.

{¶ 24} Father contends that the trial court made no determination, however, that it would have been "inappropriate or unjust" for Mother to pay the $150,000-equivalent, and further that the trial court's observation that his annual support obligation under the worksheet would have been higher than Mother's is "irrelevant"

because "the only obligation" relevant to the support calculation is Mother's, as the support obligor. Father's arguments are without merit.

{¶ 25} The statute is clear that the trial court is allowed to deviate downward from the calculated child support obligation if it finds the calculated support would be "inappropriate or unjust." Furthermore, R.C. 3119.04(B) "'neither contains nor references any factors to guide the court's determination in setting the amount of child support,'" so the determination of how much child support an obligor must pay is left "entirely to the court's discretion." *J.R.*, 8th Dist. Cuyahoga No. 106978, 2019-Ohio-1765 at ¶ 14, quoting *Siebert*, 8th Dist. Cuyahoga No. 88310, 2007-Ohio-2643 at ¶ 31, and *Cyr v. Cyr*, 8th Dist. Cuyahoga No. 84255, 2005-Ohio-504, ¶ 54.

{¶ 26} Accordingly, we find nothing inappropriate in the trial court's consideration of the fact that Father's obligation as calculated on the support worksheet exceeds Mother's. Further, although the trial court did not use the specific words "inappropriate" or "unjust" when ordering that Mother's support obligation should be $0, the court found that the modification was "in the best interest" of the children, which suffices as an appropriate justification for its decision.

{¶ 27} Finally, we reject Father's assertions that the trial court's support order was erroneous because it improperly assumed this case involved shared parenting, and that as the designated legal custodian and residential parent, he incurs many more "significant expenses" for the children than does Mother. The worksheet attached to the trial court's judgments indicates that although the court erroneously checked "shared parenting" at the top of the worksheet, it treated

Mother as the sole obligor. Thus, the mistake in the checkbox did not affect the calculations or decision of the trial court. Further, our review of the trial transcript demonstrates that Father did not have receipts to document many of his alleged expenses, and his alleged expenditures for child care by his mother and girlfriend's mother could be construed as merely a way to claim monetary gifts to family members as child care expenses.[3] Moreover, Mother and Father share equal time with the children, and despite Father's assertion that his expenses are greater than Mother's, the record reflects that she pays $1,600 per year to provide health care insurance for the children.

{¶ 28} The trial court indicated that it considered the needs and standard of living of the children and parents, the ability of the parents to meet the needs and maintain the standard of living with or without the support of the other parent, the amount of time the children spend with each parent, and the disparity of income between the parents, and concluded that modification of Mother's support obligation to $0 was in the best interest of the children. In light of the discretion given to the trial court in determining child support matters, we find no abuse of that discretion in this case. The second assignment of error is overruled.

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[3]Although Father testified that his mother tutors J.C. and G.C. twice a week, he conceded that he does not pay her for her tutoring services; instead, he pays her taxes. Father also testified that his girlfriend's mother is the children's nanny, but conceded that he does not pay her for her services; instead, he makes the payment on her townhouse every month. Father conceded that neither his mother nor his girlfriend's mother report the monies he pays them on their tax returns. Accordingly, the trial court properly found that these "expenses" do not qualify as childcare expenses because neither Father's mother nor his girlfriend's mother is an independent contractor with respect to the services they provide to the children.

C. Repayment of Overpayment of Child Support

{¶ 29} Father and Mother both acknowledged at trial that since the September 6, 2013 order, Mother has paid Father $626.23 per month, exclusive of a processing fee, as child support for the two children. In her testimony at trial, Mother testified that she paid Father $319.37 per half month (or $638.74 per month, including a processing fee) via wage deduction to the Cuyahoga County Child Support Enforcement Agency. Father also testified that he had been receiving "around $300 and some dollars, $320 to $350 * * * monthly per child. So about * * * $600 and some dollars a month" in total since September 2013. Thus, as demonstrated by the testimony at trial, it is undisputed that Mother paid $626.23 per month in child support, not $626.23 per month per child as set forth in the Lake County Juvenile Court order.

{¶ 30} Nevertheless, the trial court ordered that "it would be equitable to modify and correct the prior calculation" and for Father to repay Mother the "overpayment of child support" that had accrued between October 16, 2015, when Mother filed her motion to modify child support, to December 4, 2018, the day before trial on Mother's motions, in the amount of $11,742 per child. In his third assignment of error, Father contends that court abused its discretion in ordering that he repay Mother. Father argues that the trial court's order was based on its erroneous assumption that Mother paid child support of $1,252.46 per month,

instead of $626.23 per month, but because Mother paid the correct amount of child support, there was no overpayment. [4]

{¶ 31} Mother contends that the trial court properly ordered repayment of the child support overpayment because although the trial court modified her child support obligation to $0, it did not order the correct effective date for the $0 support order. She contends that the effective date of the trial court's order should have been October 16, 2015, when she filed her motion to modify, instead of December 5, 2018, as ordered by the court, and accordingly, Mother did, in fact, overpay child support from October 2015 until December 2018.

