[Cite as *Longo v. Longo*, 2010-Ohio-3045.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

CHARLES V. LONGO,	:	**O P I N I O N**
Plaintiff-Appellant/ Cross-Appellee,	:	**CASE NOS. 2008-G-2874**
- vs -	:	**and 2009-G-2901**
JOY E. LONGO,	:	
Defendant-Appellee/ Cross-Appellant.	:	

Civil Appeals from the Court of Common Pleas, Case No. 01 DC 000861.

Judgment: Affirmed.

Mathew D. Greenwell, and *Charles V. Longo*, Charles V. Longo, Co., L.P.A., 25550 Chagrin Boulevard, #320, Beachwood, OH 44122 (For Plaintiff-Appellant/Cross-Appellee).

Gary S. Okin, and *Laurie A. Koerner*, Dworken & Bernstein Co., L.P.A., 60 South Park Place, Painesville, OH 44077 (For Defendant-Appellee/Cross-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Charles V. Longo, appeals from the judgment of the Geauga County Court of Common Pleas ordering him to pay child support in the amount of $1,666.67 per month for each of his two children.[1] For the reasons discussed below,

1. The record in this case reveals appellee filed a cross-appeal. As no assignments of error were filed on cross-appeal, we shall presume she abandoned any would-be argument(s) in support of her cross-appeal.

we hold the trial court did not abuse its discretion in issuing the order and therefore affirm.

{¶2} Appellant and appellee, Joy E. Longo, were married on December 30, 1988. The couple had two children from the marriage. On September 18, 2001, appellee filed for divorce in Cuyahoga County. On the same date, appellant filed for divorce in Geauga County. Appellant, with a court appointed process server, subsequently gained access to the marital home, which he had previously vacated, and served appellee in her presence. The Geauga County trial court determined service was adequate and the case moved forward in the Geauga County Court of Common Pleas.

{¶3} The case proceeded to trial and was heard by a magistrate on October 10, 11, and 18, 2002 and January 14, 15, 20, 22, and 23, 2003. Objections were filed by both parties and the trial court entered its final judgment on December 23, 2003, adopting the magistrate's decision as modified.

{¶4} An appeal and cross-appeal were filed with this court alleging multiple errors. After briefing and oral argument, this court released its opinion in *Longo v. Longo*, 11th Dist. No. 2004-G-2556, 2005-Ohio-2069 affirming the trial court's judgment in part, reversing it in part, and remanding the matter for further proceedings. The remand order was premised upon this court's conclusion that, while the amount of income imputed to the couple was proper, the trial court abused its discretion by failing to set forth the method it used in arriving at the specific child support amount it awarded. This court held:

{¶5} "*** R.C. 3119.04(B) *requires* the court to set the child support amount based on the qualitative needs and standard of living of the children and parents. R.C. 3119.04(B); see, also *Zeitler v. Zeitler*, 9th Dist. No. 04CA008444, 2004-Ohio-5551, at ¶8; *Cho v. Cho*, 7th Dist. No. 03 MA 73, 2003-Ohio-7111, 2003 Ohio App. LEXIS 6456, *8[.] There is nothing in the court's judgment entry indicating this mandatory consideration was made. Thus, although the court did not abuse its discretion in calculating child support upon an imputed income of $601,388, it did abuse its discretion in ordering cross-appellant to pay $1,666.67 per month to the extent it failed to consider the mandatory requirements of R.C. 3119.04(B) ***." (Emphasis sic and footnote omitted.) *Longo*, supra, at ¶91.[2]

{¶6} On November 14, 2008, after conducting a review of the record, the trial court issued a lengthy judgment entry relating to the remanded issue of child support.[3] Pursuant to this judgment, the trial court again concluded appellant was obligated to pay permanent child support in the amount of $1,666.67 per month, per child, plus a 2% processing fee.

{¶7} Appellant now appeals the trial court's November 14, 2008 judgment, asserting three assignments of error. His first assignment of error provides:

{¶8} "The trial court abused its discretion by failing to adjust for Appellant's marginal, out-of-pocket costs, necessary to provide health insurance for the children in the child support calculation."

