

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

SARAH E. MITCHELL,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-L-124
SCOTT A. MITCHELL,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 08 DR 000643.

Judgment: Affirmed.

R. Russell Kubyn, The Kubyn Law Firm, 8373 Mentor Avenue, Mentor, OH 44060 (For Plaintiff-Appellee).

Scott R. Stefl, Harbor House Professional Building, 7844 Lakeshore Boulevard, Mentor, OH 44060 (For Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Scott A. Mitchell, appeals the judgment entered by the Domestic Relations Division of the Lake County Court of Common Pleas.

{¶2} Appellant and appellee, Sarah E. Mitchell, were married on June 1, 2002. Two children were born as issue of the marriage.

{¶3} Ms. Mitchell filed a complaint for divorce. The parties agreed to all issues with the exception of child support.

{¶4} On June 23, 2009, the magistrate issued a decision finding Ms. Mitchell's gross annual income to be \$38,952. Mr. Mitchell earned approximately \$55,000 in 2008; however, he voluntarily left his employment due to concerns of downsizing. For child support purposes, Mr. Mitchell's income was set at \$23,129, as he worked four days per week earning \$100 per day and received \$2,392 as severance from his previous employer.

{¶5} The parties stipulated that Ms. Mitchell "pays bi-weekly \$80.00 for a single policy of health insurance and \$250.00 for a family policy." Further, the child support calculation worksheet illustrates that Ms. Mitchell's "marginal, out-of-pocket costs, necessary to provide for health insurance costs for the children," amount to \$4,420, while Mr. Mitchell does not incur any out-of-pocket health care costs related to the children at issue.

{¶6} The magistrate's decision further ordered Mr. Mitchell to pay child support in the amount of "\$249.42 per month per child, *** when health insurance is in effect through OCS/DJFS. When health insurance is not in effect [Mr. Mitchell] shall pay *** the sum of \$151.17 per month per child, plus processing and as cash medical support \$302.34."

{¶7} Mr. Mitchell filed an objection to the magistrate's decision, stating:

{¶8} "1. The Magistrate's Decision finds 'there is nothing in the record to indicate a deviation from the child support worksheet would be in the best interest of the children.' Clearly, as [Mr. Mitchell] lost a good paying job at Lincoln Electric and is now making \$23,129.00 per year, a support obligation of \$508.82/month (\$6,105.84/year) would pose an undue burden.

{¶9} “2. The Shared Parenting Plan the parties signed and attached to the Magistrate’s Decision clearly indicates that [Mr. Mitchell] will have the children in his possession *every week* from Thursday at 5:00 pm until Sunday at 5:00 pm, well in excess of the Standard Order Visitation assumed by the worksheet. As such it is per se in the children’s best interest that a man earning \$23,129.00 should not be required to pay guideline support of \$508.82.”

{¶10} The trial court issued a judgment entry dated August 28, 2009, indicating that the transcript of the proceedings before the magistrate had not been filed. With regard to Mr. Mitchell’s first argument above, the trial court stated:

{¶11} “To support [Mr. Mitchell’s] argument for a deviation, a transcript is required pursuant to Civil Rule 53. The Magistrate clearly indicated [Mr. Mitchell] lost his job at Lincoln Electric in which he earned over \$55,000 in 2008. The Magistrate, based on the evidence before him, calculated [Mr. Mitchell’s] 2009 annual gross income to be \$23,129.00 for child support purposes. [Ms. Mitchell’s] income was stipulated to. The resulting child support order was determined pursuant to Revised Code 3119.022 appropriately.”

{¶12} The trial court further found Mr. Mitchell’s second argument above without merit, stating, “[s]hared parenting does not equate to an automatic reduction in child support as is well settled by case law.”

{¶13} Mr. Mitchell filed a timely notice of appeal and asserts the following assignments of error for our review:

{¶14} “[1.] The Trial Court erred in not granting defendant a deviation from the standard support order in light of defendant[’]s extensive visitation which was well in excess of the court’s standard order and other factors in O.R.C. 3119.23.

{¶15} “[2.] The Trial Court erred in denying appellant’s objection to magistrate’s decision solely because no transcript was filed.”

{¶16} A trial court’s decision regarding child support will not be reversed by a reviewing court unless it is shown that the trial court abused its discretion. *Pauly v. Pauly* (1997), 80 Ohio St.3d 386, 390, citing *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144. “The term “abuse of discretion” connotes more than an error of law or of judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” (Citations omitted.) *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶17} We first address Mr. Mitchell’s second assignment of error. Mr. Mitchell argues the trial court erred in rejecting his objections to the magistrate’s decision “solely because no transcript was filed.”

{¶18} In its judgment entry, the trial court noted a transcript of the proceedings before the magistrate had not been filed, and, therefore, the trial court aptly stated that “the facts are as determined by the [m]agistrate in his [d]ecision, pursuant to Civil Rule 53.” Thereafter, the trial court reiterated the factual findings of the magistrate’s decision and determined that the child support order was properly calculated under R.C. 3119.022 and that “shared parenting does not equate to an automatic reduction in child support as is well settled by case law.” Contrary to appellant’s assertion, it appears the trial court did not deny Mr. Mitchell’s objections to the magistrate’s decision solely due

to a lack of a transcript. As a result, the second assignment of error is without merit. Thus, on appeal, this court must determine whether the trial court abused its discretion in adopting the decision of the magistrate.

