[Cite as *Havens v. Havens*, 2012-Ohio-2867.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Amy L. Havens,	:	
Plaintiff-Appellee,	:	
		No. 11AP-708
v.	:	(C.P.C. No. 09DR-05-2151)
Jeff Havens,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 26, 2012

Laura M. Peterman, for appellee.

Jack L. Moser, for appellant.

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

SADLER, J.

{¶ 1} Defendant-appellant, Jeff Havens, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, granting a divorce terminating the marriage between appellant and plaintiff-appellee, Amy L. Havens. Specifically, appellant challenges the trial court's denial of his request to award a deviation in child support. For the reasons that follow, the trial court's judgment is affirmed in part and reversed in part.

I. BACKGROUND

{¶ 2} Appellant and appellee were married on September 6, 2002, and two children were born as issue of the marriage. Appellee filed a complaint for divorce on May 29, 2009. Along with his answer, appellant filed a counterclaim for divorce on July 6, 2009.

{¶ 3} On September 21, 2009, a magistrate issued temporary orders, designating both parents as legal custodians of the two minor children and designating appellee as the temporary school placement parent. The magistrate ordered appellee would have the children on Mondays, Wednesdays, Fridays, and Sundays, and appellant would have the children on Tuesdays, Thursdays, and Saturdays. Local Rule 27 of the Franklin County Court of Common Pleas, Division of Domestic Relations ("Loc.R. 27"), was ordered to apply for holidays, vacations, and all other matters excluding summers. Additionally, the magistrate ordered appellant to pay a total monthly child support amount of $625, plus processing charge. The magistrate's order reflected that this amount was a downward deviation from the calculated guideline child support amount of $1,061.92, which the magistrate found to be unjust, unreasonable, and not in the best interest of the minor children "as a result of the parenting schedule." (Magistrate's Sept. 21, 2009 Decision, 1.)

{¶ 4} Though they were able to stipulate to all issues pertaining to marital assets and liabilities, the parties were unable to reach an agreement regarding the custody and care of the children. The matter came for a hearing commencing April 7, 2011. After consideration of the evidence and testimony presented, the trial court concluded a system of shared parenting was appropriate. The trial court ordered possession of the children as follows. During week one, except for appellant's possession from 5:30 to 8:30 p.m. on Mondays, appellee possesses the children Sunday through Wednesday, and appellant possesses the children Thursday through Saturday. During week two, except for appellee's possession from 5:30 to 8:30 p.m. on Mondays, appellant possesses the children Monday through Wednesday, and appellee possesses the children Thursday through Saturday. The trial court also concluded the guideline child support computation of $1,487.70, plus processing charge, was just, appropriate, and in the best interest of the children. Accordingly, appellant's request to deviate downward from the guideline child

support computation was denied, and the trial court found appellant's total monthly child support obligation was $1,487.70, plus processing charge.

II. ASSIGNMENTS OF ERROR

{¶ 5} This appeal followed and appellant asserts the following two assignments of error for our review:

> [1.] THE TRIAL COURT ERRED, ABUSED ITS DISCRETION, AND RULED AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE BY FAILING TO CONSIDER THE FACTORS SET FORTH IN O.R.C. §3119.24.
>
> [2.] THE COURT ERRED, ABUSED ITS DISCRETION, MISCONSTRUED ITS APPLICATION AND INTERPRETATION OF O.R.C. §3119.04 AND O.R.C. §3119.23 AND RULED AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHEN IT CONSIDERED THAT APPELLANT WAS NOT ENTITLED TO DEVIATION FROM CHILD SUPPORT.

III. DISCUSSION

A. Applicable Law and Standard of Review

{¶ 6} As with most matters pertaining to child support, the decision to deviate from the actual annual obligation is discretionary and will not be reversed absent an abuse of discretion. *Lopez-Ruiz v. Botta*, 10th Dist. No. 10AP-610, 2011-Ohio-2414, ¶ 7, citing *In re Custody of Harris*, 168 Ohio App.3d 1, 2006-Ohio-3649, ¶ 60-61 (2d Dist.). The term "abuse of discretion" connotes that the court's decision is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). When applying this standard of review, an appellate court may not merely substitute its judgment for that of the trial court. *Holcomb v. Holcomb*, 44 Ohio St.3d 128, 131 (1989). Further, we should not independently review the weight of the evidence but should be guided by the presumption that the trial court's findings are correct. *Miller v. Miller*, 37 Ohio St.3d 71, 74 (1988).

