[Cite as *Johnson v. McConnell*, 2010-Ohio-5900.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

JULIE A. JOHNSON :

Plaintiff-Appellant : C.A. CASE NO. 24115

v. : T.C. NO. 06DR1192

JOHN C. McCONNELL : (Civil appeal from Common Pleas Court, Domestic Relations)

Defendant-Appellee :

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O P I N I O N

Rendered on the 3rd day of December, 2010.

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FROELICH, J.

{¶ 1} Julie A. Johnson appeals from a judgment of the Montgomery County Court of Common Pleas, Domestic Relations Division, which reduced her former husband's child support obligation, among other rulings. Johnson claims that the trial court erred in excluding Johnson's daycare expenses in determining the modified amount of child support

and in failing to complete a child support computation worksheet with those expenses included. For the following reasons, the trial court's judgment will be reversed and the matter will be remanded for further proceedings.

I

{¶ 2} Johnson and John McConnell were married in October 2002, and one daughter was born from the marriage in June 2006. Johnson filed a Complaint for Divorce shortly after their daughter's birth. On August 29, 2008, the trial court entered a Final Judgment and Decree of Divorce, which divided the parties' assets, established a child support obligation of McConnell of $528 per month (plus additional payments on an arrearage), required Johnson to provide health and dental insurance, and determined how medical expenses would be divided; the parties waived spousal support.

{¶ 3} On March 11, 2009, McConnell filed a four-branch motion for an order finding Johnson in contempt and modifying visitation and child support. McConnell claimed that Johnson had failed to contact the CSEA and the court to advise them that she was now unemployed (Branch I), that his child support obligation should be reduced because Johnson no longer had work-related daycare expenses (Branch II), that visitation should be modified due to Johnson's relocating "a considerable distance" from him (Branch III), and that he was entitled to attorney fees (Branch IV).

{¶ 4} On April 1, 2009, Johnson also filed a multi-branch motion for contempt. Branch I asserted that McConnell had failed to create a trust account for the benefit of their child and had failed to provide her (Johnson) with a year-end statement. Branch II asserted that McConnell had failed to prepare paperwork for her to sign in order to transfer her

interest in McConnell's vehicle. Branch III claimed that McConnell had failed to return some of her personal property. Johnson requested attorney fees in Branch IV.

{¶ 5} In May 2009, the parties filed an agreed entry as to several of the issues raised in their motions. McConnell withdrew his motion with respect to Johnson's failure to notify CSEA, and Johnson withdrew her motion as to McConnell's failure to establish a trust account, to transfer title to the vehicle, and her request for attorneys fees. The parties agreed that McConnell had overpaid child support in the amount of $1,182.48, and that his child support obligation should be lowered by $236.50 for five months to account for this overpayment.

{¶ 6} A hearing on the remaining issues was held before a magistrate on July 17, 2009, and the magistrate issued a decision on December 31, 2009. With respect to McConnell's request for a reduction of child support, the magistrate found that Johnson's claimed daycare expenses should not be included in the child support calculations. The magistrate reasoned that, "[w]hile mother claims that she spent between $6,000 and $7,000 annually on child care, there was insufficient income evidence to make a determination as to child care related expenses. Mother wishes that her current husband's payment be used in the calculation of child support computation." Using the child support computation worksheet, the magistrate calculated the child support to be $275 per month. The magistrate further ordered that the withholding amount be $39.50 ($275-$236.50) to account for the child support overage that McConnell had paid, and that McConnell pay monthly cash medical support of $65 because health insurance was not provided. The magistrate's worksheet was attached to and incorporated into the magistrate's decision.

{¶ 7} Johnson objected to the magistrate's decision on several grounds, including that the magistrate failed to (1) "properly complete the Child Support Computation Worksheet when she calculated child support by not including any daycare expense and by miscalculating the Defendant's income, which is in violation of case law and O.R.C. §3119.02 and O.R.C. §3119.021," (2) "include daycare expenses with respect to the calculation of child support and improperly placed the burden of proof upon the Plaintiff," and (3) "consider the credibility of the witnesses with respect to the calculation of daycare expenses and denied daycare expenses which was undisputed by the Defendant."

