[Cite as *Barton v. Pardi*, 2012-Ohio-4172.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Rebecca J. Barton,	:	
Plaintiff-Appellant,	:	No. 11AP-551 (C.P.C. No. 09JU-1028)
v.	:	(REGULAR CALENDAR)
John H. Pardi	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 13, 2012

Rebecca J. Barton, pro se.

Saia & Piatt, Inc., and *Lisa A. Wafer*, for appellee.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

DORRIAN, J.

{¶1} Plaintiff-appellant, Rebecca J. Barton, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, addressing the parties' objections to an administrative order rendered by a Franklin County Child Support Enforcement Agency ("FCCSEA") hearing officer recommending a recalculated amount of child support payable between the parties.

{¶2} The parties have one child together, a daughter ("A.B."), born December 30, 1995. On April 10, 1996, the FCCSEA issued an administrative order for child support in the amount of $275.61 per month, plus poundage, payable to appellant by appellee. In 2001, the FCCSEA modified this amount to $400.06 per month. In April 2005, this amount increased to $489.72 per month, and that was the order in effect at the time the present proceedings began.

{¶3} In July 2008, the FCCSEA reviewed the case and recommended a recalculated amount of $521.72 per month effective July 1, 2008. The matter was then reviewed by an administrative hearing officer, who recommended that the recalculated child support be set at $620.24 per month, effective July 1, 2008. Both parties objected, and the domestic relations court assumed jurisdiction over the matter under R.C. 3119.66, which governs the parties' objections to such an administrative determination.

{¶4} The trial court referred the matter to a magistrate. The principal points of contention between the parties involve the proper determination of the parties' respective incomes, the appropriate medical and child care expenses to be applied, and the impact of tuition expenses associated with A.B.'s enrollment in a private school, Marburn Academy, in 2005.

{¶5} After a hearing spread over four days during the period of April 26 through July 30, 2010, the magistrate rendered a decision containing findings of fact and conclusions of law. The magistrate concluded that the recalculated amount recommended by the administrative hearing officer of $620.24 was inaccurate. The magistrate reached a recalculated child support amount of $469.24 per month. Further finding that this differed by less than 10 percent from the existing child support amount of $489.72, the magistrate concluded that, pursuant to R.C. 3119.79(A), the difference between the old child support amount and the new child support amount did not constitute a change of circumstances substantial enough to require a child support modification.

{¶6} The magistrate then found that, although R.C. 3119.79(B) and (C) may provide additional grounds for modification based on a change of circumstances without respect to the 10 percent deviation rule found in R.C. 3119.79(A), those sections did not support a deviation in this case. Under R.C. 3119.79(B), the magistrate found that the health insurance costs and medical needs of the child did not warrant modification because both parents provided health insurance coverage that was adequate for A.B.'s needs. Under R.C. 3119.79(C), which addresses the impact of substantial change in circumstances from those prevailing at the time of the issuance of the last child support modification, the magistrate found no change in circumstances despite appellant's

assertion that enrollment of A.B. in a private school program to address her special educational needs was not contemplated at the time the prior order was entered in 2005.

{¶7} Appellant filed her objections to the magistrate's decision and recommendation on December 23, 2010. After the hearing transcripts became available, appellant filed supplemental objections on April 13, 2011, to provide additional material therefrom in support of her objections. In sum, these filings addressed six alleged errors in the magistrate's decision. First, appellant alleged that the magistrate improperly used a figure of $60,857.61 as appellee's annual income for 2008, and she suggested a revised figure of $66,419.69 based upon inclusion of 401(K) retirement contributions provided by his employer. Second, appellant alleged that the magistrate had underestimated appellee's income from his rental properties, the magistrate having used a figure of $1,747.50 as net income from these properties. Appellant suggested that appellee had not substantiated his associated expenses and should be imputed income of at least $4,468.00 and possibly as much as the gross rental receipts of $16,800.00. Third, appellant asserted that the magistrate erred by using medical insurance expense figures of $867.84 for appellant and $560.00 for appellee, rather than $1,035.58 and $516.00 respectively. Fourth, appellant alleged that the magistrate erred when she failed to apply the amount of $1,824 for appellant's child care expenses under the appropriate rubric in the child support worksheet. Fifth, appellant asserted that the magistrate erred by applying an improper local income tax rate (2 percent rather than 3 percent) for appellant in the child support worksheet. Sixth and finally, appellant asserted that the magistrate erred in finding that the costs of A.B.'s attendance at Marburn Academy were contemplated at the time the 2005 order was rendered.