{¶ 7} It is undisputed that the trial court issued a shared parenting order. In such a case, the trial court, pursuant to R.C. 3119.24, must calculate the amount of child support to be paid using the basic child support schedule and the worksheet set forth in R.C. 3119.022. While this amount is presumed to be the correct amount of child support due, the court may order an amount of child support that deviates from the amount of

child support that would otherwise result from the use of the basic child support schedule and the applicable worksheet if, after considering the factors and criteria set forth in R.C. 3119.23, the court determines that the amount calculated would be unjust or inappropriate and would not be in the best interest of the child.

{¶ 8} Specifically, R.C. 3119.24(A) states:

> (1) A court that issues a shared parenting order in accordance with section 3109.04 of the Revised Code shall order an amount of child support to be paid under the child support order that is calculated in accordance with the schedule and with the worksheet set forth in section 3119.022 [3119.02.2] of the Revised Code, through the line establishing the actual annual obligation, except that, if that amount would be unjust or inappropriate to the children or either parent and would not be in the best interest of the child because of the extraordinary circumstances of the parents or because of any other factors or criteria set forth in section 3119.23 of the Revised Code, the court may deviate from that amount.
>
> (2) The court shall consider extraordinary circumstances and other factors or criteria if it deviates from the amount described in division (A)(1) of this section and shall enter in the journal the amount described in division (A)(1) of this section its determination that the amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting its determination.

{¶ 9} As provided in R.C. 3119.24(B), "extraordinary circumstances of the parents" includes all of the following:

> (1) The amount of time the children spend with each parent;
>
> (2) The ability of each parent to maintain adequate housing for the children;
>
> (3) Each parent's expenses, including child care expenses, school tuition, medical expenses, dental expenses, and any other expenses the court considers relevant;
>
> (4) Any other circumstances the court considers relevant.

{¶ 10} The factors provided for under R.C. 3119.23 are as follows:

> (A) Special and unusual needs of the children;

(B) Extraordinary obligations for minor children or obligations for handicapped children who are not stepchildren and who are not offspring from the marriage or relationship that is the basis of the immediate child support determination;

(C) Other court-ordered payments;

(D) Extended parenting time or extraordinary costs associated with parenting time * * *;

(E) The obligor obtaining additional employment after a child support order is issued in order to support a second family;

(F) The financial resources and the earning ability of the child;

(G) Disparity in income between parties or households;

(H) Benefits that either parent receives from remarriage or sharing living expenses with another person;

(I) The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both of the parents;

(J) Significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing;

(K) The relative financial resources, other assets and resources, and needs of each parent;

(L) The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued * * *;

(M) The physical and emotional condition and needs of the child;

(N) The need and capacity of the child for an education * * *;

(O) The responsibility of each parent for the support of others;

(P) Any other relevant factor.

{¶ 11} However, even though a shared parenting plan is involved, no automatic credit in the support order is warranted. *Epitropoulos v. Epitropolous*, 10th Dist. No. 10AP-877, 2011-Ohio-3701, ¶ 27, citing *Pauly v. Pauly*, 80 Ohio St.3d 386 (1997) (the statutory scheme does not provide for an automatic credit in child support obligations under a shared parenting order). *See also Irish v. Irish*, 9th Dist. No. 10CA009810, 2011-Ohio-3111; *Spencer v. Spencer*, 5th Dist. No. 2005-CA-00263, 2006-Ohio-1913, ¶ 44; and *Mitchell v. Mitchell*, 11th Dist. No. 2009-L-124, 2010-Ohio-2680. Rather, the trial court should balance all of the statutory factors when a shared parenting plan is involved. *Sexton v. Sexton*, 10th Dist. No. 07AP-396, 2007-Ohio-6539, ¶ 13.

B. First Assignment of Error

{¶ 12} In his first assigned error, appellant contends that when denying his request to deviate from the guideline child support amount, the trial court failed to conduct the proper statutory analysis. Specifically, appellant contends the trial court erred in failing to consider the factors listed in R.C. 3119.24.