{¶ 8} On May 28, 2010, the trial court overruled in part and sustained in part Johnson's objections to the magistrate's decision. With respect to the inclusion of daycare expenses in McConnell's child support obligation, the trial court stated that it was "unable to determine the source of funds that paid for the daycare expenses. Therefore, the Court cannot find that plaintiff met her burden of proof regarding the payment of daycare expenses." The court thus overruled Johnson's objection to the exclusion of daycare expenses from the child support calculations. Consistent with the magistrate's worksheet, the trial court reduced McConnell's child support obligation from $528 per month to $275 per month per child. However, the court found that the adjustment to $39.50 per month based on the agreed overage was unreasonable, and it concluded that the magistrate erred in adding $65 as cash medical expense.

{¶ 9} Johnson appeals from the trial court's judgment.

II

{¶ 10} Johnson's sole assignment of error states:

{¶ 11} "THE TRIAL COURT ERRED IN DENYING CHILD SUPPORT FOR DAYCARE EXPENSES IN DETERMINING THE FATHER'S CHILD SUPPORT PAYMENTS."

{¶ 12} Johnson asserts that the trial court should have included her claimed daycare expenses in the calculation of child support and in completing the child support worksheet.

{¶ 13} "[A] trial court's decision regarding child support obligations falls within the discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion." *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 1997-Ohio-105. A court abuses its discretion when its decision is arbitrary, unreasonable, or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151.

{¶ 14} "In any action in which a court child support order is issued or modified ***, the court or agency shall calculate the amount of the obligor's child support obligation in accordance with the basic child support schedule, the applicable worksheet, and the other provisions of sections 3119.02 to 3119.24 of the Revised Code." R.C. 3119.02. The Supreme Court of Ohio has required strict compliance with the statutory procedures for an initial award or modification of a child support order. *Marker v. Grimm* (1992), 65 Ohio St.3d 139. "The trial court must include the worksheet in the record so that an appellate court can meaningfully review the trial court's order." *In re S.H.*, Montgomery App. No. 23382, 2009-Ohio-6592, ¶45, citing *Marker*, supra.

{¶ 15} Generally, the amount of child support that would be payable under a child support order, as calculated pursuant to the basic child support schedule and applicable worksheet through the line establishing the actual annual obligation, is rebuttably presumed

to be the correct amount of child support due. R.C. 3119.03. However, R.C. 3119.022 authorizes the court to order an amount of child support that deviates from the amount determined from the child support schedule and worksheet if, upon considering the factors set forth in R.C. 3119.023, the court determines that the calculated amount "would be unjust or inappropriate and would not be in the best interest of the child."

{¶ 16} Line 19 of the Child Support Worksheet set forth in R.C. 3119.022 addresses the "[a]nnual child care expenses for children who are the subject of this order that are work-, employment training-, or education-related, as approved by the court or agency (deduct tax credit from annual cost, whether or not claimed)." A percentage of the approved annual child care expenses are added into the obligor's annual child support obligation on line 21 (when health insurance is provided) or line 24 (when health insurance is not provided). R.C. 3119.022. "R.C. 3199.022 (line 19) requires an adjustment only when child care expenses a party claims are 'approved by the court.'" *Daufel v. Daufel*, Montgomery App. No. 22584, 2008-Ohio-3868, ¶38.

