[Cite as *Kessler v. Kessler*, 2015-Ohio-1666.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

WILLIAM J. KESSLER	:	
	:	
Plaintiff-Appellant	:	Appellate Case No. 26239
	:	
v.	:	Trial Court Case No. 2004-DR-1547
	:	
JULIE L. KESSLER	:	(Appeal from Domestic Relations Court)
	:	
Defendant-Appellee	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 1st day of May, 2015.

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WELBAUM, J.

{¶ 1} Plaintiff-appellant, William Joseph Kessler, appeals from the judgment of the Montgomery County Court of Common Pleas, Domestic Relations Division, denying his motion to enforce a settlement agreement, modifying a portion of his child support payment by increasing the amount owed for extraordinary expenses, and denying his motion for a new trial. For the reasons outlined below, the judgment of the trial court will be affirmed in part, reversed in part, and remanded for further proceedings.

Facts and Course of Proceedings

{¶ 2} William and Julie Kessler were married on September 22, 1990. Their marriage produced one child, A., who is now 20 years old. Due to mental and physical conditions existing from birth, A. is and always will be incapable of supporting and caring for herself. On July 13, 2006, William and Julie's marriage was terminated by a final judgment and decree of divorce. Julie was granted custody of A., whereas William was ordered to pay $4,000 per month in spousal support and $900 per month in child support. The decree also contained extensive provisions regarding the extraordinary expenses for A.'s care, treatment, and therapy. Because William and Julie could not agree on the type and extent of such care, treatment, and therapy, instead of litigating their differences, the parties reached an agreement that William would pay an additional $900 per month as an extraordinary-expense stipend.

{¶ 3} On July 31, 2011, Julie's spousal support terminated. Around that time, Julie requested an administrative modification of child support through the Montgomery County Child Support Enforcement Agency (CSEA) on grounds of decreased income.

On September 29, 2011, the CSEA filed a motion to modify child support stating that, pursuant to R.C. 3119.04(B), Julie's requested modification must be handled by the domestic relations court since Julie and William's combined income exceeded $150,000.

{¶ 4} On February 9, 2012, Julie then filed a combined motion to increase child support and motion to evaluate child and medical expenses. Under the first branch of the motion, Julie requested the current child support order be increased due to a change in circumstances. Under the second branch of the motion, Julie requested the extraordinary-expense stipend be increased due to child care and medical expenses drastically increasing since the parties' divorce. Julie also requested a hearing on both aspects of her motion.

{¶ 5} On October 17, 2012, the parties filed an agreed entry addressing Julie's request for increased child support. The agreed entry modified William's child support payment from $900 to $1,268 per month and included an additional $82 per month in cash medical support when private health insurance was not available. Over the next few months, the parties continued to negotiate the extraordinary-expense stipend. To that end, a hearing was scheduled on December 4, 2012, to address whether the extraordinary-expense stipend would be increased.

{¶ 6} Leading up to the hearing, the depositions of both parties were completed and counsel engaged in extensive negotiations, up to and including the morning of the hearing. All parties and counsel then convened at the courthouse as scheduled, but instead of having a hearing, the parties continued their negotiations in regards to the proposed agreed order. After the negotiation ended, the parties notified the court that they had reached an agreement, and the court ordered the parties to submit an agreed

order within 30 days.

{¶ 7} On December 20, 2012, William's counsel e-mailed Julie's counsel a copy of the agreed order that was purportedly drafted pursuant to the terms the parties had agreed on during the December 4th negotiation. Julie, however, had concerns with the agreed order as written, which prompted the parties to exchange multiple revised versions of the agreed order over the next six months. After the parties could not come to an agreement, on June 27, 2013, William filed various motions, including a motion to dismiss Julie's motion to modify the child support payments and extraordinary-expense stipend, and a motion to enforce the agreed order originally sent on December 20, 2012. Thereafter, a hearing was scheduled for July 2, 2013. As relevant here, the original agreed order William sought to enforce was marked as Plaintiff's Exhibit 20(B), and is hereinafter referred to as "the 20(B) Agreed Order."