{¶ 32} "Absent some special circumstances which justify a different date, a party seeking modification of a support order is entitled to have the modification relate back to the date the motion to modify was filed." *Davis v. Dawson*, 8th Dist. Cuyahoga No. 87670, 2006-Ohio-4260, ¶ 8, citing *Murphy v. Murphy*, 13 Ohio App.3d 388, 389 469 N.E.2d 564 (10th Dist.1984), and *State ex rel. Draiss v. Draiss*, 70 Ohio App.3d 418, 420-421, 591 N.E.2d 354 (9th Dist.1990). "If the trial court decides in its discretion that the order should not be retroactive to the date of the motion, it must state its reasons." *Id.*, citing *Oatey v. Oatey*, 8th Dist. Cuyahoga Nos. 67809 and 67973, 1991 Ohio App. LEXIS 1685, 42 (Apr. 25, 1996). *See also Phelps*, 8th Dist. Cuyahoga No. 106475, 2018-Ohio-4329 at ¶ 37.

{¶ 33} The trial court gave no reasons for not making its order modifying Mother's child support obligation retroactive to when she filed her motion, and we

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[4] Father does not challenge the trial court's order that he repay child support paid by Mother after December 5, 2018.

find no special circumstances that would justify a different date. Instead, we find that not making the date of the order modifying child support retroactive to October 16, 2015, penalizes Mother for the time required to have her motion heard and determined by the trial court. *See State ex rel. Mullaney v. Mullaney*, 9th Dist. Medina No. 2628-M, 1997 Ohio App. LEXIS 4690, 2 (Oct. 22, 1997) (retroactive modification of a child support order is appropriate to protect the parties from the delays that are inherent in the legal system).

{¶ 34} Accordingly, we find that although the trial court abused its discretion in finding, contrary to the evidence at trial, that Mother overpaid child support due to the Lake County Juvenile Court's erroneous order, the trial court properly determined that Father should repay Mother the child support that Mother overpaid after October 16, 2015, when Mother filed her motion to modify and the date the trial court should have ordered as the effective date of its order modifying Mother's child support obligation. Because the trial court modified Mother's child support obligation to $0, Mother overpaid child support of $626.23 per month from October 16, 2015, until December 5, 2018, when her motion was heard. The overpayment equates, as the trial court found, to $11,742 per child.

{¶ 35} The third assignment of error is therefore overruled.

D. Sharing the Federal Tax Exemption for Dependents

{¶ 36} In his fourth assignment of error, Father contends that the trial court erred in awarding Mother the right to claim G.C. as a dependent for federal income tax purposes for tax year 2019 and going forward.

{¶ 37} Father acknowledges that although there is a presumption the custodial parent is entitled to the dependency exemption, R.C. 3119.82 allows the court to award the exemption to the noncustodial parent if the court determines the award furthers the best interest of the child. In making this determination, the court must consider "any net tax savings, the relative financial circumstances and needs of the parents and children, the amount of time the children spend with each parent, the eligibility of either parent or both parents for the federal earned income tax credit or other state or federal tax credit, and any other relevant factor concerning the best interest of the children." Father contends that Mother offered no evidence in support of these factors and, accordingly, the trial court erred in granting Mother the right to claim G.C. as her dependent for federal income tax purposes. We disagree.

{¶ 38} The evidence at trial was undisputed that the children spend equal time with Father and Mother. Additionally, evidence regarding the parties' relative financial circumstances, with Father earning nearly double what Mother makes, was entered into evidence. Both Mother and Father testified regarding the children's extracurricular activities, and both testified about their financial ability to maintain the children's standard of living. The trial court's judgment entries demonstrate that the court considered this evidence in making its determination that Mother could claim G.C. as her dependent for federal income tax purposes, while Father would claim J.C. The court stated that it had considered the needs and standard of living of the children; the ability of the parents to meet the children's needs and maintain their standard of living; the amount of time the children spend with each parent

(specifically finding they spend 26 weeks per year with each parent); extracurricular activities for the children; and the disparity in income between the parents (noting that Father's income is nearly double that of Mother). Thus, it is apparent both that there was sufficient evidence presented at trial regarding the relevant R.C. 3119.82 factors, and that the trial court considered all relevant factors prior to determining that the dependency deductions for the children for federal income tax purposes would best be shared equally between Father and Mother, i.e., Mother claiming G.C. and Father claiming J.C. beginning tax year 2019 and going forward. The fourth assignment of error is therefore overruled.

{¶ 39} 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.

KATHLEEN ANN KEOUGH, JUDGE

ANITA LASTER MAYS, P.J., and
MARY EILEEN KILBANE, J., CONCUR