

[Cite as *Vanest v. Vanest*, 2017-Ohio-9302.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

ANGELA VANEST

Appellant

v.

DOMINIQUE VANEST

Appellee

C.A. No. 28498

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DR-2011-01-0193

DECISION AND JOURNAL ENTRY

Dated: December 29, 2017

TEODOSIO, Judge.

{¶1} Angela Vanest appeals from the December 15, 2016, judgment entry of the Summit County Court of Common Pleas, Domestic Relations Division, overruling her objections to the magistrate’s decision. We reverse and remand.

I.

{¶2} In January 2011, Ms. Vanest filed a complaint for legal separation and allocation of parental rights against Dominique Vanest, and in July 2011, the trial court entered a decree of divorce and approved a shared parenting plan for the couple’s three children. In July 2016, the trial court entered an agreed judgment entry maintaining the shared parenting plan, naming Ms. Vanest the residential parent for school purposes of two of the children, and naming Mr. Vanest the residential parent for school purposes of one of the children. Also in July 2016, a magistrate’s decision set child support to be paid by Mr. Vanest in the amount of \$43.67 per month, with the decision being adopted by the trial court. Ms. Vanest filed objections to the

magistrates' decision, and on December 15, 2016, the trial court entered judgment overruling her objections. Ms. Vanest now appeals, raising two assignments of error.

II.

ASSIGNMENT OF ERROR ONE

THE COURT ABUSED ITS DISCRETION IN USING A SPLIT CUSTODY WORKSHEET PURSUANT TO R.C. 3119.023 SINCE THE VANESTS' CUSTODY ARRANGEMENT DOES NOT FIT THE DEFINITION OF SPLIT CUSTODY PARENTAL RIGHTS AND RESPONSIBILITIES AND IN FAILING TO PROPERLY USE THE SHARED CUSTODY WORKSHEET PURSUANT TO R.C. 3119.022 AS REQUIRED BY STATUTE AND OHIO CASE LAW.

{¶3} In her first assignment of error, Ms. Vanest argues the trial court abused its discretion when it utilized a split custody worksheet to calculate child support despite the fact that the parties had shared parenting of their children. We agree.

{¶4} On the appeal from an order for child support, a reviewing court reviews the order of the trial court for an abuse of discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144 (1989). An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). When applying this standard, a reviewing court is precluded from simply substituting its own judgment for that of the trial court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993).

{¶5} “When it first awards child support, the court must calculate the amount in accordance with the statutory schedule and the applicable worksheet * * *.” *Irish v. Irish*, 9th Dist. Lorain No. 10CA009810, 2011-Ohio-3111, ¶ 14. “Regardless of whether the trial court determines that a shared parenting plan or a split parental rights arrangement is adopted, it must use the worksheet which corresponds with the parenting plan that it orders, i.e. a shared

parenting plan order requires use of the shared parenting worksheet, a split parenting plan requires use of the split parenting worksheet.” *Ullom v. Ullom*, 7th Dist. Columbiana No. 01 CO 33, 2002-Ohio-3005, ¶ 15. “When a court or child support enforcement agency calculates the amount of child support to be paid pursuant to a child support order in a proceeding in which * * * the court issues a shared parenting order, the court or agency shall use a worksheet identical in content and form to the [shared parenting order worksheet].” R.C. 3119.022. The worksheet identified in Section 3119.022 is the “shared parenting” worksheet. *Sandorf v. Sandorf*, 190 Ohio App.3d 355, 2010-Ohio-5326, ¶ 6.

{¶6} “R.C. 3119.022 governs the procedures for awarding and calculating child support. Its provisions are mandatory in nature and must be followed literally and technically in all material aspects * * *.” *Irish at* ¶ 14. *See also Albright v. Albright*, 4th Dist. Lawrence No. 06CA35, 2007-Ohio-3709, ¶ 7; *Coward v. Coward*, 5th Dist. Licking No. 15-CA-46, 2016-Ohio-670, ¶ 17. “R.C. 3119.022 provides the worksheet to be completed by a trial court in calculating child support under a shared parenting order. Completion of a worksheet, identical in content and form to that in R.C. 3119.022, is mandatory * * *.” *Rotte v. Rotte*, 12th Dist. Butler No. CA2004-10-249, 2005-Ohio-6269, ¶ 21.

