

[Cite as *Pagonis v. Steele*, 2010-Ohio-4459.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

MICHAEL PAGONIS

Appellant

v.

HEATHER STEELE

Appellee

C.A. No.     25189

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     2000-07-7076

DECISION AND JOURNAL ENTRY

Dated: September 22, 2010

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CARR, Judge.

{¶1} Appellant, Michael Pagonis, appeals the judgment of the Summit County Court of Common Pleas, Domestic Relations Division. This Court affirms.

I.

{¶2} This case originated in the Summit County Court of Common Pleas, Juvenile Division, and was transferred to the Domestic Relations Division after the Juvenile Court made a paternity determination regarding the parties' only child, E.P.

{¶3} On January 19, 2001, the trial court ordered shared parenting pursuant to a plan agreed upon by the parties, with appellee, Heather Steele, as a primary residential parent. On February 18, 2003, the trial court re-allocated parental rights and responsibilities, leaving in place the shared parenting plan but naming Mr. Pagonis the primary residential parent. This order was put in place after the parties experienced frequent problems with visitations under the original shared parenting plan. For the first three years under the shared parenting plan which

designated Mr. Pagonis as the primary residential parent, there was no support order regarding E.P. On February 7, 2006, Mr. Pagonis filed a motion requesting that Ms. Steele pay child support. On March 29, 2006, the trial court issued an order requiring Ms. Steele to pay child support to Mr. Pagonis in the amount of \$165.17 per month plus a 2% processing fee for a total of \$168.47 per month.

{¶4} Subsequently, on June 16, 2006, Mr. Pagonis filed a contempt motion concerning child support and parenting issues. At this time, Mr. Pagonis himself owed child support arrearages. On March 5, 2007, the trial court adopted the magistrate's decision which dismissed Mr. Pagonis' contempt motion and ordered the Child Support Enforcement Agency (CSEA) to conduct an audit and offset Mr. Pagonis' support arrearages against Ms. Steele's arrearages. On July 30, 2007, Mr. Pagonis filed a motion to terminate the shared parenting plan and name him the residential parent and legal custodian. This motion was denied on August 3, 2007. Mr. Pagonis filed a motion to terminate Ms. Steele's visitation rights on September 14, 2007. Subsequently, the trial court denied this motion on October 24, 2007.

{¶5} On September 1, 2009, Mr. Pagonis filed a contempt motion and a request for modification of child support. On October 26, 2009, the trial court adopted the magistrate's decision which denied the motion for contempt, denied the request to modify child support, and charged Mr. Pagonis with costs. On November 6, 2009, Mr. Pagonis filed three objections to the magistrate's decision. In a December 15, 2009 journal entry, the trial court found that the record did not contain a CSEA audit, as previously requested by the magistrate, and stated that it would not find Ms. Steele in contempt until Mr. Pagonis established that his child support arrearages had been completely offset by Ms. Steele's child support obligation. The trial court further found that two of the three objections Mr. Pagonis filed to the magistrate's decision presented

factual issues and, because Mr. Pagonis had not provided the trial court with a transcript, those objections should be overruled. In his third objection, Mr. Pagonis argued that he should not have been assigned court costs just because he did not prevail on his motions. The trial court overruled Mr. Pagonis' third objection on the basis that it was not supported by legal authority.

{¶6} On appeal, Mr. Pagonis raises three assignments of error.

## II.

### **ASSIGNMENT OF ERROR I**

“THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT/MOTHER, THE OBLIGOR FOR CHILD SUPPORT, WAS NOT IN CONTEMPT OF COURT, WHEN THE TRIAL COURT ON THE RECORD SET FORTH ADMITTED NONPAYMENT OF SUPPORT BY THE MOTHER, WITHOUT HAVING PROVIDED SUFFICIENT LEGAL JUSTIFICATION FOR SUCH NONPAYMENT.”

{¶7} In his first assignment of error, Mr. Pagonis argues the trial court erred by finding that Ms. Steele was not in contempt for failing to make support payments. This Court disagrees.

