

[Cite as *Alghamee v. Tkach*, 2017-Ohio-897.]

STATE OF OHIO, MAHONING COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

BAHIA ALGAHMEE,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	CASE NO. 16 MA 0026
V.	)	
	)	OPINION
JOHN TKACH,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas, Juvenile Division of Mahoning County, Ohio Case No. 2009 JH 1814
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JUDGMENT:	Affirmed
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APPEARANCES: For Plaintiff-Appellee	No brief filed
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For Defendant-Appellant	Attorney Andrea Burton 1045 Tiffany South, Suite No. 3 Youngstown, Ohio 44514
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JUDGES:

Hon. Gene Donofrio  
Hon. Mary DeGenaro  
Hon. Carol Ann Robb

Dated: March 9, 2017

[Cite as *Algahmee v. Tkach*, 2017-Ohio-897.]  
DONOFRIO, J.

{¶1} Defendant-appellant, John Tkach, appeals from a Mahoning County Juvenile Court judgment denying his motion to modify his child support obligation.

{¶2} Appellant and plaintiff-appellee, Bahia Algahmee, are the parents of a child born in 2008. A child support order has been in place since July 15, 2009. The original child support order obligated appellant to pay appellee \$468.84 per month. It also ordered appellee to provide health insurance for the child. The parties have operated under a shared parenting agreement since January 6, 2010.

{¶3} On May 13, 2011, the trial court ordered appellant's child support payments to continue at \$452.43 per month. This child support obligation took into consideration a 17% downward deviation due to the increased time the child spent in appellant's care.

{¶4} On August 3, 2015, appellant filed a motion for modification of child support. In support of his motion, appellant asserted his support obligation should be decreased because on July 31, 2015, appellee received a substantial pay raise.

{¶5} A magistrate held a hearing on appellant's motion. The magistrate granted the motion for modification and reduced appellant's monthly child support obligation to \$274.01.

{¶6} Appellee filed two objections to the magistrate's decision. She first took issue with the fact that the magistrate designated both parties to provide health insurance. She noted that both she and appellant work for the Mahoning County Sheriff's Department and, therefore, there is no benefit to the child to be covered under both of their insurance policies. Second, appellee alleged the magistrate erroneously granted appellant a 45% deviation. She asserted that she and appellant had been operating under the same shared parenting schedule since the time of the prior order wherein the court applied a 17% deviation. Therefore, she claimed the magistrate should have only ordered a 17% deviation and should have determined that only she would provide health insurance for the child. Appellee argued that if the magistrate would have properly considered these two issues, the difference in support would be less than a ten percent difference from the prior order. Therefore,

she asserted the change was not significant enough to warrant granting the motion for modification.

{¶7} The trial court sustained both of appellee's objections.

{¶8} As to designating a single party as being primarily responsible for the child's health insurance, the court found that appellee was previously designated as being responsible for the child's health insurance and she has maintained coverage for the child since his birth. The court found that since the parties were both insured by the same employer, there was no benefit to require them both to provide coverage. Therefore, the court ordered appellee to continue to maintain health insurance for the child and to include her out-of-pocket medical costs for health insurance in the calculation of child support.

{¶9} As to the deviation, the trial court noted that the parties have been operating under a shared parenting plan without any modifications. The court found that nothing in the record demonstrated a further deviation was necessary. The court also noted that the magistrate did not document a basis for the 45% deviation. Therefore, the court ordered that the 17% deviation would remain in effect.

{¶10} Based on the above, the trial court denied appellant's motion to modify child support and ordered that the prior child support order would remain in effect.

{¶11} Appellant filed a timely notice of appeal on February 26, 2016. He now raises a single assignment of error.

{¶12} Appellant's assignment of error states:

THE JUVENILE COURT ERRED WHEN IT DENIED THE  
MAGISTRATES [sic] ORDER MODIFYING THE APPELLANT'S CHILD  
SUPPORT OBLIGATION.

{¶13} Appellant asserts that the trial court abused its discretion when it denied his motion to modify his child support obligation. He states that, contrary to the trial court's finding, a modification was justified given appellee's substantial raise in income. Appellant points to the magistrate's decision wherein the magistrate found

that both parties had equal time with and responsibility for the child and, because of appellee's substantial change in income, appellant was entitled to a 45% deviation. Moreover, appellant takes issue with the court's finding that the magistrate's decision was vague as to the justification for a 45% deviation. He contends the proper remedy would have been for the court to remand the matter to the magistrate with instructions for additional findings of fact and conclusions of law to support the 45% deviation.

{¶14} In reviewing matters concerning child support, we employ the abuse of discretion standard of review. *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 686 N.E.2d 1108 (1997); *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). Abuse of discretion connotes more than an error of law or judgment; it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶15} The child support modification statute provides in pertinent part:

(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 circumstance 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 the obligee have been ordered to obtain for the children specified in the 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 of 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, \* \* \*.