{¶8} Appellee's response to these objections conceded the minor proposed modifications regarding health insurance expenses and tax rates. Appellee also pointed out that the magistrate had largely allowed the child care item as an expense for appellant, despite appellee's contention that the cited expense (tennis lessons) did not qualify, although the magistrate had reduced the amount from $1,824 to $1,459 to take into account the child care tax credit. Appellee opposed all other objections to the magistrate's recommendations. Appellee further postulated that, with respect to his rental income, use of the higher figure suggested by appellant, even in conjunction with the conceded

corrections for health insurance and local taxes, would still not result in a 10 percent deviation from the prior order and support a modification. Appellee provided a modified child support worksheet to support this position.

{¶9} The trial court entered its decision on May 26, 2011, essentially overruling all of appellant's objections to the magistrate's decision. The trial court found that, even after adopting some of the proposed computational corrections set forth in the objections, the variation between the existing order and the amount given in the recomputed child support worksheet would be less than 10 percent and would not support a change in support. The trial court further determined that the enrollment of A.B. in Marburn Academy did not present a substantial change in circumstances because, at the time of the last child support modification in April 2005, appellant had actually expressed that she contemplated enrolling A.B. in another, substantially more expensive, private school, and therefore the increase in A.B.'s schooling costs was contemplated at the time of the 2005 order and did not represent an unanticipated change in circumstances. The trial court therefore approved and adopted the magistrate's decision with some minor variations to the child support guideline caculations.

{¶10} Appellant has timely appealed and brings the following assignments of error:

> I. The trial court erred and abused its discretion when it did not properly calculate the Defendant's 2008 child support obligation and when it did not properly calculate the Defendant's child support obligations for 2009 and 2010; and incorrectly concluded that the amount was not ten percent greater than the order in effect.
>
> II. The trial court abused its discretion and committed error when it found that no change of circumstances existed that permitted a child support deviation under R.C. Section 3119.23.
>
> III. The trial court committed error and abused its discretion by not considering the educational status and the tuition requirements for the minor child when it failed to recognize the evidence that established a substantial change of circumstances pursuant to R.C. §3119.79(A) and R.C. §3119.79(C).

> IV. The trial court erred and abused its discretion when it continued to allow Defendant not to provide his current residence address as required under Franklin County, Ohio Juvenile Rule 10(D) when it was aware that the Defendant acknowledged that his residence had changed.
>
> V. The trial court erred and abused its discretion by permitting Defendant to leave the courtroom during testimony provided by Plaintiff's education witness and by permitting visitation matters to be discussed.

{¶11} A trial court has considerable discretion when computing child support, and that determination will not be disturbed on appeal absent an abuse of discretion on the part of the trial court. *Pauley v. Pauley*, 80 Ohio St.3d 386, 390 (1997). The term "abuse of discretion" signifies that the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). When a court of appeals reviews the evidentiary conflicts underlying a support order, there is no abuse of discretion on the part of a trial court in computing support obligations where there is some competent, credible evidence supporting the court's decision. *Ross v. Ross*, 64 Ohio St.2d 203, 208 (1980).

