

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
ASHTABULA COUNTY, OHIO**

IN RE: J.J.M.S. : **OPINION**  
: **CASE NO. 2011-A-0031**

Civil Appeal from the Ashtabula County Court of Common Pleas, Juvenile Division, Case No. 09 JI 36.

Judgment: Affirmed.

*Virginia K. Miller*, Smith & Miller, 36 West Jefferson Street, Suite 1, Jefferson, OH 44047 (For Appellants, James Brody Montgomery and Lori Jo Montgomery).

*Kayla Stoltz*, pro se, 6375 U.S. Highway 6, Hartsgrove, OH 44085 (Appellee).

*Chrisy Stoltz*, pro se, 6375 U.S. Highway 6, Hartsgrove, OH 44085 (Appellee).

*Chris Stoltz*, pro se, 6375 U.S. Highway 6, Hartsgrove, OH 44085 (Appellee).

THOMAS R. WRIGHT, J.

{¶1} This is an accelerated-calendar appeal, taken from a final judgment of the Ashtabula County Court of Common Pleas, Juvenile Division. In the disputed judgment, the trial court modified a prior decision of a court magistrate and ordered that the basic child support obligation of appellant, Lori Jo Montgomery, be reduced by 33 percent for purposes of determining her total arrearages. Before this court, Montgomery contends that the trial court abused its discretion in not reducing her monthly support obligation by

50 percent for the disputed period.

{¶2} The subject of the underlying proceeding was Joseph Montgomery-Stoltz, a minor child who was born on April 3, 2008. At the time of his birth, the child's natural mother, Kayla Stoltz, was still herself a minor, and was still residing in Ashtabula County with her natural parents, Christopher and Christine Stoltz.

{¶3} The natural father of the subject child was James B. Montgomery. On the date of his son's birth, James had just become 15 years old and was still residing in Ashtabula County with his natural parents, Terry and Lori Jo Montgomery.

{¶4} During the first 30 months of his life, the subject child lived solely with Kayla and his maternal grandparents at the Stoltz residence. In this time frame, Kayla and James both continued to attend high school. Although James was able to procure a part-time job in May 2008, he initially worked only an average of 11 hours each week and was only earning \$7.30 an hour.

{¶5} When the child in question first came home from the hospital, the paternal grandparents, i.e., the Montgomerys, made an "in-kind" contribution of \$600 for the care of the baby. Furthermore, during the first 18 months of the child's life, they paid approximately \$2,100 in daycare expenses so that Kayla could continue to attend high school. However, besides other assorted payments for \$600, the Montgomerys did not pay any monthly support to Kayla or the maternal grandparents. As a result, the bulk of the financial burden for providing for the child fell upon the Stoltzs.

{¶6} During the time frame from April 2008 until August 2010, Christine Stoltz, the maternal grandmother, worked full-time as a school bus driver and earned \$20,740 per year. At the outset of this time frame, the maternal grandfather, Christopher Stoltz, also had a full-time job with a local company; however, in early 2009, the company went

out of business, and Christopher's income was limited to unemployment compensation for a period of seven months. Finally, in November 2009, Christopher obtained new full-time employment with a manufacturing company, and is presently earning \$31,200 per year.

{¶7} In light of Christopher's employment problems and the fact that the Stoltzs were providing the primary financial support for their grandson, their overall lifestyle was greatly affected. For example, instead of purchasing fuel oil in the winter, they began to use wood to heat their home. Additionally, the Stoltzs were unable to make necessary repairs to the roof of their residence.

{¶8} During the same time frame, the paternal grandfather, Terry Montgomery, was employed as a tool and die maker for an automobile manufacturer. Including overtime, his average yearly income was \$90,000, and he was once able to earn \$115,000 in one year. The paternal grandmother, Lori Jo Montgomery, also was employed full-time as a custodian for a local school district, and was receiving \$25,958 per year.

{¶9} In February 2009, when the subject child was ten months old, James B. Montgomery instituted an action against Kayla Stoltz to establish his visitation rights as the father. While that particular issue was being mediated, the Ashtabula County Child Support Enforcement Agency filed a petition to determine support in behalf of Kayla and her parents. Named as defendants in the petition were James and his parents.

{¶10} The "child support" matter was assigned to a trial court magistrate for final resolution. After conducting an evidentiary hearing, the magistrate rendered her initial decision in February 2010. Essentially, the court magistrate concluded that each of the Montgomerys, James, Terry, and Lori Jo, had a legal duty to pay support for the subject

child in 2008, 2009, and 2010. As to 2008, the magistrate first held that, pursuant to the support guidelines, the Montgomerys together had owed a total of \$1,005.36 per month. The magistrate then made an individual calculation for each person in 2008, concluding that: (1) James, as the father, was liable for \$50 per month; (2) Lori Jo, as the paternal grandmother, was liable for 20.5 percent of the remaining amount, or \$195.85 per month; and (3) Terry, as the paternal grandfather, was liable for the entire remaining amount, or \$759.51 per month. The magistrate also made similar calculations for 2009 and 2010.

