

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

R. O.

Appellant

C.A. No. 28929

v.

P. O.

Appellee

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DR-2010-01-0191

DECISION AND JOURNAL ENTRY

Dated: June 29, 2018

HENSAL, Judge.

{¶1} R.O. (“Husband”) appeals from the judgment of the Summit County Court of Common Pleas, Domestic Relations Division. This Court reverses.

I.

{¶2} This divorce case has a lengthy procedural history, much of which is not relevant to this appeal. Relevantly, the divorce decree ordered Husband to pay P.O. (“Wife”) spousal support as follows: (1) \$13,525 per month; (2) 50% of any gross bonus Husband receives from his employment; and (3) 33% of any income or gain realized by Husband from any executive stock incentive plan in which he participates.

{¶3} On April 24, 2015, Husband moved to modify the spousal-support award based upon a change in circumstances. Specifically, Husband asserted that, effective June 11, 2015, he would be involuntarily unemployed. Shortly thereafter, Wife moved for an increase in spousal support. A magistrate held a hearing on the motions in August 2016, and issued her decision in

October 2016. Relevantly, the magistrate found that – as of May 1, 2015 – Husband had started a new job with a salary of \$150,000. She found that this was a “significant[] decrease” from his prior salary of \$400,000, and that it warranted a decrease in Husband’s spousal-support obligation from \$13,525 to \$6,100 per month. In doing so, the magistrate noted that the original \$13,525 award was based upon Husband’s annual salary of \$400,000 per year at the time of the divorce.

{¶4} The trial court, however, disagreed with the magistrate’s conclusion. The trial court concluded that, despite Husband’s decrease in salary, his total income (as indicated by a draft of Husband’s 2015 tax return) was “in line” with Husband’s total income from previous years. It, therefore, held that no change in circumstances existed to justify a decrease in Husband’s spousal-support obligation, and ordered Husband to continue to pay Wife \$13,525 per month. Husband has appealed the trial court’s decision, raising one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION IN HOLDING THAT NO CHANGE OF CIRCUMSTANCES EXISTED TO JUSTIFY MODIFICATION OF APPELLANT’S SPOUSAL SUPPORT OBLIGATION.

{¶5} In his assignment of error, Husband argues that the trial court abused its discretion when it held that no change in circumstances existed to justify a modification of his spousal-support obligation. This Court agrees.

{¶6} “We review a trial court’s decision concerning * * * modification of spousal support under an abuse of discretion standard.” *Simcox v. Simcox*, 9th Dist. Summit No. 21342, 2003-Ohio-3792, ¶ 4. An abuse of discretion is more than merely an error of judgment; it

connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶7} Revised Code Section 3105.18 governs awards and modifications of spousal support. “In determining whether a spousal support award should be modified pursuant to R.C. 3105.18(E), the trial court engages in a two-step analysis.” *Barrows v. Barrows*, 9th Dist. Summit No. 21904, 2004-Ohio-4878, ¶ 7. “First, jurisdiction is established where the language of the divorce decree permits modification of a spousal support obligation and the court determines that there has been a change in circumstances of either party.” *Id.*, citing R.C. 3105.18(E) and R.C. 3105.18(E)(1). “Second, if the court finds a change in circumstances, it may then determine the appropriateness and reasonableness of the existing award.” *Id.*, citing R.C. 3105.18(C)(1). Regarding what constitutes a “change in circumstances[,]” Section 3105.18(F) provides that:

a change in the circumstances of a party includes * * * any * * * involuntary decrease in the party’s wages[or] salary * * * so long as both of the following apply: (a) [t]he change in circumstances is substantial and makes the existing award no longer reasonable and appropriate[; and] (b) [t]he change in circumstances was not taken into account by the parties or the court as a basis for the existing award when it was established or last modified, whether or not the change in circumstances was foreseeable.

{¶8} There is no dispute that the trial court retained jurisdiction to modify the spousal-support award under the terms of the divorce decree. There is also no dispute that Husband experienced an involuntary decrease in his salary, and that this change was not taken into account at the time the trial court issued its original spousal-support award. Husband, therefore, argues that the sole issue in this appeal is whether the decrease in his base salary (from \$400,000 to \$150,000) constituted a change in circumstances that justified a decrease in his spousal-support obligation.

{¶9} As Husband points out in his merit brief, the trial court’s original spousal-support award is a three-tiered structure based upon the varying forms of income that Husband receives from his employment. Tier one is the monthly payment of \$13,525 based upon Husband’s base salary at the time of the divorce (i.e., \$400,000); tier two is 50% of any gross bonus Husband receives from his employment; and tier three is 33% of any income or gain realized from any executive stock incentive plan in which Husband participates. The monthly payment under tier one is the only form of spousal support at issue in this appeal.

{¶10} Husband’s primary argument is that, because the trial court’s original tier-one-spousal-support award was based solely on his base salary, the trial court abused its discretion by subsequently considering his total income for purposes of determining whether a change in circumstances existed to justify a decrease in his tier-one-spousal-support obligation. He argues that this created an apples-to-oranges comparison that now requires him to pay 108% of his salary as spousal support to Wife.

{¶11} This Court addressed an analogous situation in *Manos v. Manos*, 9th Dist. Summit No. 27335, 2015-Ohio-2932. There, the trial court based its original spousal-support award on the husband’s net income. *Id.* at ¶ 17. The husband later moved to modify the award, which the trial court granted. *Id.* at ¶ 5, 8. In doing so, the trial court used an average of the husband’s adjusted gross income to conclude that the husband experienced an 80% decrease in his salary, which warranted an 80% decrease in his spousal-support obligation. *Id.* at ¶ 8, 18. On appeal, this Court determined that “[t]hese two figures are not comparable[,]” and held that “the trial court’s use of Husband’s *adjusted gross income* was arbitrary considering the court used Husband’s *net* income for determining spousal support in [the original order].” (Emphasis sic.) *Id.* at ¶ 18.

{¶12} This same logic applies in this case. Here, the trial court based its original tier-one-spousal-support award on Husband's base salary of \$400,000. Then, after Husband moved to modify the award, the trial court used Husband's total income – not his new base salary of \$150,000 – to determine that Husband did not experience a substantial change in circumstances to justify a decrease in his spousal-support obligation. These figures are not comparable. We, therefore, hold that the trial court abused its discretion when it used Husband's total income – as opposed to his base salary – for purposes of determining whether Husband experienced a substantial change in circumstances to justify a decrease in his tier-one-spousal-support obligation. Accordingly, Husband's assignment of error is sustained.

III.

{¶13} Husband's assignment of error is sustained. The judgment of the Summit County Court of Common Pleas, Domestic Relations Division is reversed.

Judgment reversed.

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.

JENNIFER HENSAL
FOR THE COURT

SCHAFFER, P. J.
TEODOSIO, J.
CONCUR.

APPEARANCES:

CHARLES E. GRISI and CHARLES M. BUDDE, Attorneys at Law, for Appellant.

KENNETH L. GIBSON, Attorney at Law, for Appellee.

RANDAL A. LOWRY, Attorney at Law, for Appellee.