{¶7} The split parenting worksheet is appropriate if “the parents have split parental rights and responsibilities with respect to the children who are the subject of the child support order.” R.C. 3119.023. Under R.C. 3119.01(C)(14), “[s]plit parental rights and responsibilities” means a situation in which there is more than one child who is the subject of an allocation of parental rights and responsibilities and each parent is the residential parent and legal custodian of at least one of those children.” “This Court, however, has interpreted the definition of split parental rights and responsibilities to apply only to situations in which ‘each parent is the

residential parent, and the only residential parent, of at least one child.” *Sandorf* at ¶ 11, quoting *Paluch v. Paluch*, 9th Dist. Summit No. 18515, 1998 Ohio App. LEXIS 2469, at *2 (June 3, 1998).

{¶8} Although Mr. Vanest and Ms. Vanest had shared parental rights and responsibilities for all three children, the magistrate’s decision that was adopted by the trial court utilized the “split parental rights and responsibilities” worksheet to determine the amount of child support. Ostensibly the split parenting worksheet was used based upon the magistrate’s finding that “recently [one of the children] has been with the father almost exclusively.” The trial court adopted this finding, and in overruling Ms. Vanest’s objections, the trial court stated: “The parties have shared parenting of two children who reside equally in each parent’s home. It was appropriate for the Magistrate to calculate child support based on a split parenting arrangement with Plaintiff having two children and Defendant having one child per purposes of calculating child support.”

{¶9} Because Mr. Vanest and Ms. Vanest were under a shared parenting plan, and because the provisions of R.C. 3119.022 are mandatory in nature and must be followed literally and technically in all material aspects, we conclude the trial court abused its discretion in utilizing the split parenting worksheet to determine child support. We note that although a trial court may deviate from the calculation obtained through the applicable worksheet, it must follow the procedures outlined in R.C. 3119.22:

If it deviates, the court must enter in the journal the amount of child support calculated pursuant to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, its determination that that amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting that determination.

The trial court did not take these necessary steps in its deviation from the shared parenting worksheet.

{¶10} Ms. Vanest's assignment of error is sustained.

ASSIGNMENT OF ERROR TWO

THE COURT'S DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AS THE AMOUNT OF CHILD SUPPORT PAYABLE FROM MR. VANEST TO MRS. VANEST WAS INEQUITABLY REDUCED FROM \$240 PER MONTH PER CHILD TO \$44 PER MONTH FOR ALL THREE OF THE PARTIES' CHILDREN SIMPLY BECAUSE THE PARTIES MODIFIED THEIR SHARED PARENTING PLAN BY NAMING MR. VANEST THE PRIMARY RESIDENTIAL PARENT FOR SCHOOL PURPOSES ONLY OF ONE OF THE PARTIES' THREE CHILDREN AND MRS. VANEST REMAINED THE PRIMARY RESIDENTIAL PARENT FOR SCHOOL PURPOSES ONLY OF THE PARTIES' OTHER TWO CHILDREN AND THE DECISION WAS INEQUITABLE BETWEEN THE PARTIES AND NO IN THE CHILDREN'S BEST INTEREST.

{¶11} In her second assignment of error, Ms. Vanest argues the trial court erred in its reduction of child support payments. We do not reach the merits of this argument. Our resolution of the first assignment of error is dispositive of this appeal, so we decline to address Ms. Vanest's remaining assignment of error as it is rendered moot. *See* App.R. 12(A)(1)(c).

III.

{¶12} Ms. Vanest's first assignment of error is sustained. The judgment of the Summit County Court of Common Pleas, Domestic Relations Division, is reversed and remanded for proceedings consistent with this decision.

Judgment reversed
and cause remanded.

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(C). 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 Appellee.

THOMAS A. TEODOSIO
FOR THE COURT

HENSAL, P. J.
CARR, J.
CONCUR.

APPEARANCES:

RONALD T. GATTS, Attorney at Law, for Appellant.

LESLIE GRASKI, Attorney at Law, for Appellee.