{¶11} The Montgomerys objected to the foregoing decision, primarily asserting that the magistrate had erred in failing to apply R.C. 3119.04(B) to the facts of the case. Specifically, the Montgomerys argued that, since the total of all four grandparents was greater than \$150,000, the magistrate was obligated to consider the standard of living and the needs of everyone involved before making a final “support” calculation.

{¶12} On June 3, 2010, the court magistrate released an amended decision, in which it was acknowledged that R.C. 3119.04(B) should have been followed in light of the total income involved. The magistrate also noted that, during the first hearing, “little” or no evidence had been presented concerning the needs and standard of living of the subject child or the grandparents. Thus, the magistrate scheduled a second hearing on the “support” issue.

{¶13} Eleven days after the filing of the court magistrate’s second decision, Lori Jo and James Montgomery moved to modify their support obligations. As the basis for the motion, they asserted that Terry Montgomery, the paternal grandfather, had recently died of cancer. The motion further stated that, due to Terry’s illness, Lori Jo had left her job and would not be able to return to work in the near future.

{¶14} The second evidentiary hearing was held in August 2010. After issuing an interim support order immediately after that hearing, the magistrate rendered her third written decision three months later. As to the “standard of living” issue, the magistrate found that none of the four grandparents had led an extravagant lifestyle before the birth of their grandchild. Regarding this point, the magistrate emphasized that, even though the Montgomery household had more income, the Montgomerys had had more children than the Stoltzs. In light of this, the magistrate held that it would be unjust to require the Montgomerys to pay support in accordance with the statutory guidelines, and that their total monthly support obligation for the disputed three-year period should be reduced from approximately \$1,000 to approximately \$650. Finally, the decision recommended that the reduction be achieved by cutting Terry Montgomery’s obligation in half from the date of the child’s birth until Terry’s death in June 2010.

{¶15} Again, Lori Jo and James Montgomery objected to the foregoing decision. While agreeing that a reduction of the basic support order was warranted, they argued that the magistrate had erred in only reducing Terry’s monthly obligation over the three years. Specifically, the Montgomerys maintained that Lori Jo’s monthly obligation must also be cut by one half for the entire arrearages period.

{¶16} Without expressly addressing the merits of the Montgomerys’ contention, the trial court overruled their objection in its final judgment of April 4, 2011. Despite this, the trial court still concluded that the magistrate’s decision had to be modified. That is, the court found that it would be unfair to reduce Terry’s monthly obligation by one half while not changing Lori Jo’s monthly obligation for the entire period. Therefore, the trial court ultimately held that, because the magistrate had found that the total Montgomery support obligation should be reduced by 33 percent, the separate obligations of Terry

and Lori Jo should be lowered by that specific percentage.

{¶17} In appealing the foregoing determination, Lori Jo Montgomery, appellant, has advanced a single assignment of error for review:

{¶18} “The trial court erred and/or abused its discretion in the determination of the deviation percentage to be applied to the Plaintiff-Appellant-Paternal Grandparent’s child support obligation.”

{¶19} In contending that the trial court’s ruling must be reversed as unreasonable and arbitrary, appellant submits that the court failed to provide any logical reason for not following the magistrate’s recommendation. According to appellant, the magistrate held that the *total* support obligation for all three Montgomerys should be divided in half, and that the trial court decided to change the “deviation percentage” from 50 percent to 33 percent. Based upon this, appellant asserts that, given the lack of any explanation for the change in percentages, the trial court abused its discretion.

{¶20} At the outset of our analysis, this court would indicate that a review of the trial record readily shows that appellant has mischaracterized the magistrate’s holding in her final written decision. That is, the magistrate never held that the total Montgomery support obligation should be reduced by one half. In paragraph 13 of her final decision, the magistrate stated:

{¶21} “The Magistrate finds that it would be inappropriate and unjust to order \* \* \* guideline support from the Montgomerys, because that amount of support for a baby is excessive given the lifestyles of the two households. See R.C. 3119.04. The Magistrate finds that [Terry’s] duty of support should be cut in half, resulting in total household support from the Montgomerys of approximately \$600-\$670 per month.”