{¶8} In his first objection to the magistrate's decision, Mr. Pagonis stated that the magistrate's decision was contrary to law in that it did not find Ms. Steele in contempt for failing to pay child support. Mr. Pagonis argued that even when a party is not employed, they are still required by statute to pay at least \$50 per month. Mr. Pagonis did not provide a transcript in support of his objections. Mr. Pagonis argued, however, that no transcript was necessary in order for him to prevail on his objection because of admissions made by Ms. Steele and findings by the magistrate which were “clearly in error.” Mr. Pagonis also noted that Ms. Steele had a felony conviction for nonsupport of dependants which post-dated the support order in this case. The trial court overruled this objection on the basis that the issue of whether Ms. Steele owed child support presented a question of fact which could not be resolved without a transcript. In its journal entry, the trial court stated it would, “not find Mother in contempt of court until Father

establishes that his child support arrearages have been completely offset by Mother's child support obligation." The trial court also noted that Mr. Pagonis' contention that Ms. Steele had a felony conviction for nonsupport of dependants was incorrect. On appeal, Mr. Pagonis argues that it was not necessary to provide a transcript to resolve this issue because the magistrate specifically found, "[Ms. Steele] acknowledges that she has not paid the support order." Mr. Pagonis also emphasizes that Ms. Steele's conviction for nonsupport of dependants demonstrates that she had not met her support obligations. In light of the facts set forth by the magistrate, Mr. Pagonis argues that the trial court erred as a matter of law in not finding Ms. Steele to be in contempt of court.

{¶9} In his merit brief, Mr. Pagonis cites this Court's decision in *Rossen v. Rossen* (1964), 2 Ohio App.2d 381, in which this Court reversed a trial court's judgment finding Mr. Rossen not guilty of contempt for failing to make support payments pursuant to a decree of divorce. Our holding was premised on the notion that a prima facie case for contempt was established when counsel for Mr. Rossen made a statement that his client was not financially able to make payments. *Id.* at 384. This Court reversed the trial court's judgment despite the fact that Wife presented no testimony at trial. *Id.* at 382. There are two notable distinctions between this case and the facts at issue in *Rossen*. Initially, our opinion in *Rossen* suggests that this Court was privy to a trial transcript as we discussed an exchange between the parties' attorneys at the trial on the contempt action. *Id.* This case is further distinguishable in that it involves the adoption of a magistrate's decision. Pursuant to Civ.R. 53(D)(4)(d), a trial court, in ruling on objections to a magistrate's decision, "shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." Civ.R. 53(D)(3)(b)(iii) states, in a pertinent part:

“An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.”

{¶10} As the trial court recognized, the issue of whether Ms. Steele should be held in contempt for failing to make child support payments requires a factual determination. Mr. Pagonis correctly notes that the magistrate found that Ms. Steele had acknowledged not making payments pursuant to the support order. The magistrate also found that Ms. Steele would have difficulty finding employment in the current economic conditions because she had pled guilty to nonsupport in a criminal case. However, without the opportunity to review the transcript from the hearing before the magistrate, the trial court could not have conducted a proper review of these factual determinations as is required under Civ.R. 53(D)(4)(d).<sup>1</sup> Furthermore, the trial court expressed a reluctance to hold Ms. Steele in contempt because the record did not contain a CSEA audit and it could not determine whether Mr. Pagonis’ support arrearages had been completely offset. Given the factual nature of the support payment issue in this case, the trial court did not err in overruling Mr. Pagonis’ first objection to the magistrate’s decision on the basis that it was not provided with a transcript.

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

### **ASSIGNMENT OF ERROR II**

“THE TRIAL COURT ERRED IN DENYING PLAINTIFF/FATHER’S MOTION TO INCREASE CHILD SUPPORT.”

{¶12} In his second assignment of error, Mr. Pagonis argues that the trial court erred in denying his motion to increase child support. This Court disagrees.

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<sup>1</sup> This Court notes that the appellate record in this case does not contain a transcript from the hearing before the magistrate.

{¶13} In his motion to modify child support, Mr. Pagonis requested that Ms. Steele’s support obligation be increased “to the amount called for under Ohio’s child support guidelines, on the ground of change of circumstance[s] and best interest of the child[.]” In an affidavit attached to the motion, Mr. Pagonis averred that he had lost the employment he had at the time of the prior support order and that the expenses involved with supporting E.P. had increased as she grew older. Mr. Pagonis also averred that Ms. Steele had “an increase in her ability to pay support.”

{¶14} In finding that Mr. Pagonis’ motion to modify child support should be denied, the magistrate stated, “the fact that the minimum wage has gone up does not justify a modification of the support order in this case. \*\*\* Defendant is unemployed and cannot find work despite her efforts, and therefore full-time minimum wage is not a realistic figure to impute under the circumstances.”

{¶15} Mr. Pagonis raised the following objection with regard to magistrate’s recommendation that the motion to increase child support should be overruled:

“2. The Magistrate further erred in not increasing child support. The minimum wage, which was imputed to [Ms. Steele] has increased; that also is a matter of law. The same economy exists for Plaintiff.”

The trial court found that this objection involved a question of fact as it centered on the amount of “income the parties have or should be imputed to them.” Because Mr. Pagonis did not provide the trial court with a transcript from the hearing, the trial court overruled his objection.