{¶ 17} Although Johnson's primary argument is that the trial court failed to include her daycare expenses when calculating child support, Johnson appears to assert that the trial court committed reversible error by failing to complete a child support calculation worksheet. In rendering its decision modifying McConnell's child support obligation, the magistrate completed the applicable child support worksheet and determined that "child support at guideline amount pursuant to O.R.C. § 3119.022 is $275.00 per month, per child for 1 child;" the worksheet was attached to and incorporated into the magistrate's decision. Upon review of Johnson's objections to the magistrate's decision, the trial court agreed with

that child support calculation. Although the trial court did not complete its own worksheet, the magistrate's worksheet is in the record and available for appellate review. "[A] trial court can rely on a magistrate's filed worksheet if the court's figures reflect those calculated by the magistrate." *Stevens v. Stevens*, Warren App. Nos. CA2009-02-028, CA2009-06-073, 2010-Ohio-1104, ¶36. Because the trial court agreed with the magistrate's guideline child support calculation of $275 per child, the magistrate's worksheet satisfies the requirement that a worksheet be completed and included in the record.

{¶ 18} We therefore turn to Johnson's principal argument, namely that the trial court was required to include her child care expenses in calculating McConnell's modified child support obligation and erred in failing to do so.

{¶ 19} Prior to the couple's divorce in August 2008, Johnson was working and had gross income of $17,914, representing 55 percent of the couple's income. Johnson had $7,287 in child care expenses, $3,755.67 of which was included in McConnell's child support obligation.

{¶ 20} At the July 2009 motions hearing, Johnson testified that she became a full-time student at Sinclair Community College when the fall semester started in September 2008. She has not worked since becoming a student and expected to remain a full-time student for at least another year. Johnson uses a daycare in Enon for her daughter, and she pays $132 per week (which amounts to $6,864 per year) in daycare expenses. Johnson is required to pay for the daycare regardless of whether her daughter actually attends.

{¶ 21} On cross-examination, Johnson initially testified that she paid for her daughter's daycare from her savings; she claimed that she had between $5,000 and $10,000

in savings at the time of the divorce in August 2008. Johnson denied that her current husband was paying for the child care. Upon further questioning, Johnson stated that, beginning in September 2008 when she started school, she received assistance from the State to pay for daycare and that she had minimal savings at that time. Johnson testified that her child care rate while receiving assistance was "almost nothing," but she "paid more than that to daycare so that he could come and pick her up."[1]

{¶ 22} Citing *Varner v. Varner*, 170 Ohio App.3d 448, 2007-Ohio-675, Johnson claims that the trial court was required to include her daycare expenses in calculating McConnell's child support payment, because McConnell did not dispute the amount of her expenses, i.e., $132 per week. In *Varner*, both parents agreed that the cost of daycare was $180 per week, yet the trial court failed to include that amount in its child support calculations. The Ninth District reversed, holding that the trial court's failure to include the cost of day care for the parties' children when completing the child-support worksheet constituted an abuse of discretion.

{¶ 23} We do not find *Varner* to be persuasive. Unlike the present case, there was no suggestion in *Varner* that the parties contested the amount of child support that should have been used in the child support calculations. We do not read *Varner* to mean that the trial court must, in all circumstances, include the *claimed* cost of daycare. And, as stated above, R.C. 3119.022 does not require the trial court to include all of the claimed daycare expenses; rather, the court has the discretion to determine what amount of daycare expenses

[1]It is unclear whether Johnson was referring to her current husband or to McConnell when she said "he."

is appropriately included on the worksheet in determining child support.

{¶ 24} We reached a similar conclusion in *Daufel*. In that case, the mother asserted that the trial court erred in failing to consider the actual daycare expenses in establishing the father's child support obligation. The mother had claimed work-related child care expenses of $25,0000 per year for the parties' two children, representing the wages paid to a nanny who provided in-home care; no offset was made for the weeks during the summer months when the children visited with the father. The magistrate found that the claimed child care expenses were "excessive." The magistrate reduced the adjustment to the mother's income by half and allowed a further downward adjustment for the weeks the children were with their father. The total adjustment or deduction allowed by the magistrate was $11,347.07. The trial court agreed that the claimed expenses were excessive, and it adopted the magistrate's decision.