{¶12} Ohio law requires that a trial court, when determining the amount of child support, complete a support guideline computation worksheet and include it in the trial court's record.[1] *Marker v. Grimm*, 65 Ohio St.3d 139 (1992), paragraph one of the syllabus; R.C. 3119.022. The amount yielded by the worksheet is rebuttably presumed to be the correct amount of child support due, although the worksheet itself contains terms permitting deviation in certain aspects of the computations. *Marker*; R.C. 3119.03 and 3119.022. Where the recalculated amount under the worksheet does not deviate from the prior order by more than 10 percent, the court may deem that there has been no change of circumstances substantial enough to require modification of the child support amount. R.C. 3119.79(A). The statute provides, however, that, if there has been a substantial

[1] Appellant argues here that the trial court erred in using the latest version of the child support guidelines, rather than the version in effect in 2008 when the FCCSEA considered the matter in the first instance. Generally, a court does not err in applying the latest version of the guidelines at all stages of the proceedings. *In re Dissolution of Marriage of Al-Faour*, 68 Ohio App.3d 279 (10th Dist.1990). Appellant has not specified any material change in the guidelines that would make application of the current version inequitable and cause us to depart from our position in *Al-Faour* on this issue.

change of circumstances that was not contemplated at the time of the issuance of the original child support order or the last modification, the court may modify child support without consideration of the 10 percent change discussed in subsection (A). R.C. 3119.79(C); *Karales v. Karales*, 10th Dist. No. 05AP-856, 2006-Ohio-2963.

{¶13} Appellant's first assignment of error addresses the trial court's determinations regarding appellee's income, specifically appellee's income from his rental property. Appellant also argues that certain deposits to appellee's bank accounts totaling $34,931.69 represented some concealed source of income that should have been considered when computing child support. With respect to this last item, which appellee testified resulted from rental receipts and substantial health insurance reimbursement for out-of-pocket expenses, we note that appellant did not raise this item in her objections to the magistrate's decision, and the issue is therefore not preserved for appeal. Civ.R. 53(D)(3)(b)(iv); *Padgett v. Padgett*, 10th Dist. No. 08AP-269, 2008-Ohio-6815, ¶ 31 ("[E]xcept for plain error, a party shall not assign as error on appeal the court's adoption of a factual finding or legal conclusion unless the party has objected to that finding or conclusion.")

{¶14} Although appellant presented various arguments before the trial court in her objections, and before the magistrate in the first instance, regarding the proper computation of appellee's rental income, her sole argument on appeal is that appellee did not properly substantiate the actual expenses that should be applied to offset the gross income derived from his rental units. Appellant proposes that the full gross rent for the two units in question of $16,200 ($16,800 was the figure given in the trial court) should be counted as income for child support purposes.

{¶15} In her objections to the magistrate's report, which found that appellee had $1,747.50 in rental income for 2008, appellant argued that the trial court should disregard some unsubstantiated expenses. These included the amount that appellee deducted from his taxes for his own work on the properties at a rate of $10 per hour, his automobile and travel expenses for traveling to and from the rental units, his undocumented cleaning and maintenance deductions, and undocumented insurance costs.

{¶16} Application of these expenses against appellee's rental income yielded a net rental *loss* in the amount of $2,487 on his 2008 tax return. The magistrate did exclude depreciation in concluding that appellee actually had positive cash flow from the rental units. The magistrate further concluded that the properties were half-owned by appellee's current wife. The magistrate found rental income of $3,495.00 for the two properties, divided that amount by half, and attributed $1,747.50 in rental income in 2008 to appellee. For 2009, the magistrate followed a similar computation to find rental income for appellee of $220.50.

{¶17} Appellant argued in her objections that a rental income for appellee should be included in an amount "no less than $4,468" (appellant's initial objections at 12), or alternatively the gross amount of $16,800. The trial court, without articulating in detail which deductions should be allowed, impliedly rejected use of the gross rental figure and stated that, even if the figure of $4,468 were applied, it would not yield an increase under the support guidelines that exceeded 10 percent. The court essentially concluded that, within the minor variations resulting from the disputed figures, this issue was moot.