{¶16} On appeal, Mr. Pagonis argues that the trial court was obligated to modify child support pursuant to R.C. 3119.79, which deals with modifying child support due to a change in circumstances. R.C. 3119.79 states:

“(A) If an obligor or obligee under a child support order requests that the court modify the amount of support required to be paid pursuant to the child support

order, the court shall recalculate the amount of support that would be required to be paid under the child support order in accordance with the schedule and the applicable worksheet through the line establishing the actual annual obligation. If that amount as recalculated is more than ten per cent greater than or more than ten per cent less than the amount of child support required to be paid pursuant to the existing child support order, the deviation from the recalculated amount that would be required to be paid under the schedule and the applicable worksheet shall be considered by the court as a change of circumstances substantial enough to require a modification of the child support amount.

“(B) In determining the recalculated support amount that would be required to be paid under the child support order for purposes of determining whether that recalculated amount is more than ten per cent greater than or more than ten per cent less than the amount of child support required to be paid pursuant to the existing child support order, the court shall consider, in addition to all other factors required by law to be considered, the cost of health insurance the obligor, the obligee, or both the obligor and obligee have been ordered to obtain for the children specified in the order. Additionally, if an obligor or obligee under a child support order requests that the court modify the support amount required to be paid pursuant to the child support order and if the court determines that the amount of support does not adequately meet the medical needs of the child, the inadequate coverage shall be considered by the court as a change of circumstance that is substantial enough to require a modification of the amount of the child support order.

“(C) If the court determines that the amount of child support required to be paid under the child support order should be changed due to a substantial change in circumstances that was not contemplated at the time of the issuance of the original child support order or the last modification of the child support order, the court shall modify the amount of child support required to be paid under the child support order to comply with the schedule and the applicable worksheet through the line establishing the actual annual obligation, unless the court determines that the amount calculated pursuant to the basic child support schedule and pursuant to the applicable worksheet would be unjust or inappropriate and would not be in the best interest of the child and enters in the journal the figure, determination, and findings specified in section 3119.22 of the Revised Code.”

{¶17} A change in the minimum wage was not the only factor the trial court had to consider in determining whether there had been a change in circumstances which justified a modification of child support. Mr. Pagonis raised several factual issues in his motion to modify child support, notably that he had lost employment, that the cost of supporting E.P. had increased, and that Ms. Steele had experienced an increase in her ability to pay support. The

magistrate's decision specifically found that Ms. Steele had been unable to find employment despite clearly seeking to do so. In addition to the minimum wage laws, the trial court had to consider all of these factual issues in determining whether to modify the child support order. As discussed above, Civ.R. 53(D)(3)(b)(iii) requires that an objection to a factual finding "shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available." As noted in our resolution of the first assignment of error, Mr. Pagonis did not provide the trial court with a hearing transcript when he filed his objections to the magistrate's decision. Without a transcript, the trial court could not have adequately reviewed whether a change of circumstances had occurred which would justify a modification of Ms. Steele's child support obligation. Thus, the trial court did not err in overruling Mr. Pagonis' objection on the basis that it had not been provided with a transcript.

{¶18} Mr. Pagonis' second assignment of error is overruled.

### **ASSIGNMENT OF ERROR III**

"IN ACCORD WITH THE ASSIGNMENTS OF ERROR NUMBERS ONE AND TWO, THE TRIAL COURT ERRED IN AWARDING COSTS AGAINST PLAINTIFF/FATHER, THE CHILD SUPPORT OBLIGEE WHO HAD, BY THE COURT'S OWN RECORD, NOT BEEN RECEIVING SUPPORT FROM THE OBLIGOR."

{¶19} In his third assignment of error, Mr. Pagonis argues that the trial court erred in ordering him to pay court costs. This Court disagrees.

{¶20} In his merit brief, Mr. Pagonis argues that because the trial court erred in not finding Ms. Steele in contempt, it also erred in holding him accountable for court costs. In our resolution of Mr. Pagonis' first assignment of error, this Court held that the trial court did not err



in denying the motion to find Ms. Steele in contempt. It follows that the trial court did not err in assigning court costs to Mr. Pagonis. The third assignment of error is overruled.

III.

{¶21} Mr. Pagonis' assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Domestic Relations Division, is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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DONNA J. CARR  
FOR THE COURT

BELFANCE, P. J.  
WHITMORE, J.  
CONCUR

APPEARANCES:

GEORGE W. MACDONALD, Attorney at Law, for Appellant.

HEATHER STEELE, pro se, Appellee.