{¶22} In her second written decision, the magistrate had found that, pursuant to

the statutory support guidelines, the Montgomerys' entire monthly obligation would be approximately \$1,000 in each of the three disputed years, based upon the fact that total income for both households had been greater than \$150,000. Hence, by stating in the second sentence of the foregoing quote that the Montgomerys' new total monthly duty would be between \$600 and \$670, the magistrate was reducing the total amount owed by approximately \$350, or approximately 33 percent. However, instead of achieving the percentage of reduction by cutting by both Terry's and Lori Jo's individual obligations by 33 percent, the magistrate chose to take the entire sum from Terry's original obligation, thereby lowering his monthly duty by one half.

{¶23} In light of the foregoing, it follows that when the trial court chose to reduce the individual obligations of Lori Jo and Terry by one third, it was not implicitly rejecting the magistrate's finding as to the amount of the deviation percentage. Rather, the court was only modifying the manner in which the deviation percentage was applied. Under such circumstances, it was not necessary for the trial court to explain why it was employing the "33 percent" figure.

{¶24} Given that the trial court actually followed the magistrate's finding as to the deviation percentage, the issue then becomes whether the adopted percentage, i.e., 33 percent, was justified under the facts of the case. As was noted above, the decision of the court magistrate to deviate from the child support guidelines was based upon R.C. 3119.04(B). This statute provides, in pertinent part:

{¶25} "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, \* \* \* 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 \* \* \* 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 \* \* \* 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.”

{¶26} In construing the provisions of R.C. 3119.04(B), this court has stated:

{¶27} “In essence, ‘\* \* \* 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 (of) living of the children and the parents in arriving at its determination.’ *Longo v. Longo*, 11th Dist. Nos. 2008-G-2874 and 2009-G-2901, 2010-Ohio-3045, at ¶ 11. A ‘\*\*\* domestic court possesses considerable discretion in setting a child support order when the parents’ combined income is above \$150,000.’ *Id.* at ¶ 12.” *Janecek v. Marshall*, 11th Dist. No. 2010-L-059, 2011-Ohio-2994, at ¶ 41.

{¶28} Similarly, the Eighth Appellate District has summarized R.C. 3119.04(B) in the following manner:

{¶29} “This section has been construed to mean that the court must ‘(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 would be inappropriate (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.’ *Zeitler v. Zeitler*, [9th Dist.] No. 04CA008444, 2004-Ohio-5551, at ¶ 8.” *Siebert v. Tavarez*, 8th Dist. No.



88310, 2007-Ohio-2643, at ¶ 30.

{¶30} In the instant case, appellant essentially contends that the magistrate and the trial court should have invoked R.C. 3119.04(B) to reduce her and Terry's support obligation by 50 percent, as compared to 33 percent. However, the testimony submitted during the two evidentiary hearings plainly established that, during the first 30 months of the subject child's life, the Montgomerys paid very little support to the Stoltzs to assist in providing for the child. That is, the financial burden of caring for the child fell primarily upon the Stoltzs. As a result, the Stoltzs suffered serious financial hardship, especially during the period in which Christopher Stoltz was unemployed.

{¶31} As part of her factual findings in her final written decision, the magistrate found that none of the four grandparents had led extravagant lifestyles prior to the birth of the child, and that, given the number of children in the Montgomery household, the standards of living of the two families had been similar. Hence, the lack of full support from the Montgomerys had the direct effect of lowering the Stoltzs' standard of living in comparison to the Montgomerys. Under such circumstances, cutting the child support obligation of James Montgomery's parents would be unjust to the child himself and the Stoltzs. Regardless of the present difficulties facing the Montgomery family, the Stoltzs deserve to be reimbursed for sustaining James' son for a substantial period.

{¶32} When viewed as a whole, the record in the instant matter shows that the trial court did adopt the magistrate's finding regarding the need to reduce the entire child support of the Montgomerys by 33 percent, and that the magistrate provided a sufficient explanation to justify the deviation percentage. Furthermore, although the trial court did modify the magistrate's application of the 33 percent deviation to Terry's and Lori Jo's respective obligations, that modification was warranted to ensure that Lori Jo only had

to pay the percentage of the total Montgomery support obligation that was commiserate with her actual income during the disputed time frame. In other words, if a reduction of the child support arrearages was justified in light of the needs of the child and the basic lifestyles of all four grandparents prior to Terry's death, Lori Jo is individually entitled to benefit from the deviation as much as Terry's estate.

{¶33} Pursuant to the foregoing analysis, the court concludes that appellant has failed to demonstrate that the trial court acted unreasonably or arbitrarily in adopting the 33 percent deviation or modifying its application to the respective support obligation. As a result, since the trial court did not abuse its discretion in setting appellant's support obligation for the first 30 months of the subject child's life, her sole assignment lacks merit. It is the judgment and order of this court that the judgment of the trial court is affirmed.

DIANE V. GRENDALL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.