{¶18} There is competent, credible evidence in the record to support the court's determination that some expenses must be applied to offset the gross rental receipts. Appellee testified that his actual gross rental receipts, including some vacancy periods, were $14,950 in 2008. As outlined above, the magistrate disallowed some deductions, primarily depreciation, that were proper for income tax purposes but inapplicable in computing support. This was a correct distinction. As stated by this court in *Helfrich v. Helfrich*, 10th Dist. No. 95APF-12-1599 (Sept. 17, 1996):

> The legislature has specifically provided a definition of ordinary and necessary expenses to be applied when determining the amount of income available for child support. Further, the purposes underlying the Internal Revenue Code and the child support guidelines are vastly different. The tax code permits or denies deduction from gross income based on myriad economic and social policy concerns which have no bearing on child support. The child support guidelines, in contrast, are concerned solely with determining how much money is actually available for child support purposes. To this end, [former R.C. 3113.215(A)(2)] now includes nontaxable income in "gross income" for purposes of calculating child support. This recognized the economic reality that all money

> earned by a parent, irrespective of its taxability, is in fact income to that parent.

{¶19} Application of this general principle does not, however, require the court to disregard all expenses associated with rental income. The allowance of such expenses must necessarily be considered on a case-by-case basis in light of the financial context in which they arise. For example, in *Tonti* v. *Tonti*, 10th Dist. No. 03AP-494, 2004-Ohio-2529, ¶ 52-54, we allowed a deduction not only for mortgage interest and management expenses but for mortgage principal payments, despite the fact that such principal payments might more properly be considered as acquisition of a capital asset and accrue to the payor as a net gain in wealth. This was more than the magistrate allowed in the present case, in which the magistrate seems to have allowed only a mortgage interest deduction without credit for the full monthly mortgage payment.

{¶20} Despite his inability to provide some records relating to the rental properties, appellee did furnish his tax returns for relevant years and testified personally regarding the expenses of owning and managing the properties. Appellee also testified that he owned the two rental units jointly with his wife that she had in fact owned one unit as her personal residence at one time, and that the couple purchased the second unit together. The magistrate's attribution of half the rental income to appellee's wife was supported by this credible evidence. The allowance of some, if not all, of the claimed expenses was also based on the evidence presented, and the magistrate had the discretion to weigh that evidence and draw suitable inferences. The conclusion reached by the trial court that any proposed variation from the magistrate's figures would not trigger a modification was not error.

{¶21} Appellant also asserts that the magistrate incorrectly allowed appellee to claim labor expenses associated with his own maintenance and repair work on the rental properties. Appellee testified that he deducted $10 per hour for his own work and that this was in fact less than the $20 per hour allowed by the tax code. Appellant contends that if this amount is allowed as a deduction from gross rental income, then logic dictates that it in turn must be recouped as self-generated earned income to appellee that can be included in his income for support purposes. Otherwise put, appellant protests that, if appellee is allowed to pay himself $10 per hour and count it as a deduction on the one

hand without it being income on the other, appellee is allowed to generate a phantom deduction from cash flow by translating an expense in time and effort into a financial expense. Upon this tenable basis, appellant then requests a considerable leap in faith and proposes that appellee be credited for ten hours per week at the federally allowed $20 per hour maximum, giving an additional $10,400 in annual imputed income.

{¶22} Appellant's initial argument regarding the treatment of this deduction is sound. Any attempt to account for time and effort expended on rental properties naturally creates the inference that either a phantom deduction or phantom income will be attributed to a party. We conclude, however, that any error in this respect was harmless because the amounts at issue are much smaller than proposed by appellant.

{¶23} First, we decline to take the leap requested by appellant and impute additional income to appellee based upon his capacity to engage in property maintenance. There is no indication that appellee engaged in such a business beyond that labor actually associated with maintaining his own rental properties. Second, the actual deductions for cleaning and repairs, the only two items under which the labor deduction would apply, were $1,548 total for both units in 2008. Taking this figure as consisting entirely of such disputed deductions for labor, we thus disregard all cleaning and repair deductions. Allowing all other deductions save depreciation, the properties together generated $5,043 in 2008 after property taxes, insurance, and mortgage interest. Appellant's one-half interest in the properties would result in $2,521.50 in income for support calculation purposes. This is substantially less than the $4,468 figure that the trial court concluded would not change the outcome of the proceedings, and therefore any error regarding the labor deduction is not prejudicial.