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2. The trial court arrived at its conclusion regarding the imputed income by considering appellant's income range of the five year period preceding the divorce. In particular, the record indicated that this income, over the five year span, ranged from $438,570 up to $1,511,201. See, *Longo,* supra, at ¶2.

3. Appellant's appellate brief indicates a decision was issued by the magistrate. However, the record does not indicate the magistrate formally participated in resolving the issue on remand. Rather, the November 14, 2008 judgment contained findings of fact and conclusions of law issued by Judge Fuhry, the judge sitting on this matter.

{¶9} As discussed above, the trial court imputed an income to the parties of $601,388. That figure was not disputed in *Longo* and is therefore res judicata. Because the combined income of the parties exceeded $150,000, the provisions of R.C. 3119.04(B) governed the trial court's child support computation. That statute provides:

{¶10} "If the combined gross income of both parents is greater than one hundred fifty thousand dollars per year, the court, with respect to a court child support order, or the child support enforcement agency, with respect to an administrative child support order, 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." (Emphasis added.)

{¶11} In short, when the combined gross income of the parents exceeds $150,000, the statute requires a court to treat the issue of child support on a case-by-case basis; in so doing, however, it must consider the needs and standard living of the children and the parents in arriving at its determination. Courts have held that unless it awards less than the amount awarded for combined incomes of $150,000, a trial court is not required to explain its support order. *Cyr v. Cyr*, 8th Dist. 84255, 2005-Ohio-504,

at ¶56; accord, *Guertin v. Guertin*, 10th Dist. No. 06AP-1101, 2007-Ohio-2008, at ¶6; *Bertram v. Bertram*, 2d Dist. No. 2007-CA-135, 2009-Ohio-55, at ¶13.

{¶12} A review of the statute demonstrates a domestic court possesses considerable discretion in setting a child support order when the parents' combined income is above $150,000. *Macfarlane v. Macfarlane*, 8th Dist. No. 93012, 2009-Ohio-6647, at ¶17. Indeed, "the 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." (Emphasis removed.) *Cyr*, supra, at ¶54. This court, therefore, will not reverse the domestic court's judgment under these circumstances save an abuse of discretion. An abuse of discretion implies more than an error of judgment, but a result so obviously violative of reason that it demonstrates a perversity of will, passion, prejudice, partiality, or moral delinquency. *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 256, 1996-Ohio-159. A court abuses its discretion when it acts unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. If, in exercising its discretion, the domestic court's reasoning process in support of its order was sound, we will not disturb its judgment. *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161.

{¶13} In its November 14, 2008 entry, the trial court's judgment included approximately 20 pages of factual findings upon which it premised its legal conclusions. Throughout the entry, the court discussed the parent's and children's needs and emphasized their "above-average standard of living." With respect to appellant and appellee, the court observed:

{¶14} "[They] paid cash for expensive cars, took vacations, maintained an interest in a condominium in Florida that they would visit frequently, lived in a home valued at over $600,000, owned an expensive boat for a time, and dined out at relatively expensive restaurants. They paid for maintenance of the grounds of their house. In general, they lacked for nothing materially or financially."

{¶15} With respect to the children, the court observed the eldest attends a private school and appellee wishes to ultimately send the youngest to such a school. The court also emphasized the children engage in many activities such as "gymnastics, dance lessons, riding lessons, and camps."

{¶16} The court additionally detailed the parties' regular expenses which, by implication, involved an itemization of their (as well as their minor children's) needs.

{¶17} In light of these, among many other detailed considerations, the court drew the following conclusions of law:

{¶18} "The basic child support schedule provides for $21,971 per year of child support for two children when the parents have a combined gross income of $150,000. This amount equals $1830.92 per month total, or $915.46 per child per month, plus the applicable two percent processing charge.