R.C. 3119.79.

{¶16} Thus, pursuant to the child support modification statute, the trial court must recalculate the child support obligation. If the recalculated amount is more than ten percent greater than or more than ten percent less than the amount of the current child support obligation, then the court must grant the motion to modify child support.

{¶17} At the time appellant filed the current motion to modify, his monthly child support obligation was \$452.43. Appellee was ordered to provide health insurance for the child. When that child support obligation was ordered, appellee was earning an annual salary of \$30,185. (May 20, 2011 Judgment Entry). Appellant was earning an annual salary of \$43,660 and had additional income of approximately \$6,200. (May 20, 2011 Judgment Entry). Additionally, at that time, the court first found appellant's annual obligation would be \$6,541.11. (May 20, 2011 Judgment Entry). The court then found, however, that a deviation was warranted based on the amount of time the child spent in appellant's care. The court noted that

the child spent 45% of his time in appellant's care. This was an increase over the normal 28% of time the child would spend in appellant's care under the standard parenting time schedule for an increased difference of 17%. Therefore, the court granted a 17% deviation of appellant's annual obligation. This reduced appellant's annual obligation to \$5,429.12, or \$452.43 monthly.

**{¶18}** At the time appellant filed the motion for modification, appellee's annual salary was now \$46,779.00. (October 8, 2015 Magistrate's Decision). Appellant's annual salary was now \$49,400.00 and he earned additional income of \$3,600. (October 8, 2015 Magistrate's Decision). The magistrate calculated appellant's monthly support obligation to be \$279.49 for an annual obligation of \$3,353.88. (October 8, 2015 Magistrate's Decision). This is more than ten percent less than his previous annual obligation of \$5,429.12, thus the modification would be appear to be warranted under the magistrate's calculation.

**{¶19}** But the magistrate made two errors in calculating appellant's support obligation.

**{¶20}** The first error was that the magistrate did not make an adjustment on the Child Support Worksheet to account for appellee providing medical insurance coverage for the child. The magistrate ordered both parties to provide health insurance for the child. Therefore, the magistrate did not account for any difference on the Worksheet. But the parties both work for the same employer and, therefore, are insured by the same medical insurance. As the trial court found, there is no benefit to the child to be covered under both policies. Therefore, the trial court correctly ordered only appellee to continue to provide medical insurance for the child.

**{¶21}** The second error by the magistrate was that he gave appellant a 45% deviation based on the amount of time the child spent in appellant's care. Throughout this case the child has always spent 45% of his time in appellant's care. This was not something that changed from the May 2011 child support order to the present. And when the court entered the May 2011 child support order, it gave appellant a 17% deviation for the amount of time the child spent in his care. In the

May 20, 2011 judgment entry, the court explained that under the standard parenting time schedule, the child would spend 28% of his time with appellant. But because the child spent 45% of his time with appellant, this was an upward deviation of 17%. Therefore, the court granted appellant a 17% deviation in his child support obligation.

**{¶22}** At the hearing on appellant's motion to modify support, the parties agreed that the child still spends 45% of his time in appellant's care and 55% of his time in appellee's care. (Tr. 13). Thus, there was no change in this circumstance since the May 20, 2011 child support order. As the trial court found when ruling on appellee's objections, there was no basis for a 45% deviation. Thus, the trial court correctly found that the 17% deviation should remain in place.

**{¶23}** When a 17% percent deviation is applied instead of a 45% deviation, appellant does not meet the ten-percent-change threshold required by R.C. 3119.79(A) to constitute a change in circumstances required for modification. The 45% deviation results in a reduction of annual support from \$5,978.51 to an annual support obligation of \$3,288.18 ( $\$5,978.51 - \$2,690.33[45\% \text{ deviation}]$ ). The 17% deviation results in a reduction of annual support from \$5,978.51 to an annual support obligation of \$4,962.16 ( $\$5,978.51 - \$1,016.35[17\% \text{ deviation}]$ ). The original annual support obligation was \$5,429.12. (May 20, 2011 Judgment Entry). Ten percent of \$5,429.12 is \$542.92. Thus, the difference between the newly calculated obligation and the pre-existing obligation would have to be more than \$542.92.

**{¶24}** When the 17% deviation is used, the difference between the original support obligation and the newly calculated support obligation is only \$466.96 ( $\$5,429.12 - \$4,962.16$ ). Therefore, when the 17% deviation is applied, the threshold for modification is not met.

**{¶25}** Based on the above, the trial court did not abuse its discretion in sustaining appellee's objections to the magistrate's decision and overruling appellant's motion to modify his child support obligation.

**{¶26}** Accordingly, appellant's assignment of error is without merit and is overruled.

{¶27} For the reasons stated above, the trial court's judgment is hereby affirmed.

DeGenaro, J., concurs.

Robb, P.J., concurs.