{¶ 25} On appeal, we rejected the mother's argument that the trial court abused its discretion because her child care expenses were work-related, and because neither the magistrate nor the court pointed to any evidence showing why they were excessive. We stated:

{¶ 26} "The magistrate considered the lesser amount that [the father] pays for daycare when the children are with him. Furthermore, R.C. 3119.022 (line 19) requires an adjustment only when child care expenses a party claims are 'approved by the court.' It was [the mother's] burden to show how and why the expenses she claimed are reasonable. [The mother] argued that the daycare expenses she incurred were necessary to provide stability for the children. The court acted within its discretion in rejecting that contention." *Daufel* at

¶38.

{¶ 27} In so stating, we made clear that a party is not entitled to automatically have all of the claimed daycare expenses included in the child support calculations and that the court may exercise its discretion in determining the appropriate amount. See, also, *Wingard v. Wingard*, Greene App. No. 2005-CA-09, 2005-Ohio-7066, ¶56 (affirming the trial court's child support calculations and noting that, in completing child support worksheet, the trial court credited the father with "$3,859.20 in annual work-related child care expenses that are approved by the court," which amounted to $80.40 less than the father had claimed).

{¶ 28} As in *Daufel*, the trial court in this case had the authority to exercise its discretion in determining whether to include Johnson's claimed daycare expenses when calculating McConnell's child support obligation. Johnson ceased her employment and, as of September 2008, has been a full-time student with no source of income. Based on her lack of income and savings, Johnson originally received State assistance with her education-related child care, resulting in daycare expenses of "almost nothing." The record reflects that Johnson elected to obtain child care for her daughter at the cost of $132 per week, and that someone other than herself (likely her current husband) is paying that expense. Although it is undisputed that the daycare for the parties' child costs $132 per week, the trial court was permitted to consider, within its discretion, whether Johnson was paying for the daycare from her own savings, income, or loans, and whether the amount of the daycare expense was reasonable under the circumstances.

{¶ 29} Johnson argues, however, that the trial court improperly concluded that daycare expenses did not need to be included when it could not determine the source of the

funds used to pay for the child care. She asserts that there is no law to support the conclusion that funds used to pay the child care expenses must come directly from her income.

{¶ 30} In determining that it would not include Johnson's daycare expenses, the trial court reviewed the evidence of Johnson's daycare expenses and the source of payment of those expenses. The court then found that it "is unable to determine the source of funds that paid for the daycare expenses. Therefore, the Court cannot find that plaintiff met her burden of proof regarding the payment of daycare expenses." Based on the trial court's language, the court apparently found that, as a matter of law, Johnson was entitled to have her daycare expenses considered only if she could prove that she had paid for those expenses from her income or savings.

{¶ 31} We have found no authority, statutory or otherwise, *requiring* child care expenses to be paid directly from the parent's income. See *Saylor v. Saylor*, Muskingum App. No. CT2008-0039, 2009-Ohio-3109, ¶10-12 (holding that the trial court did not abuse its discretion in using the total cost of daycare on the child support worksheet, even though child's grandparents were currently paying all but $1,000 of the daycare costs). Although the source of funds to pay the daycare expenses may be considered by the trial court in the court's exercise of its discretion, the fact that the parent may be receiving financial assistance from third parties for daycare expenses does not disqualify those expenses from inclusion in the child support calculation. The trial court erred when it found, as a matter of law, that Johnson had the burden of proving that she was paying any daycare expense that should be included in McConnell's child support obligation.

{¶ 32} The legislature's requirement of completion of the worksheet is certainly helpful for overall consistency, the parties' understanding of the court's decision, and appellate review. However, whether the child care expense is determined on line 19 or adjusted on line 27 does not seem controlling as long as the record is clear that the court considered all relevant factors in exercising its discretion to arrive at a final child support figure.

{¶ 33} The assignment of error is sustained.

III

{¶ 34} The trial court's judgment will be reversed, and the matter will be remanded for further proceedings.

