

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KEITH A. HARRIS	:	JUDGES:
	:	Hon: W. Scott Gwin, P.J.
	:	Hon: John W. Wise, J.
Petitioner-Appellant	:	Hon: John F. Boggins, J.
	:	
-vs-	:	
	:	Case No. 03CA000024
DARCY JO HARRIS N.K.A.	:	
DARCY JO HENTHORN	:	
	:	<u>OPINION</u>
Petitioner-Appellee	:	

CHARACTER OF PROCEEDING: Civil appeal from the Knox County Court of Common Pleas, Domestic Relations Division, Case No. 00-DK-050110

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 19, 2004

APPEARANCES:

For Petitioner-Appellant
CHARLES D. LYNCH
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Mansfield, OH 44903

For Knox County CSEA
JEAN L. STACKER
Assistant Prosecuting Attorney
117 E. High St., 4th Fl.
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Gwin, P.J.

{¶1} First petitioner/appellant Keith A. Harris appeals a judgment of the Court of Common Pleas, Domestic Relations Division, of Knox County, Ohio, which modified the child support order to pay second petitioner/appellee Darcy Jo Harris, nka Darcy Jo Henthorn, for the parties' two children. Appellant assigns two errors to the trial court:

{¶2} "I. THE TRIAL COURT COMMITTED ERROR AS A MATTER OF LAW WHEN IT INCREASED APPELLANT'S CHILD SUPPORT OBLIGATION DESPITE THE FACT THAT THERE HAD BEEN NO CHANGE IN THE CIRCUMSTANCES OF THE PARTIES OR THEIR INCOMES SINCE THE LAST CHILD SUPPORT ORDER.

{¶3} "II. THE TRIAL COURT COMMITTED ERROR AS A MATTER OF LAW WHEN IT INCREASED APPELLANT'S CHILD SUPPORT OBLIGATION PURSUANT TO AN ORDER WHICH DID NOT RECALCULATE HIS CHILD SUPPORT OBLIGATION, DID NOT CONTAIN BY REFERENCE OR OTHERWISE A CHILD SUPPORT CALCULATION WORKSHEET AND DID NOT FOLLOW THE MANDATES OF *MARKER VS. GRIMM*, 65 OHIO ST. 3D 139 (1992)."

{¶4} The record indicates appellant and appellee dissolved their marriage on July 5, 2000. Their dissolution included an agreed shared parenting plan for their two children. At the time of the dissolution, neither party paid child support to the other.

{¶5} Sometime during 2002, appellee began to receive public assistance. The Knox County Child Support Enforcement Agency filed a motion to establish a child support order. At the hearing on the motion, the parties reached an agreement, which the court approved and entered on February 6, 2003. Pursuant to the agreed judgment entry, appellant's child support obligation was computed to be \$608.57 per month. The

court granted appellant a deviation because of the shared parenting order. The court set appellant's child support obligation at \$200 per month plus processing charges.

{¶6} There was a delay between the hearing on December 16, 2002, and the filing of the judgment entry, on February 6, 2003. Because of the delay, there was some confusion in processing appellant's child support checks. It appears appellant attempted to pay child support through the Child Support Enforcement Agency, but his checks were returned. Appellant testified he signed over the checks CSEA returned to him to appellee for the children.

{¶7} In April of 2003, CSEA filed a motion with the court, asking it to review whether the deviation from the child support guideline amount was still appropriate. Appellant also moved the court requesting he be given credit for the payments he had made directly to appellee.

{¶8} The court heard the motions on June 16, 2003. Both parties testified their circumstances had not changed from the way they were on December 16, 2002. Appellee testified she had received public assistance checks, but stopped receiving them in January of 2003. However, she continued to receive food stamps and a medical card through the time of the hearing. The amount of the food stamps fluctuated somewhat, and at the time of the hearing, appellant was still receiving \$248 in food stamps, plus the medical card. Appellee testified appellant provided health insurance for the children, but she uses the medical card for what is not covered by his insurance.

{¶9} The trial court's judgment entry of June 25, 2003, granted appellant credit for his direct payments, and also found it was inappropriate to continue to deviate from child support worksheet amount when his children were still receiving food stamps and

a medical card. The court set appellant's child support payments at \$608.57 per month, starting from the date of the hearing.

I

{¶10} In his first assignment of error, appellant argues the trial court erred in modifying his child support from \$200 per month to over \$600 per month, because the evidence showed the parties were in essentially the same situation at the time of the hearing in June as they had been in the prior December when appellant's child support obligation was set at \$200.

{¶11} CSEA responds at the time of the hearing in December, appellee had intended to terminate her public assistance, but instead, had continued to receive food stamps, sometimes at a higher amount than the December amount, as well as the medical card. Appellee testified appellant paid for school clothing and supplies, haircuts, and whatever came up. Appellee testified she could go to appellant when she needed money.

{¶12} CSEA urges us not to permit the parties to enter into an agreement deviating greatly from the child support guideline amount while the State of Ohio provides public assistance, health care, and food.

{¶13} We find the trial court did not err in finding there was a change in the circumstances the parties contemplated when they entered into the agreement to set child support at \$200 per month. The trial court found appellant had not met the needs of the children, and was not justified in continuing to receive the deviation.

{¶14} The first assignment of error is overruled.

{¶15} In his second assignment of error, appellant urges the trial court erred when it did not re-calculate his child-support obligation by completing or referring to a child support calculation worksheet, in violation of the Supreme Court directive in *Marker v. Grimm* (1992), 65 Ohio St. 3d 139.

{¶16} The trial court's judgment entry of June 25, 2003, finds the deviation from the child-support guideline is no longer appropriate, and it refers to the guideline attached to the February 6, 2003 judgment entry.

{¶17} We find the trial court is not required to re-compute the child-support obligation where it is merely eliminating the deviation and setting child-support at the previously calculated amount. Neither party testified there was any change necessitating a new worksheet. We find the mandates of *Marker v. Grimm*, supra, have not been violated.

{¶18} The second assignment of error is overruled.

{¶19} For the foregoing reasons, the judgment of the Court of Common Pleas, Domestic Relations Division, of Knox County, Ohio, is affirmed.

By Gwin, P.J.,

Wise, J., and

Boggins, J., concur

JUDGES

WSG:clw 1004

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KEITH A. HARRIS

Petitioner-Appellant

-vs-

DARCY JO HARRIS N.K.A.
DARCY JO HENTHORN

Petitioner-Appellee

JUDGMENT ENTRY

CASE NO. 03CA000024

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, of Knox County, Ohio, is affirmed. Costs to appellant.

JUDGES