[Cite as *Laubacher v. Laubacher*, 2010-Ohio-5335.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
BRYAN LAUBACHER	:	Hon. W. Scott Gwin, P.J.
	:	Hon. Sheila G. Farmer, J.
Plaintiff-Appellant	:	Hon. John W. Wise, J.
	:	
-vs-	:	
	:	Case No. 2009CA00279
DIANA LAUBACHER	:	
	:	
Defendant-Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil appeal from the Stark County Court of Common Pleas, Domestic Relations Division, Case No. 2005-DR-00996
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	November 1, 2010

APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellee
PERICLES G. STERGIOS 2859 Aaronwood Avenue N.E. Suite 102 Massillon, OH 44646-2371	DAVID L. SMITH 101 Central Plaza South Suite 1003 Canton, OH 44702

Gwin, P.J.

{¶1} Plaintiff-appellant Bryan Laubacher appeals a judgment of the Court of Common Pleas, Domestic Relations Division, of Stark County, Ohio, overruling his objections to the magistrate's decision setting child support. Appellee is Diana Laubacher. Appellant assigns three errors to the trial court:

{¶2} "I. WHETHER THE TRIAL COURT ERRED IN ADOPTING THE MAGISTRATE'S DECISION CALCULATING APPELLANT'S CHILD SUPPORT OBLIGATION FOR THE TIME PERIOD OF DECEMBER 1, 2008 THROUGH AUGUST 1, 2009.

{¶3} "II. WHETHER THE TRIAL COURT ERRED IN ADOPTING THE MAGISTRATE'S DECISION WHEREIN THE MAGISTRATE ARBITRARILY DESIGNATED APPELLANT AS THE OBLIGOR ON A SHARED PARENTING PLAN CHILD SUPPORT COMPUTATION WORKSHEET WHEN THE SHARED PARENTING PLAN ESSENTIALLY PROVIDED FOR THE CHILDREN TO SPEND EQUAL TIME WITH EACH PARENT.

{¶4} "III. THE TRIAL COURT ERRED AS A MATTER OF LAW IN ADOPTING THE MAGISTRATE'S DECISION BECAUSE THERE WAS NO SUPPORT ORDER IN EFFECT AT THE TIME OF THE ADMINISTRATIVE ADJUSTMENT RECOMMENDATION BY THE SCCSEA."

{¶5} The record indicates the parties divorced in March of 2006. The divorce decree incorporated a shared-parenting plan wherein the parties' two minor children would spend approximately equal time with each parent. Neither the shared-parenting

plan nor the decree provided for child support to be paid by either party, because the parents earned relatively the same income and because of the shared-parenting order.

{¶6} Shortly after the divorce was final, both parties filed motions to terminate the shared-parenting plan, but eventually the parties agreed to modify the shared-parenting agreement.

{¶7} In November 2008, the Stark County Child Support Enforcement Agency conducted an administrative review of the matter, and made an administrative recommendation that appellant pay $760.71 per month as child support. Appellant pursued the administrative appeal process without success, and ultimately filed objections to the administrative support recommendation with the Court of Common Pleas. He also moved to modify the shared-parenting agreement.

{¶8} At the trial before the magistrate, the parties reached an agreement on some of the parenting issues, and presented evidence regarding child support. The magistrate issued a decision finding appellant to be the obligor. The magistrate noted mother's employment had fluctuated. The magistrate found from December 2008, one of the minor children, the daughter, has not complied with the shared-parenting plan schedule. She had seldom visited appellant's home, and has not stayed overnight. The other minor child has consistently maintained the 50-50 parenting time. Effective mid-July of 2009, the parties agreed the daughter would have two hour visits with appellant, but stay at the paternal grandparents' home for the balance of appellant's parenting time. The magistrate found appellant should assist his parents with any costs they incur in caring for the daughter while she is in their home.

{¶9} The magistrate ordered child support of $593.00 per month commencing December 2008. Thereafter, commencing August 2009, appellant was to pay $382.34 per month. The magistrate explained in calculating the support, she used a 25% deviation for the period December 2008 through August 2009, based upon the minor daughter being with appellee virtually 100% of the time. Thereafter, the court employed a 50% deviation from the worksheet amount because of the equal parenting time, apparently ascribing the time the child spent with the paternal grandparents to be part of appellant's 50% share.