{¶19} Mr. Mitchell claims he was entitled to a downward deviation from the child support guidelines because of his extended parenting time and the disparity in income between himself and Ms. Mitchell.

{¶20} The purpose of child support is to meet the needs of the minor children. *Carnes v. Kemp*, 104 Ohio St.3d 629, 2004-Ohio-7107, at ¶10. (Citations omitted.) “Generally, courts must use the Ohio Child Support Guidelines in ascertaining the appropriate level of child support. *** However, a court may deviate from these guidelines at its discretion after considering the statutory factors delineated in R.C. 3119.23, and after determining that the calculated amount would be unjust or inappropriate and not in the children’s best interest. ***.” *Albright v. Albright*, 4th Dist. No. 06CA35, 2007-Ohio-3709, at ¶6. (Internal citations omitted.)

{¶21} “R.C. 3119.022 governs the procedures for awarding and calculating child support. Its provisions are mandatory in nature and must be followed literally and technically in all material aspects because the overriding concern is the best interest of the children for whom the support is being awarded. *** If the trial court makes the proper calculations on the applicable worksheet, the amount shown is ‘rebuttably presumed’ to be the correct amount of child support due. *** A party who attempts to rebut the basic child support guideline amount has the burden of presenting evidence that proves the calculated amount is unjust, inappropriate, or not in the best interest of the children. ***.” *Id.* at ¶7.

{¶22} In the context of a shared parenting plan, R.C. 3119.24(A)(1) states that the trial court “shall order an amount of child support to be under the child support order that is calculated in accordance with the schedule and worksheet set forth in section 3119.022 of the Revised Code ***.” The statute, however, authorizes the trial court to deviate from the guideline calculations if “that amount would be unjust or inappropriate to the children or either parent and would not be in the best interest of the child because of the extraordinary circumstances of the parents or because of any other factors or criteria set forth in section 3119.23 of the Revised Code ***.” R.C. 3119.24(A)(1).

{¶23} For purposes of R.C. 3119.24(A)(1), “extraordinary circumstances of the parents” include:

{¶24} “(1) The amount of time the children spend with each parent;

{¶25} “(2) The ability of each parent to maintain adequate housing for the children;

{¶26} “(3) Each parent’s expenses, including child care expenses, school tuition, medical expenses, dental expenses, and any other expenses the court considers relevant;

{¶27} “(4) Any other circumstances the court considers relevant.” R.C. 3119.24(B)(1)-(4).

{¶28} Two of the factors set forth in R.C. 3119.23 include “extended parenting time or extraordinary costs associated with parenting time” and “disparity in income between parties.” R.C. 3119.23(D) and (G). “Although the trial court is permitted to deviate from the standard child support worksheet if one or more of the factors in R.C. 3119.23 are present, the trial court is not mandated to do so. One is not *automatically*

entitled to a downward deviation merely because a factor is present.” *Lopez v. Coleson*, 3d Dist. No. 12-05-24, 2006-Ohio-5389, at ¶9. (Citation omitted and emphasis added.)

{¶29} Mr. Mitchell’s objection to the magistrate’s decision focused solely on the legal conclusions drawn from facts presented at the hearing. Consequently, Mr. Mitchell argues that he was not required to file a transcript of the magistrate’s hearing at the time he filed his objections. We further note that Mr. Mitchell has not presented this court with a record on appeal. The only evidence Mr. Mitchell presents to support his argument for a downward deviation from the child support calculation is the fact that the parties entered into a shared parenting plan and Mr. Mitchell’s income is less than that of Ms. Mitchell. This court must be mindful that ““there is ‘no authority *requiring* a domestic court to deviate from the child support guidelines merely because a deviation would be permissible, or even desirable.’” (Emphasis sic.) ***.” *Warzala v. Warzala*, 11th Dist. Nos. 2006-T-0018 and 2006-T-0025, 2007-Ohio-2855, at ¶26. (Citation and internal citation omitted.)

{¶30} Neither the trial court nor this court has any evidence demonstrating what effect Mr. Mitchell’s increased parenting time would have on his general living expenses. Furthermore, there is no evidence relating to Mr. Mitchell’s expenses, his current living situation, or any factors that may have been considered by the trial court. As noted above, Mr. Mitchell bore the burden of presenting evidence “that proves the calculated amount is unjust, inappropriate, or not in the best interest of the children.” *Albright v. Albright*, 2007-Ohio-3709, at ¶7.

{¶31} The amount awarded gives rise to legitimate questions; however, given our standard of review on appeal, it is not our role to substitute our judgment for that of the trial court.

{¶32} Based on the record before us, we conclude the court's child support award is not arbitrary, unreasonable, or unconscionable. The judgment of the Domestic Relations Division of the Lake County Court of Common Pleas is hereby affirmed.

MARY JANE TRAPP, P.J.,

DIANE V. GRENDALL, J.,

concur.