{¶19} "Child support of $915.46 per child per month does not reflect the needs and standard of living the parties established for their children. The parties clearly wished to send the children to private schools and to provide them with other activities and advantages. The cost of private schooling for [the eldest child] is at least $10,000 per year. $915.46 per month equals $10,985.52 per year, so child support of that amount would barely cover her tuition. While the evidence showing the costs of the

children's other activities is not entirely clear, those expenses could well be several hundred dollars per child per year.

{¶20} "Defendant has received a spousal support award of $7000 per month, which is $84,000 per year. This amount is sufficient to cover about 7/8 of her total expenses for living in the Lakesedge home. Her budget does not break out her expenses for the children.

{¶21} "Child support of $40,000 total, $20,000 per child per year, will, when combined with Defendant's $84,000 annual spousal support, give her $124,000 of cash to pay both her expenses at the Lakesedge home, [the eldest child's] tuition at Gilmour, and [the youngest child's] tuition at that school.

{¶22} "Plaintiff has the ability to pay child support in the amount of $20,000 per child per year.

{¶23} With these conclusions in mind, the court ordered appellant to pay "*** $1,666.67 per child per month, for a total of $3,333.33 per month, plus two per cent processing charge ***."

{¶24} Under assignment of error one, appellant takes issue with this award, asserting the trial court erred by failing to formally adjust the child support order to reflect the out-of-pocket expense he personally shoulders providing for his children's health insurance. Appellant argues that he paid an average of $307.76 per month or $3,693.12 per year maintaining his children's health insurance since the divorce. As a result, appellant contends the trial court should have credited this amount against the support award. We disagree.

{¶25} The trial court acknowledged that appellant maintains health insurance for the children and further considered that appellant covers 100% of any uninsured medical expenses, such as deductibles and co-pays. In calculating the amount of child support, however, the court evidently did not feel these expenses should be included in the child support award. While appellant may disagree with this decision, the trial court did not breach its statutory obligation by not setting-off the health care expenses.

{¶26} Under the circumstances of this case, R.C. 3119.04(B) only required the trial court to consider the relative needs and standard of living of the parties and their children. As the trial court's judgment entry reflected, the parties and their children enjoyed a high standard of living during the term of the marriage and the relative needs of appellee and the children were judged in relation to that standard. The trial court met its statutory obligation and was not required to provide additional explanation or consider any additional factors in rendering its order. See *Cyr,* supra; *Guertin*, supra; and *Bertram*, supra. The trial court, therefore, neither acted unreasonably nor exhibited a "perversity of will" in arriving at this conclusion.

{¶27} Appellant's first assignment of error is overruled.

{¶28} As they are related, appellant's second and third assignments of error shall be addressed together. They provide:

{¶29} "[2.] The trial court abused its discretion when it failed to include appellee's spousal support received as 'other annual income' on line six of the child support worksheet and when it failed to credit Appellant for spousal support paid on line ten of the worksheet.

{¶30} "[3.] The trial court abused its discretion when it deviated from the basic child support schedule because it failed to utilize the computation worksheet to determine the support obligation of the parties."

{¶31} Under these assignments of error, appellant points out the trial court failed to adjust his as well as appellee's income to reflect the child support obligation which he pays. As a result, he contends the trial court based its child support order on an inaccurate calculation of his income through the use an artificially inflated sum. We disagree.

{¶32} Initially, appellant points out, and appellee concedes, the trial court neither appended a completed child support computation worksheet to its November 14, 2008 judgment entry nor included the same in the record. In *Marker v. Grimm* (1992), 65 Ohio St.3d 139, 142, the Supreme Court of Ohio held that a trial court's failure to complete the required child support worksheet or to include the worksheet in the record was an error as a matter of law. Id. at paragraphs one and two of the syllabus.[4] The Court reasoned that failing to include the worksheet would undercut meaningful appellate review. Id. at 142. In other words, where the worksheet is absent, a reviewing court would have little insight into whether the court properly followed the statutory scheme in rendering its child support determination. See *Carr v. Blake* (Feb.

