[Cite as *Harless v. Harless*, 2002-Ohio-2361.]

IN THE COURT OF APPEALS OF LUCAS COUNTY

Rebecca A. Harless — Court of Appeals No. L-01-1383

Appellee — Trial Court No. DR-99-0073

v.

Eugene E. Harless, Jr. — **DECISION AND JUDGMENT ENTRY**

Appellant — Decided: May 17, 2002

* * * * *

Jerry P. Purcel, for appellant.

* * * * *

KNEPPER, J.

{¶1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, that modified appellant's child support obligation. For the reasons that follow, this court affirms the judgment of the trial court.

{¶2} Appellant sets forth the following assignment of error:

{¶3} "ASSIGNMENT OF ERROR NO. 1: THE TRIAL COURT ERRED IN FINDING THAT THE MAGISTRATE PROPERLY CALCULATED THE DEVIATION OF APPELLANT'S CHILD SUPPORT OBLIGATION BASED UPON THE PARTIES' PRIOR AGREEMENT AS CALCULATED IN THE DIVORCE DECREE."

{¶4} The undisputed facts that are relevant to the issues raised on appeal are as follows. The parties were married in 1984 and divorced in 2000. At the time of the divorce, the parties entered into a shared parenting agreement concerning custody of their only child. The parties agreed to deviate from the child

support guidelines and the trial court ordered appellant to pay child support of $348.92 per month. Based upon appellant's income of $65,237 per year and appellee's annual income of $30,000, the Ohio Child Support Guidelines would have resulted in an award of $623.17 per month if the parties had not entered into the shared parenting plan. The deviation of $274.25, or 44 percent, from the guidelines amount was based upon the parties' shared possession of their child and the fact that appellant was currently responsible for child care expenses.

{¶5} On July 3, 2001, appellant filed a motion to modify child support. In his motion, appellant asserted that he had recently retired and had experienced a substantial drop in income. On July 19, 2001, a hearing was held on appellant's motion. Appellant was present with counsel but appellee was not represented and did not appear at the hearing. Appellant testified that he received $41,328 per year from his pension plan, out of which he paid appellee $9,084 per year pursuant to the divorce decree. He further testified that, since the time of the divorce, appellee's income has increased to $41,600 per year. Appellant testified that the child is with him more than half of the time.

{¶6} In the decision filed following the hearing, the magistrate found that, based on the parties' current gross incomes, the Ohio Child Support Guidelines would require an award of $320.18 per month. The magistrate modified the prior order to $179.30 per month, which is a deviation of 44 percent from the $320.18 called for in the guidelines. Appellant filed objections which the trial

court found not well-taken by judgment entry filed August 8, 2001. In so doing, the trial court noted that there had been no change in the shared parenting plan and that it therefore was not unreasonable to use the original agreement as the basis for determining the amount by which to deviate from the child support guidelines.

{¶7} Appellant argues on appeal that the trial court should have ordered a deviation of 50 percent from the guidelines, as opposed to 44 percent, because the parties are now spending equal time with their child. He asserts that, in light of his testimony that his daughter is with him at least 50 percent of the time, the trial court should not have found that the parties continued to operate pursuant to the original shared parenting plan. Appellant argues that he and appellee mutually amended the terms of the shared parenting plan when they arranged for him to spend more time with their daughter while appellee works on her electrician's apprenticeship.

{¶8} In reviewing matters concerning child support, the decision of the trial court should not be overturned absent an abuse of discretion. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144. An abuse of discretion exists only where the court's action is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1984), 5 Ohio St.3d 217, 219. This court has thoroughly reviewed the record of proceedings in the trial court and we find that the trial court correctly found a substantial change of circumstance due to appellant's drop in income upon retirement.

However, because there was no evidence before the trial court of a change in the original shared parenting plan, we are unable to find the court's decision to deviate from the guidelines by 44 percent, as opposed to 50 percent, to be unreasonable, arbitrary or unconscionable. Accordingly, we find that the trial court did not abuse its discretion and appellant's sole assignment of error is not well-taken.

{¶9} On consideration whereof, this court finds that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is affirmed. Costs of this appeal are assessed to appellant.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

James R. Sherck, J. _____
JUDGE

Richard W. Knepper, J. _____
JUDGE

Mark L. Pietrykowski, P.J. _____
CONCUR. JUDGE