{¶ 13} At the time of the magistrate's September 21, 2009 order, the total monthly guideline child support without processing charge was calculated at $1,061.92, and the magistrate afforded appellant a downward deviation to $625, plus processing charge. Due mainly to a $28,000 increase in appellant's income, the guideline child support computation at the time of trial created a total monthly child support obligation of $1,487.70, plus processing charge. According to the trial court's decision, appellant asserted factors (D), (G), (J), and (K) of R.C. 3119.23 were applicable and warranted a downward departure from the calculated guideline child support amount.

{¶ 14} The trial court expressly discussed these four factors and noted that the remaining factors listed under R.C. 3119.23 were not applicable. Thereafter, the trial court concluded the child support amount calculated, pursuant to the basic child support schedule and worksheet, is just, appropriate, and in the best interest of the minor children. Therefore, the trial court denied appellant's request for a downward deviation. Thus, the trial court made specific findings that the statutory factors relied upon by appellant in support of his request for a downward departure did not warrant such a deviation in child support.

{¶ 15} Though appellant contends the trial court did not conduct the analysis required by R.C. 3119.24 for cases involving shared parenting, we disagree. As noted, the trial court calculated the amount of child support to be paid using the basic child support schedule and applicable worksheets. The trial court considered appellant's request for a deviation by specifically addressing the relevant statutory factors of R.C. 3119.23. Following an examination of those factors, the court found that the guideline child support amount was just, appropriate, and in the best interest of the minor children. Contrary to appellant's contention, "the mere fact that the trial court did not specifically reference R.C. 3119.24 does not constitute an abuse of discretion." *Kuper v. Halbach*, 10th Dist. No. 09AP-899, 2010-Ohio-3020, ¶ 82 (in a shared parenting circumstance, no abuse of discretion in failing to mention R.C. 3119.24 when deviating from guideline child support).

{¶ 16} Accordingly, appellant's first assignment of error is overruled.

C. Second Assignment of Error

{¶ 17} In his second assignment of error, appellant contends the trial court erred in denying his request for a deviation in child support. Under this assigned error, appellant essentially makes three arguments: (1) the trial court's interpretation of "extending parenting time" was incorrect; (2) the trial court erred in stating the parties stipulated to the child support calculations; and (3) the trial court failed to consider appellant's expenditures on health insurance and daycare for the children.

{¶ 18} For ease of discussion we address the second and third arguments first, and we address them together. Both of these arguments challenge the trial court's calculation of guideline child support. We reject appellant's arguments for several reasons.

{¶ 19} Though appellant contends he stipulated only to the parties' incomes and did not stipulate to the calculated amount of guideline child support or the amounts used to compute it, the transcript reflects otherwise. A recess was taken during appellee's testimony, and after the recess, the following exchange occurred:

> THE COURT: Let the record reflect that the parties have stipulated to incomes, $36,000 for mother; $65,000 for father and stipulated to a child support figure. It's been signed by both parties. Both parties are indicating that you've read this, considered it, and it's your voluntary will that the Court adopt this as your agreement?

[Appellant]: Yes.

[Appellee]: Yes.

[Appellant's Counsel]: Your Honor, I do want to clarify, as far as the calculations are concerned, we are still requesting – in the event that the court grants the shared parenting, that there be deviations away from that number, so I –

THE COURT: Is that your understanding?

[Appellee's Counsel]: Yes, that's our understanding.

***

[Guardian ad Litem]: But, counsel, you're in agreement that this is the guideline number –

[Appellant's Counsel]: We are – Yes, this is the guideline number to start with. Yes, we are in agreement with this.

[Appellee's Counsel]: Yes, we are definitely in agreement on that, and both parties stipulate to all the numbers contained in that worksheet so that they do not have to present evidence on any of those numbers.

THE COURT: Very good. Thank you.

(Tr. 215-16.)

{¶ 20} Additionally, during appellant's direct examination, the following occurred:

[Appellant's Counsel]: I'm going to hand you what's been marked as Joint Exhibit 1. Now, this is what we call a stipulation as to the Ohio Guidelines when it comes to child support. Did you sign that document?

[Appellant]: Yes.

***

[Appellant's Counsel]: Now, the number that's reflected on Joint Stipulation No. 1, do you – You've already stipulated that it is a number for guideline purposes. Are you asking the Court to deviate away from that number?

(Tr. 394.)