{¶ 8} At the outset of the July 2, 2013 hearing, the parties stipulated that during their negotiations, they had agreed to modify the child support payment to $700 per month and the extraordinary-expense stipend to $2,968 per month. However, William's counsel made it clear on the record that the agreement to those amounts was dependent upon Julie accepting all the terms of the 20(B) Agreed Order. William's counsel also confirmed on the record that the purpose of the hearing was to determine whether the 20(B) Agreed Order should be enforced. After those initial remarks, the parties gave testimony regarding their December 4, 2012 negotiation and their understanding of the terms they had allegedly reached.

{¶ 9} Julie testified that the 20(B) Agreed Order was satisfactory except for Section 4, which provided when William's obligation to pay the extraordinary-expense stipend

would terminate. Julie also had other minor concerns with the 20(B) Agreed Order, but her main concern was with Section 4. Pursuant to Sections 4(A) through(C), William's obligation to pay the extraordinary-expense stipend would terminate upon: (A) William's retirement or after he turns 65 years old; (B) William's retirement due to disability or an involuntary substantial reduction in income; and (C) A.'s placement into a group home prior to William's retirement and absent any other change in circumstances. In addition, Section 4(D) stated that any reduction in William's annual income to $190,000 or less would constitute a change of circumstances sufficient to warrant a reduction in the extraordinary-expense stipend.

{¶ 10} Julie testified that she took issue with the extraordinary-expense stipend terminating upon the events described in Section 4 because A. is expected to graduate from high school when she is 22 years old, the day before William turns 65, and once A. graduates, she will need full-time care. Julie testified that for the past nine years, A. has been on a waiting list for a Medicaid waiver that would help pay for her placement in a group home; however, due to the high demand for such placement, Julie testified that she was concerned a facility will not be available for A. by the time she graduates. In that event, Julie testified that she would incur expenses to hire child care for A. while she was at work. As a result, Julie testified that she would like Section 4 to state that once any of the events listed under that section occur, the continuation of the extraordinary-expense stipend would be reviewed by the court and not automatically terminated.

{¶ 11} On cross-examination, William's counsel attempted to elicit testimony that during the December 4, 2012 negotiation, Julie had agreed that the extraordinary-expense stipend would terminate once A. graduated from high school.

William submitted Plaintiff's Exhibit 17, which is a December 4, 2012 e-mail exchange regarding the proposed terms of the agreement. The text of the e-mail states, in pertinent part, that: "I have reviewed the language with my client and she has requested the following changes: * * * (6) pay extra amount until high school graduation, even if [William] retires." William also submitted Plaintiff's Exhibit 18, which is a copy of the same e-mail, but with his counsel's handwritten notes stating: "(6) OK unless retirement is due to a disability." According to William, these e-mails and notes reflect the parties' oral agreement used to prepare the 20(B) Agreed Order.

{¶ 12} Julie, however, testified that during the December 4, 2012 negotiation, it was her understanding that the extraordinary-expense stipend would continue at least through A.'s high school graduation and that she never agreed to say that the stipend would end thereafter. Julie further testified that the parties said a lot of things during the negotiation that were not put in the notes from Plaintiff's Exhibit 18. She also testified that she thought they were all on the same page during the negotiation, but they were in fact not. According to Julie, it was her understanding that the continuation of the extraordinary-expense stipend would be reviewed by the court if any of the events listed in Section 4 occurred.

{¶ 13} Following the hearing, the magistrate issued a written decision and entry denying William's motion to enforce the 20(B) Agreed Order and denying Julie's motion to increase child support and evaluate medical expenses. The magistrate, therefore, recommended that all prior child support orders remain in full force and effect, which meant William was obligated to pay $1,268 each month in child support per the October 17, 2012 agreed order and $900 each month for the extraordinary-expense stipend per

the final decree of divorce.