{¶10} Our standard of reviewing decisions of a domestic relations court is generally the abuse of discretion standard, see *Booth v. Booth* (1989), 44 Ohio St. 3d 142. The Supreme Court made the abuse of discretion standard applicable to decisions calculating child support, see *Dunbar v. Dunbar*, 68 Ohio St 3d 369, 533-534, 1994-Ohio-509, 627 N.E. 2d 532. The Supreme Court has repeatedly held the term abuse of discretion implies the court's attitude is unreasonable, arbitrary or unconscionable, *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 450 N.E.2d 1140, at 219. When applying the abuse of discretion standard, this court may not substitute our judgment for that of the trial court, *Pons v. Ohio State Med. Board*, (1993), 66 Ohio St.3d 619, 621 614 N.E.2d 748.

II.

{¶11} We will address the second assignment of error first. In his second assignment of error, appellant argues the magistrate arbitrarily designated him as the obligor when she calculated the child support. Appellant provided the magistrate with

several different worksheets, demonstrating the various ways the child support could be calculated. The magistrate used none of them.

{¶12} Appellant argues in this shared parenting plan, both parents are residential parents and legal custodians and thus, the court should have calculated each parent's share of child support, and permitted appellant to set off appellee's share.

{¶13} The magistrate calculated the child support on the shared-parenting worksheet. The worksheet calculated the percent of the basic obligation according to the parties' respective incomes. Deducting the other parent's share of the support is commonly known as the *Weinberger* calculation, first described in *Weinberger v. Weinberger* (May 15, 1998), Hamilton App. No. C970552. In *French v. Burkhart* (May 22, 2000), Delaware App. No. 99CAF07038, this court rejected use of the *Weinberger* calculation. We found the General Assembly has not provided for this calculation, and instead, the statute provides the court may make a case by case analysis and adjust the support order, always guided by the best interest of the child. *French* at 3, citing *Minor Children of Zentack v. Strong* (1992), 83 Ohio App. 3d 332, 336, 614 N.E. 2d 1106 and *Pauly v. Pauly* (1997), 80 Ohio St. 3d 386, 686 N.E. 2d 1108. See also, *Walker v. Walker,* Delaware App. No. 02CAF04019, 2002-Ohio-5293.

{¶14} We find the trial court did not abuse its discretion in adopting the magistrate's calculation of child support based upon appellant as the obligor.

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

I.

{¶16} In his first assignment of error, appellant argues the trial court erred in adopting the magistrate's decision calculating appellant's child support obligation for the

period of time from December 1, 2008 through August 1, 2009. The magistrate stated because the child was with appellee virtually 100% of the time during the time period, she would not use the 50% deviation she utilized for the 50-50 residential time.

{¶17} This court has frequently held a trial court may make child support retroactive to the date when the matter first came to the court's attention by motion or otherwise. Appellant filed his objections to the administrative support recommendation with the Common Pleas Court on December 10, 2008. We conclude the trial court could make a support order retroactive to the month of December, 2008. We further find the court did not err in modifying the support order because of the temporary change in parenting time.

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

III.

{¶19} In his third assignment of error, appellant argues the court erred in adopting the magistrate's decision because there was no support order in effect at the time of the administrative adjustment recommended by SCCSEA. In *Foss v. Foss,* Richland App. No. 05CA7, 2005-Ohio-3614, this court adopted the "zero support" rule, finding an order awarding no child support is essentially a support order of zero. It is treated as a deviation from the amount the court could have ordered, and may be modified as any other support order.

{¶20} The third assignment of error is overruled.

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

By Gwin, P.J.,

Farmer, J., and

Wise, J., concur

_____

HON. W. SCOTT GWIN

_____

HON. SHEILA G. FARMER

_____

HON. JOHN W. WISE

WSG:clw 1025

[Cite as *Laubacher v. Laubacher*, 2010-Ohio-5335.]

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

BRYAN LAUBACHER	:	
Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
DIANA LAUBACHER	:	
Defendant-Appellee	:	CASE NO. 2009CA00279

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

_____
HON. W. SCOTT GWIN

_____
HON. SHEILA G. FARMER

_____
HON. JOHN W. WISE