{¶ 21} Thus, the record reveals appellant did stipulate to the guideline child support amount and the numbers utilized for its computation. A stipulation is a voluntary agreement between opposing counsel concerning the disposition of some relevant point to avoid the necessity for proof of an issue. *In re J.B.*, 10th Dist. No. 11AP-63, 2011-Ohio-3658, ¶ 8, citing *Julian v. Creekside Health Ctr.*, 7th Dist. No. 03MA21, 2004-Ohio-3197, ¶ 54. Once entered into by the parties and accepted by the court, a stipulation is binding upon the parties. *Id*. Importantly, for purposes of the present appeal, it is well-established that a stipulation to the admissibility of evidence precludes any subsequent challenge or claim of error relating to the stipulated evidence. *Id*. at ¶ 9, citing *Lentz v. Schnippel*, 71 Ohio App.3d 206, 211 (3d Dist.1991); *Dubecky v. Horvitz Co.*, 64 Ohio App.3d 726, 742 (11th Dist.1990). *See also In re Washburn*, 70 Ohio App.3d 178, 182 (3d Dist.1990) (even though documents would have been inadmissible in evidence, because trial counsel stipulated to their admission at trial, appellant waived any error by stipulation); *In re Beireis*, 12th Dist. No. CA2003-01-001, 2004-Ohio-1506, ¶ 21 (appellant waived any error related to admission of a report prepared by a counselor when counsel failed to object to this report at trial and in fact stipulated that it would be entered into evidence); and *Wilson v. LTV Steel Co., Inc.*, 8th Dist. No. 59515 (June 11, 1992) (appellant waived right to claim error when appellant stipulated to the admission of medical records in their entirety without objecting to or preserving the right to object to the hearsay contained therein).

{¶ 22} As stated by this court in *Nyamusevya v. Nkurunziza*, 10th Dist. No. 10AP-857, 2011-Ohio-2614, " '[i]t is fundamentally unfair for one party (here the appellant) to sit idly while a stipulation is presented to the court, to fail to object to an alleged inaccuracy, and then challenge the substance of the stipulation as being against the weight of the evidence caused by the misleading effect of his own failure to object.' " *Id*. at ¶ 22, quoting *Osterling v. Osterling*, 12th Dist. No. CA86-06-083 (June 22, 1987). Hence, in the present case, because appellant stipulated to the guideline child support amount and the numbers utilized for its computation, he is precluded from challenging the same before this court on appeal.

{¶ 23} Furthermore, under the doctrine of invited error, an appellant, in either a civil or a criminal case, cannot attack a judgment for errors committed by himself or

herself, for errors that the appellant induced the court to commit or for errors which the appellant is actively responsible. *In re J.B.* at ¶ 10, citing *Daimler-Chrysler Truck Fin. v. Kimball*, 2d Dist. No. 2007-CA-07, 2007-Ohio-6678, ¶ 40, citing 5 Ohio Jurisprudence 3d, Appellate Review, Section 448 (1999, Supp.2007). Under this principle, a party cannot complain of any action taken or ruling made by the court in accordance with that party's own suggestion or request. *Id*.

{¶ 24} Moreover, even if we ignored these well-established tenets, we would not find that the trial court erred in failing to consider appellant's expenditures. The trial court expressly referenced appellant's health insurance costs and said amounts were noted on the guideline child support computation worksheet. With respect to child care, appellant testified that he paid appellee approximately $640 per month in child support which he stated was "designed to pay half" of the daycare costs. However, we note the amount to which appellant testified was the amount of child support he was ordered to pay pursuant to the magistrate's September 21, 2009 temporary order. In contrast, appellee testified that she pays $280 per month for the children's preschool and $220 per week for daycare for the children. Consequently, we find no error in the worksheet wherein the trial court attributed these costs to appellee.

{¶ 25} Appellant's final argument under this assigned error challenges the trial court's findings with respect to R.C. 3119.23(D). Specifically, appellant challenges the following language from the trial court's entry:

> In response to Defendant's "extended parenting time" argument, the Court would simply respond that Defendant does not have the children an "extended" period of time.
>
> The Court interprets that portion of the statute to relate to obligors who possess the children a significant time **in excess of 50%** of the available parenting time.