{¶ 14} Both parties filed objections to the magistrate's decision and the matter was referred to the domestic relations court for review. On May 2, 2014, the court issued a written decision adopting the magistrate's decision denying William's motion to enforce the 20(B) Agreed Order. Specifically, the court stated that "there was not an agreement to terminate the stipend completely when [A.] was moved to a care facility or when plaintiff retired." Decision and Entry (May 2, 2014), Montgomery County Court of Common Pleas Case No. 2004 DR 01547, Docket No. 148, p. 8. The court also adopted the magistrate's decision denying Julie's motion to increase child support, but granted Julie's motion to evaluate child care and medical expenses and ordered William to pay $700 per month in child support and $2,968 per month for the extraordinary-expense stipend.

{¶ 15} William filed a notice of appeal from the domestic relations court's decision on May 27, 2014. Prior to filing his appeal, on May 20, 2014, William also moved for a new trial and for a stay of the execution of the judgment. The domestic relations court granted the stay and refrained from ruling on the motion for new trial. However, on August 5, 2014, we remanded the matter pursuant to App.R. 4(B)(2) for the court to resolve the motion for new trial. On remand, the domestic relations court denied William's motion for a new trial. Thereafter, we permitted William to amend his notice of appeal to include herein the trial court's denial of his motion for a new trial.

{¶ 16} William now raises eight assignments of error for our review. For purposes of clarity we will review his assignments of error out of order.

Fifth, Sixth, Seventh, and Eighth Assignments of Error

{¶ 17} William's Fifth, Sixth, Seventh, and Eighth Assignments of Error are as follows:

V. THE TRIAL COURT'S FAILURE TO ENFORCE THE PARTIES' SETTLEMENT AGREEMENT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

VI. THE TRIAL COURT'S FINDING THAT NO MEETING OF THE MINDS OCCURRED TO FORM AN ENFORCEABLE CONTRACT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND WAS AN ABUSE OF DISCRETION.

VII. THE TRIAL COURT'S FAILURE TO ADOPT APPELLANT'S EXHIBIT 20(B) AS AN ORDER OF THE COURT WAS BASED UPON AN ERRONEOUS STANDARD OR A MISCONSTRUCTION OF THE LAW.

VIII. THE TRIAL COURT'S FAILURE TO ADOPT ALL OTHER PROVISIONS OF EXHIBIT 20(B) WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 18} Under the foregoing assignments of error, William contends that the domestic relations court erred in failing to enforce the 20(B) Agreed Order. Specifically, William claims that the testimony and evidence presented at the July 2, 2013 hearing establishes that a final, enforceable settlement agreement was reached between the parties on December 4, 2012, and that said agreement is reflected in the 20(B) Agreed Order. Accordingly, William argues that the court's failure to enforce the 20(B) Agreed Order was an abuse of discretion, against the manifest weight of the evidence, and an

error of law. We disagree.

{¶ 19} As previously noted, the main issue in contention was whether there was an agreement as to when the $2,968 extraordinary-expense stipend would terminate. The domestic relations court adopted the magistrate's decision by finding "there was not an agreement to terminate the stipend completely when [A.] was moved to a care facility or when plaintiff retired" and then overruling William's motion to enforce the 20(B) Agreed Order. *See* Decision and Entry (May 2, 2014), Montgomery County Court of Common Pleas Case No. 2004 DR 01547, Docket No. 148, p. 8.

{¶ 20} "We review a trial court's decision to adopt a magistrate's decision under an abuse-of-discretion standard." (Citation omitted.) *PNC Mtge. v. Guenther*, 2d Dist. Montgomery No. 25385, 2013-Ohio-3044, ¶ 8. "Under this standard, we reverse only 'where it appears that the trial court's actions were arbitrary or unreasonable.' " *Id*., quoting *Lincoln v. Callos Mgt. Co.*, 2d Dist. Montgomery No. 23848, 2010-Ohio-4921, ¶ 6. "But a ruling on a motion to enforce a settlement agreement also raises questions of contract law. These issues are questions of law, which we review de novo." (Citations omitted.) *Id*. "The standard of review is whether the trial court erred as a matter of law in deciding to enforce (or not enforce) the settlement agreement." (Citations omitted.) *Montei v. Montei*, 2d Dist. Clark No. 2013 CA 24, 2013-Ohio-5343, ¶ 23.