4. Although *Marker* indicates the guideline worksheet is mandatory regardless of the case, it was released before R.C. 3119.04(B) was modified in 2001. Since the change in the statute, however, some courts have indicated the worksheet is not necessarily required in cases where the combined income exceeds $150,000 and the trial court properly follows the statutory directives for awarding an amount beyond that which the guidelines would provide for at $150,000. See *Cho v. Cho*, 7th Dist. No. 03 MA 73, 2003-Ohio-7111, at ¶13; see, also, *Farrell v. Farrell*, 5th Dist. No. 2008-CA-0080, 2009-Ohio-1341, at ¶29. Given the arguments presented for our review in this case as well as the record before this court, however, we need not specifically rule on this issue at this time.

18, 2000), 1st Dist. No. C-990174, 2000 Ohio App. LEXIS 557, *10 (discussing the import of the *Marker* holding.)

{¶33} Although the use of a worksheet is mandatory, the court in *Carr*, supra, held a trial court's failure to include a worksheet can be considered harmless error. In drawing this conclusion, the court pointed out that where the record on appeal sufficiently supports the trial court's judgment and the appealed judgment entry itself is sufficiently detailed, the worksheet could prove redundant. To the point, the court commented:

{¶34} "Any remand *** with instructions to memorialize in a worksheet that which the court has already considered would be an exercise in futility. Inevitably, the result would be the same. The [parties] would derive no benefit, and judicial resources would be wasted." Id. at *13.

{¶35} Even though the worksheet may be necessary in cases such as this, we believe any error in failing to include it in the record here was harmless. First of all, the record includes a completed worksheet vis-à-vis the court's December 23, 2003 decree which was appealed in *Longo I.* The relevant figures the trial court used in 2003, e.g., imputed income and spousal support, have not changed. A review of the original worksheet indicates that the trial court did include appellee's annual $84,000 payment of spousal support as "other annual income." It further indicates the court adjusted the imputed incomes accordingly. Appellant's abstract claim that the court failed to properly adjust the income levels in light of his spousal support payments is therefore not supported by the record.

{¶36} In addition, the extensive record accompanying this case is replete with the information the trial court used to arrive at its child support order. Because we are able to accomplish a meaningful review of the appealed judgment, the trial court's omission has affected no substantial rights. We therefore hold any error in omitting the worksheet is harmless as a matter of law. See Civ.R. 61. (This civil rule states, in relevant part, that "no error or defect in any ruling or order *** is ground for *** vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.") See, also, R.C. 2309.59. (Directing a reviewing court to disregard similar errors.)

{¶37} Moreover, appellant's argument that his child support obligations should be downwardly deviated in light of the adjusted income is also without merit. Child support guideline calculations are not available by statute in situations where parents' combined income exceeds $150,000. *Farrell*, supra, at ¶25; see, also, *Cyr*, supra, at ¶54. This is because "*** the child support guideline worksheet and the basic child support guideline schedule set forth in R.C. 3119.02[] do not address circumstances in which combined parental income is over $150,000." *Keating v. Keating*, 8th Dist. No. 90611, 2008-Ohio-5345, ¶83. Instead, R.C. 3119.04(B) directs:

{¶38} "The court *** 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 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." (Emphasis added).

{¶39} Here, the trial court determined that the basic amount under the child support schedule for parties with a combined income of $150,000 was insufficient to meet the needs and standard of living the parties had established for themselves and their children. While we recognize that the methods of calculating child support imposed by the guideline worksheet may indicate that appellant's child support obligation would be lower if the worksheet were used, a trial court in a high-income case such as this is not required to use, let alone accept, the child support figure derived from the worksheet.

{¶40} As discussed under appellant's first assignment of error, R.C. 3119.04(B) requires the trial court to consider the needs and standard of living of the children and the parents on a case-by-case basis. Although the court may choose to extrapolate a child support figure using the worksheet, it is not bound by statute to do so. Because the trial court met its statutory obligations, we find no error in its order.

{¶41} Appellant's second and third assignments of error are overruled.

{¶42} For the reasons discussed in this opinion, appellant's assigned errors are overruled and the judgment of the Geauga County Court of Common Pleas is affirmed.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.