(Emphasis sic.) (Decree at 16.)[1]

[1] Additionally, the trial court stated in its decision that the magistrate's motivation in deviating downward from the calculated guideline child support was "largely that, at that time, the parties' incomes were substantially similar and the parties shared the children on a near equal basis." (Decree at 15; footnote omitted.) However, the magistrate's orders indicate a deviation from the guideline child support amount was "unjust, unreasonable and not in the best interests of the minor children *as a result of the parenting schedule*." (Emphasis added.) (Magistrate's Sept. 21, 2009 Order, 1.)

{¶ 26} Appellant contends the trial court's interpretation is incorrect as there are numerous courts that grant child support deviations in circumstances based on extended parenting time in which there is a 50/50 split of parenting time. According to appellant, the guideline child support assumes a standard visitation schedule with a 75/25 split of parenting time, therefore, extended parenting time contemplates anything over and above that standard visitation schedule. We agree with appellant's contention.

{¶ 27} An argument similar to appellant's was recently made in *Keith v. Keith*, 12th Dist. No. CA2010-12-335, 2011-Ohio-6532, where the court reviewed an order establishing child and spousal support obligations incident to the parties' divorce. As is relevant here, the trial court in that case ordered the father to pay the mother $1,440.71 per month in child support for the couple's five children. The claimed error on appeal was that the trial court erred in denying the father's request for a downward deviation in child support because the father had extended parenting time under the parties' shared parenting plan. The shared parenting plan in *Keith* provided the father with more parenting time than that provided under a standard visitation schedule.

{¶ 28} The *Keith* court stated, " '[e]xtended parenting time,' which generally contemplates something more than parenting time during the standard visitation schedule, is one of the many factors that the trial court may consider in determining whether a deviation is appropriate." *Id*. at ¶ 18. Though recognizing that parenting time beyond the standard visitation schedule could constitute extended parenting time, the *Keith* court found no abuse of discretion in the trial court's refusal to deviate from the calculated guideline child support based on the allocation in the shared parenting plan.

{¶ 29} Similarly, in *Albright v. Albright*, 4th Dist. No. 06CA35, 2007-Ohio-3709, the father argued the trial court erred in not deviating from the calculated guideline child support based on extended parenting time. Relying on *Harris*, the *Albright* court held, "the term 'extended parenting time' certainly contemplates something more than parenting time during the standard visitation schedule established by the court for all non-custodial parents." *Id*. at ¶ 14. *See also Pahl v. Haugh*, 3d Dist. No. 5-10-27, 2011-Ohio-1302, ¶ 32 (extended parenting time means something beyond the standard visitation schedule); *Harris v. Harris*, 11th Dist. No. 2002 A 81, 2003-Ohio-5350, ¶ 44 (recognizing that extended parenting time contemplates something beyond the standard

parenting visitation schedule); and *Epitropoulos* (implicitly recognizing that a shared parenting plan providing for 50/50 parenting time could qualify as extended parenting time).

{¶ 30} Therefore, we agree that "extending parenting time" as used in R.C. 3119.23(D) contemplates something more than parenting time during the standard visitation schedule established by the court for all non-custodial parents and does not necessarily require parenting time in excess of 50 percent. Accordingly, we must conclude the trial court erred in holding otherwise and sustain in part appellant's second assignment of error. This is not to say that a deviation from the calculated guideline child support is required when there is a shared parenting plan, as it is well-established that such automatic credits are not provided for in the law. *Pauly*; *Epitropoulos*; and *Sexton*. Rather, extended parenting time, contemplating something beyond that provided in a standard visitation schedule, is but one factor to be considered. *Id.* However, because the trial court was operating under an inaccurate premise concerning extended parenting time when it denied appellant's request for a child support deviation, we are of the opinion that a limited remand is appropriate. After consideration of R.C. 3119.23(D), the trial court, in its discretion, is free to grant or deny appellant's request for a downward deviation in child support.

IV. CONCLUSION

{¶ 31} For the foregoing reasons, appellant's first assignment of error is overruled, appellant's second assignment of error is sustained in part and overruled in part, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is hereby affirmed in part and reversed in part. This matter is remanded to that court for the limited purpose of considering appellant's request for a child support deviation in light of our holding concerning only the trial court's disposition of R.C. 3119.23(D).

Judgment affirmed in part and reversed in part;
cause remanded with instructions.

BROWN, P.J., and FRENCH, J., concur.