{¶ 21} Also, in reviewing William's manifest weight challenge, we must determine whether the evidence weighs heavily against the magistrate's decision finding the 20(B) Agreed Order unenforceable. "When a [judgment] is challenged on appeal as being against the weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and

determine whether, in resolving conflicts in the evidence, the trier of fact 'clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.' " *State v. Hill*, 2d Dist. Montgomery No. 25172, 2013-Ohio-717, ¶ 8, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 17-23.

{¶ 22} "A judgment should be reversed as being against the manifest weight of the evidence 'only in the exceptional case in which the evidence weighs heavily against the [judgment].' " *Id*., quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). "In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact." *Eastley* at ¶ 21. The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

{¶ 23} As to the enforceability of the 20(B) Agreed Order, we note that "[w]hen a settlement agreement is extrajudicial, it may be enforced only if a binding contract exists." (Citation omitted.) *Hamlin v. Hamlin*, 2d Dist. Darke No. 1629, 2004-Ohio-2742, ¶ 21. " 'The law is clear that to constitute a valid contract, there must be a meeting of the minds of the parties, and there must be an offer on the one side and an acceptance on the other.' " *Id*., quoting *Noroski v. Fallet*, 2 Ohio St.3d 77, 79, 442 N.E.2d 1302 (1982). Specifically, "[t]he parties must have a 'meeting of the minds' as to the essential terms of the contract in order to enforce the contract." *Johnson Invest. Group, LLC v. Marcum*, 2d Dist. Greene No. 2012 CA 65, 2013-Ohio-3175, ¶ 24, citing *Episcopal Retirement Homes,*

Inc. v. Ohio Dept. of Indus. Relations, 61 Ohio St.3d 366, 369, 575 N.E.2d 134 (1991). " 'In order for a meeting of the minds to occur, both parties to an agreement must mutually assent to the substance of the exchange.' " *Jackson Tube Service, Inc. v. Camaco LLC*, 2d Dist. Miami Nos. 2012 CA 19, 2012 CA 25, 2013-Ohio-2344, ¶ 11, quoting *Miller v. Lindsay-Green, Inc.*, 10th Dist. Franklin No. 04AP-848, 2005-Ohio-6366, ¶ 63. (Other citation omitted.) "The parties must have a distinct and common intention that is communicated by each party to the other." (Citation omitted.) *Id*.

{¶ 24} "To be enforceable as a binding contract, a settlement agreement requires no more formality than any other type of contract. It need not necessarily be signed, as even oral settlement agreements may be enforceable." *Hamlin* at ¶ 21, citing *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 15. "Where there is a dispute regarding the meaning of the terms of a settlement agreement or where there is a dispute of whether a valid settlement agreement exists, a trial court must conduct an evidentiary hearing." *Rieger v. Montgomery Cty.*, 2d Dist. Montgomery Nos. 23877, 23878, 2010-Ohio-4764, ¶ 4, citing *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 376, 683 N.E.2d 337 (1997).

{¶ 25} Before an oral agreement can be enforced by a court, the party that asserts that an oral agreement exists has the burden of proving by clear and convincing evidence the terms of the oral agreement. (Citation omitted.) *Clemens v. Clemens*, 2d Dist. Greene No. 07-CA-73, 2008-Ohio-4730, ¶ 93. " 'The terms of an oral contract must be established by oral testimony and their determination is a question for the trier of fact.' " *Hall v. Turner*, 11th Dist. Lake No. 2013-L-127, 2014-Ohio-4298, ¶ 10, quoting *Zink v. Harp*, 12th Dist. Warren No. CA93-02-009, 1993 WL 390511, *1 (Oct. 4, 1993). (Other

citations omitted.)