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WAITE, J., concurs.

GRADY, J., concurring:

{¶ 35} The court must calculate an obligor's child support obligation in accordance with the applicable statutory worksheet. R.C. 3119.02. "[T]he amount of child support that would be payable under a child support order, as calculated pursuant to the basic child support schedule and applicable worksheet through the line establishing the actual annual obligation, is rebuttably presumed to be the correct amount of child support due." R.C. 3119.03. The terms of the applicable worksheet are therefore mandatory and must be followed literally and technically in all material respects. *Marker v. Grimm* (1992), 65 Ohio St.3d 139.

{¶ 36} Julie A. Johnson is the sole residential parent of the parties' minor child.

R.C. 3119.022 sets out the scheme for computation of the obligor's actual annual child support obligation in that circumstance. R.C. 3119.022, at line 19, requires a court in calculating the child support obligation to there include an amount representing "[a]nnual child care expenses for children who are the subject of this order that are work-, employment training-, or education-related, as approved by the court or agency." The amount of day care expenses approved must be entered in the column of the parent who incurs that expense.

{¶ 37} The phrase "as approved by the court or agency" contemplates four determinations the court or agency must make: (1) that one of the parents incurs child care expenses, and, if so; (2) the annual amount of expenses incurred; (3) that the expense is work, employment training-, or education-related; and, (4) that the expense is reasonable in relation to the need for child care.

{¶ 38} It is undisputed that Johnson incurs child care expenses for the child of $132 per week of $6,854 annually. Johnson testified that she currently is enrolled in college, which supports a finding that the expense Johnson incurs is education-related. There is no claim that the amount of that expense is unreasonable in relation to Johnson's need for child care.

{¶ 39} The domestic relations court declined to enter the annual child care expense Johnson incurs on line 19 because, as it found, the court could not determine the source of the funds Johnson uses to pay for her child's daycare. The suggestion was made that those monies instead come from Johnson's new spouse following her remarriage.

{¶ 40} The source of the funds that Johnson uses to pay the education-related child

care expenses for the child for whom Johnson is the residential parent is irrelevant to the determinations that line 19 required the court to make. Strict compliance with R.C. 3119.022 is required. *Marker v. Grimm.* The court therefore abused its discretion when it declined to enter on line 19 of the R.C. 3119.022 worksheet the actual annual amount of child care expenses which the evidence demonstrates Johnson incurs. Absent that required entry, the court could not arrive at the "actual annual obligation" for child support owed by Defendant-Appellee McConnell that the court must enter on line 23(C) of the worksheet.

{¶ 41} The domestic relations court nevertheless "has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters." In the exercise of that power, the court is authorized by line 27(a) of the R.C. 3119.022 worksheet to order a deviation from the amount of support the court enters on line 23(c) if that amount "would be unjust or inappropriate" in relation to the factors in R.C. 3119.23. Paragraph (H) of that section authorizes the court to consider "[b]enefits that either parent receives from remarriage . . . ."

{¶ 42} The suggestion that Johnson's new spouse pays the child care expenses Johnson incurs could permit the court to order a deviation from the amount of child support McConnell owes, on a finding that the cost of that child support is not an expense that Johnson bears personally, and that imposing an obligation on McConnell to pay a share of that cost would be inequitable. It appears that the court was concerned with that prospect when, instead, the court declined to credit Johnson with any expense at all on line 19.

{¶ 43} The problem with proceeding as it did, on the court's finding that it could not determine the source of the funds that Johnson uses, is that on this record the court could

reasonably order a line 27(a) deviation only upon a finding that the source of the funds is someone other than Johnson. That is a positive finding, requiring proof which the court found is lacking. Lacking that necessary proof, the court abused its discretion when it instead relieved McConnell of the actual annual child support obligation imposed on him by R.C. 3119.022, at line 27(c).

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(Hon. Cheryl L. Waite, Seventh District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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