{¶24} Based upon the foregoing, we find that the trial court did not err in overruling appellant's objections to the magistrate's determinations regarding appellee's income, and appellant's first assignment of error is overruled.

{¶25} Appellant's second and third assignments of error both address the trial court's determination that enrollment of A.B. in a private school and the associated increase in school expenses were contemplated at the time of the 2005 support order and therefore did not present a substantial change in circumstances. We will therefore address these two assignments of error together. Appellant provides two intertwined

arguments to support her position that R.C. 3119.79(B) or (C) provide a basis for a modification of child support based upon a change of circumstances. Subsection (B) allows the court to consider the medical needs of the child to establish a change of circumstances. Subsection (C) permits a modification on the basis of a substantial change in circumstances of any other nature—in this case, A.B.'s enrollment in a private school. Subsection (C) provides for modification only if the substantial change in circumstances was not contemplated at the time of the issuance of the last child support modification. Subsection (C) does not require that the change in calculated support exceed 10 percent in order to trigger a modification.

{¶26} With respect to R.C. 3119.79(B), appellant argues that A.B.'s educational expenses are necessitated by her special learning needs and that these learning characteristics should be classed as a medical condition to fall within subsection (B). The record reveals that this argument was not raised below. R.C. 3119.79(B) was not invoked before the trial court, and we decline to address in the first instance such arguments that the trial court never had the opportunity to resolve.

{¶27} We will thus only address R.C. 3119.79(C). The trial court relied on communications between parties in 2005 to find that enrollment of A.B. in a private school to address her special learning needs was contemplated prior to the last child support modification. In particular, the trial court cited an e-mail from appellant to appellee dated May 18, 2005, in which appellant expressed that, contrary to prior discussions between the parties, A.B. would not be attending Wellington School in Upper Arlington, Ohio, but Marburn Academy, the private institution where A.B. is currently enrolled. From this the court concluded that additional educational expenses were not a newly introduced factor after 2005 because the parties had discussed private school enrollment before that date and were in fact discussing Wellington School, which according to appellant's communications, presented a substantially more expensive option than Marburn Academy.

{¶28} Appellant points out on appeal that the last child support modification in this case became effective April 1, 2005, some six weeks before the e-mail cited by the trial court. Appellant also concedes in her brief, however, that she undertook extensive research and exploratory discussion with educational specialists to determine her child's

needs before enrolling A.B. in private schooling for the 2005-2006 school year. (Appellant's brief at 13.) Her trial testimony similarly reflected a long period of concern, frustration, and remedial action to try and solve A.B.'s learning difficulties within the public school system where she was enrolled at the time, and her developing intent to find a private solution to A.B.'s educational dificulties. (Tr. 263-75.) In conjunction with the communications between parties, there was sufficient evidence before the magistrate to conclude that ongoing discussions between the parties reflected that A.B.'s future attendance at least at Wellington School, if not Marburn Academy, was contemplated at the time of the last modification in March of 2005 and did not constitute a substantial change in circumstances occurring after that time.

{¶29} Because there is some credible evidence in the record to support the trial court's conclusions regarding the private school expenses and the application of R.C. 3119.79(C), appellant's second and third assignments of error are overruled.

{¶30} Appellant's fourth assignment of error asserts that the magistrate erred by failing to force appellee to provide his current residence address, which he apparently has been reluctant to disclose throughout these proceedings. Appellant's fifth assignment of error asserts that the magistrate erred by allowing appellee to leave the courtroom during some of the testimony by an expert education witness and further erred by allowing visitation between appellee and A.B. to be discussed during these proceedings. None of these issues was raised through objection before the trial court, and they are therefore not properly preserved for review in this appeal. Civ.R. 53(D)(3)(b)(iv); *Padgett*. Appellant's fourth and fifth assignments of error are overruled.

{¶31} For the foregoing reasons, appellant's five assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

BRYANT and CONNOR, JJ., concur.