{¶ 26} In this case, following the July 2, 2013 hearing, the magistrate found that the 20(B) Agreed Order was not an enforceable settlement agreement because there was no meeting of the minds between the parties. Specifically, the magistrate found no mutual assent on the term concerning when the extraordinary-expense stipend would terminate. In coming to this conclusion, the magistrate relied on Julie's testimony that it was not her understanding that the stipend would terminate upon A. graduating from high school. Julie further testified that she did not believe the parties' complete agreement was reflected by the December 4, 2012 e-mail exchange and the handwritten notes on Plaintiff's Exhibit 18. The magistrate also found that William did not understand Julie's position about when the stipend would terminate. Furthermore, the magistrate considered that while an agreement reached in the presence of the court can constitute a binding contract, *see Spercel v. Sterling Indus., Inc.*, 31 Ohio St.2d 36, 285 N.E.2d 324 (1972), paragraph one of the syllabus, here, the purported agreement was reached outside of the hearing room and never read into the record.

{¶ 27} As the trier of fact, the magistrate found Julie's testimony regarding her understanding of the agreement credible and we will not disturb that finding on appeal. Julie's testimony sufficiently indicates that there was no meeting of the minds as to when the extraordinary-expense stipend would terminate; therefore, the magistrate correctly applied the law when it found the 20(B) Agreed Order unenforceable. Therefore, it was not unreasonable for the domestic relations court to adopt that portion of the magistrate's decision. Accordingly, while William may disagree with the magistrate's findings on the enforceability issue and the domestic relations court's adoption thereof, the fact remains

that the domestic relations court committed no error of law, competent and credible evidence supports the court's decision not to enforce the 20(B) Agreed Order, and the decision was not against the manifest weight of the evidence.

{¶ 28} William's Fifth, Sixth, Seventh, and Eighth Assignments of Error are overruled.

First, Second, and Third Assignments of Error

{¶ 29} William's First, Second, and Third Assignments of Error are as follows:

I. THE TRIAL COURT'S ORDER INCREASING APPELLANT'S EXTRA STIPEND OBLIGATION FROM $900 PER MONTH TO $2,968 PER MONTH VIOLATED APPELLANT'S RIGHTS TO DUE PROCESS, WAS AN ABUSE OF DISCRETION, AND CONSTITUTES PLAIN ERROR.

II. THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS TO DUE PROCESS, ABUSED ITS DISCRETION, AND COMMITTED PLAIN ERROR BY MAKING A DECISION ABOUT AN ISSUE NOT BEFORE THE COURT.

III. THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS TO DUE PROCESS AND ABUSED ITS DISCRETION BY FAILING TO GIVE APPELLANT AN OPPORTUNITY TO PRESENT EVIDENCE ON THE ISSUE DECIDED BY THE COURT.

{¶ 30} Under the foregoing assignments of error, William contends that the domestic relations court abused its discretion and violated his rights to due process by

increasing the extraordinary-expense stipend from $900 per month to $2,968 per month without first providing him with an opportunity to present evidence showing whether that increase was reasonable and in A.'s best interest. In support of this claim, William argues that the scope of the hearing held on July 2, 2013, only concerned his motion to enforce the 20(B) Agreed Order and that the parties stipulated that the only issue to be determined from that hearing was whether the court should enforce that order. In turn, William claims that while the parties agreed to the stipend increase at $2,968 per month, the increase was dependent on other terms in the 20(B) Agreed Order, which was deemed unenforceable. Accordingly, William contends the domestic relations court should have held an additional hearing on the matter before increasing the extraordinary-expense stipend. We agree.

{¶ 31} "Due process of law, as guaranteed both by Section 1 of the Fourteenth Amendment to the United States Constitution and by Article I, Section 16 of the Ohio Constitution, encompasses, at a minimum, notice and an opportunity to be heard." *State v. Crews*, 179 Ohio App.3d 521, 2008-Ohio-6230, 902 N.E.2d 566, ¶ 9 (2d Dist.), citing *State v. Edwards*, 157 Ohio St. 175, 178, 105 N.E.2d 259 (1952). Generally speaking, " '[a] hearing before judgment, with full opportunity to present all the evidence and arguments the party deems important, is all that can be adjudged vital under the guaranty of due process of law.' " *Armstrong v. Armstrong*, 2d Dist. Clark No. CA2951, 1993 WL 76940, *2 (Mar. 17, 1993), quoting *Gallagher v. Harrison*, 86 Ohio App. 73, 77, 88 N.E.2d 589 (1st Dist.1949).

{¶ 32} In this case, the parties did not present all evidence they deemed important with respect to the extraordinary-expense stipend, because the July 2, 2013 hearing was

limited to the issue of whether the 20(B) Agreed Order was enforceable, not whether and to what extent the extraordinary-expense stipend should be increased. In fact, as a review of the transcript reveals, William's trial counsel confirmed that the enforceability of the 20(B) Agreed Order was the issue to be determined at the hearing. Counsel also confirmed that William only agreed to pay $2,968 in extraordinary expenses if all other terms in the 20(B) Agreed Order were accepted by Julie. This is reflected in the following discussion that took place at the hearing:

> COURT: It is my understanding that counsel have reached certain stipulations. I would like one of the attorneys to read those in the record.
>
> PLAINTIFF: If I may, your Honor, I'll do that. I wanted to reiterate on the record because I said earlier and last week that while we are prepared to go forward on the motion to enforce, we are not waiving the arguments we made regarding the motion to dismiss.
>
> * * *
>
> COURT: Thank you, counsel.
>
> PLAINTIFF: You're welcome. The agreement is that which is reflected in Exhibit 20(B) and so Plaintiff says that's the agreement. We agree on all of those provisions. The Defendant disagrees—doesn't believe we reached an agreement on certain provisions and that's what Mr. Conboy needs to put on the record.

* * *

COURT: Attorney Conboy?

DEFENSE: Your Honor, that's correct. However, we did have a conversation about a couple things to add that we had discussed or delete from the entry that we agreed to.

* * *

COURT: Okay. Let's just I guess be very direct and focused. It was my understanding that the parties had reached agreements on certain—on a child support number and I would like that number to be read into the record. And then we can have our hearing on the remaining issues that are outstanding. So what is the number that's agreed upon?

DEFENSE: Seven hundred dollars a month.

PLAINTIFF: That is correct, your Honor.

COURT: That's correct.

PLAINTIFF: The Exhibit 20(D) reflects the child support calculation worksheet that arrived at that number and the explanation for the deviation from the guideline amount.

* * *

COURT: Okay. Is there anything else agreed upon before we get started on the motions?

DEFENSE: Yes, we agreed to a stipend of two thousand nine hundred and sixty-eight dollars a month.

PLAINTIFF: *Your Honor, I need to make sure the record is clear. I don't agree to things [in] piecemeal. I agree that everything that's in Exhibit 20(B), that's what we agreed to. It contains the amount that Mr. Conboy just stated, the two thousand nine hundred and sixty-eight dollars.*

COURT: So Mr. Conboy, does your client agree to the items in Exhibit 20(B)?

DEFENSE: Everything except Section 4.

COURT: *So we're really having a hearing on Section 4 of Exhibit 20(B)—*

DEFENSE: *Yes.*

COURT: Essentially?

PLAINTIFF: Okay.

COURT: Yes?

PLAINTIFF: *That's fine. Now we're having a hearing on whether or not we've already agreed to Section 4 by virtue of the events that took place that led up to the drafting of this document. We're not having a hearing on the reasons—well, I mean we are literally having a hearing on whether or not we already reached an agreement on the language that's in Section 4.*

COURT: That may be the case, but until I have a signed, you know, agreed order, there's no agreement.

PLAINTIFF: I understand that, *but the motion is to enforce that agreement*.

COURT: Okay. All right. So is everyone ready?

DEFENSE: Yes.

PLAINTIFF: We are.

(Emphasis added.) Trans. (July 2, 2013), p. 5-9.

{¶ 33} Following these initial remarks, the parties proceeded to tailor their questioning on the contents of the 20(B) Agreed Order and the events leading up to the purported agreement. Although there was some tangential information elicited as to why Julie had requested an increase in child support and the extraordinary-expense stipend, we find the transcript of proceedings indicates that the scope of the hearing was limited to the enforceability of the 20(B) Agreed Order. This is further supported by the fact that the magistrate issued a post-hearing order instructing the parties to submit written arguments on whether Section 4 of the Agreed Order should become an order of the court. *See* Magistrate's Order (July 3, 2013), Montgomery County Court of Common Pleas Case No. 2004-DR-01547, Docket No. 131, p. 2.

{¶ 34} We note that, despite the hearing being on the terms of the 20(B) Agreed Order, the magistrate also ruled on Julie's motion to increase child support and motion to evaluate child care and medical expenses. The magistrate denied Julie's motion because the magistrate found there was insufficient evidence to independently prepare a child support worksheet and to determine whether there was a substantial change of circumstances necessary to modify the child support order pursuant to Chapter 3119 of the Revised Code. Given the limited scope of the hearing, we agree that there was insufficient information presented on the substantial change issue with respect to the extraordinary-expense stipend. However, as previously noted, this issue was outside

the scope of the hearing.

{¶ 35} As for the modification of child support from $1268 to $700 per month, the parties submitted a child support worksheet explaining how the parties arrived at the new figure. *See* Plaintiff's Exhibit 20(D). The domestic relations court held it was permitted to rely on that worksheet in modifying the child support order to $700. Neither party has challenged that aspect of the modification in their appeal. However, the parties were never given the opportunity to specifically address what the appropriate amount of the extraordinary-expense stipend should be in light of the 20(B) Agreed Order being deemed unenforceable.

{¶ 36} We also note that the domestic relations court decided to modify the extraordinary-expense stipend after essentially holding that there was, to date, no change in circumstances warranting a review of the stipend. Specifically, the domestic relations court stated that:

> The Court finds there was not an agreement to terminate the stipend completely when [A.] was moved to a care facility or when plaintiff retired. The Court further finds that it would not be in the best interest of [A.] to automatically terminate the stipend at that time. The Court finds that *when the above referenced events occur, that may constitute a change of circumstances to warrant the Court's review of the stipend issue.*

(Emphasis added.) Decision and Judgment (May 2, 2014), Montgomery County Court of Common Pleas Case No. 2004 DR 01547, Docket No. 148, p. 8.

{¶ 37} Regardless of this finding, since the July 2, 2013 hearing concerned only issues regarding the enforceability of the 20(B) Agreed Order, we find it was error for the

trial court to increase the extraordinary-expense stipend without first holding a hearing on the matter, thereby allowing both parties to present evidence on that issue.

{¶ 38} William's First, Second, and Third Assignments of Error are sustained.

Fourth Assignment of Error

{¶ 39} William's Fourth Assignment of Error is as follows:

> THE TRIAL COURT'S DISMISSAL OF APPELLANT'S MOTION FOR NEW TRIAL CONSTITUTED A VIOLATION OF APPELLANT'S RIGHTS TO DUE PROCESS AND AN ABUSE OF DISCRETION.

{¶ 40} Under his Fourth Assignment of Error, William argues that the domestic relations court erred by dismissing his motion for a new trial. In light of our holding under William's First, Second, and Third Assignments of Error, wherein we found it was error for the domestic relations court not to hold a hearing prior to increasing the extraordinary-expense stipend, this assignment of error is rendered moot.

Conclusion

{¶ 41} Having overruled William's Fifth, Sixth, Seventh, and Eighth Assignments of Error, the judgment of the trial court denying William's motion to enforce the 20(B) Agreed Entry is affirmed. However, having sustained William's First, Second, and Third Assignments of Error, with William's Fourth Assignment of Error rendered moot, the judgment of the trial court ordering William to pay $2,968 per month for extraordinary expenses is reversed and remanded for further proceedings consistent with this opinion.

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FROELICH, P.J. and FAIN, J., concur.

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