[Cite as *Kuper v. Halbach,* 2010-Ohio-3020.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Alicia M. Kuper,	:	
Plaintiff-Appellant,	:	
		No. 09AP-899
v.	:	(C.P.C. No. 07DR 05 1923)
Kevin P. Halbach,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 30, 2010

Farlow & Associates, LLC, and *Beverly J. Farlow*, for appellant.

Harris, *McClellan*, *Binau & Cox P.L.L.*, and *James B. Harris*, for appellee.

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

SADLER, J.

{¶1} Plaintiff-appellant, Alicia M. Kuper ("appellant"), 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 defendant-appellee, Kevin P.

Halbach ("appellee"). Because the trial court committed no reversible error, we affirm the judgment.

{¶2} The parties were married on September 5, 1998 in North Carolina. Two children were born as issue of the marriage; both are minors.

{¶3} At the time of the marriage, appellant had completed her degree as a doctor of osteopathy. Appellee had recently been honorably discharged from the United States Navy, after having served for approximately 13 years. While on active duty as a Navy Seal, appellee sustained injuries for which he receives military disability payments. Appellee's education is limited to a high school diploma.

{¶4} Following their marriage, the parties moved into a modest home in Galloway, Ohio so they could work toward repaying appellant's substantial student loan debt. During this time, appellee worked in various construction jobs. Appellant completed her residency at Kiddie West Pediatrics, Inc. ("Kiddie West"); in 1999, she accepted a full-time position with Kiddie West as a pediatrician. In 2001, appellant, having established herself in the medical practice at Kiddie West, became a shareholder in the practice through a close corporation agreement.

{¶5} By May 2005, the parties had completely repaid appellant's student loan debt. Shortly thereafter, they purchased a significantly larger and more expensive home in Hilliard, Ohio.

{¶6} In 2006, appellee was presented with a job offer in Louisiana as a dump truck driver transporting materials related to the clean-up in the aftermath of Hurricane Katrina. The job offer required him to have a six-axle dump truck. Although the extent of appellant's involvement in the decision-making process regarding the Louisiana job

opportunity is the subject of some dispute, appellee ultimately accepted the job and purchased a new dump truck which met the specifications for the job. Shortly after purchasing the dump truck, the job offer was rescinded. Thereafter, the parties decided that appellee should proceed to Louisiana to find employment. For the first month after he arrived in Louisiana, appellee slept in the back of the dump truck. Weary of that arrangement, appellee decided to purchase a motor home to live in rather than rent an apartment. Appellee parked the motor home in a FEMA trailer park in Pearl River, Louisiana, where he continued to work and reside throughout the proceedings.

{¶7} On May 10, 2007, appellant filed a complaint for divorce; appellee filed an answer and counterclaim on June 13, 2007. Upon the parties' separate motions, the trial court issued standard restraining orders. In addition, the court, through a magistrate, issued temporary orders. As pertinent here, the temporary orders required appellant to pay spousal support of $500 per month; appellee was ordered to pay zero child support.

{¶8} At trial, the parties stipulated to a shared parenting plan; the parties left the determination of child support to the trial court. On September 15, 2009, the trial court filed a Judgment Entry-Decree of Divorce. Therein, the trial court granted the parties a divorce, divided the marital property, allocated parental rights and responsibilities pursuant to the parties' shared parenting plan, ordered appellant to pay spousal support of $1,200 per month plus processing charge for 42 months, and ordered appellee to pay zero child support.

{¶9} Appellant timely appeals, assigning five errors for our review:

> ASSIGNMENT OF ERROR I: THE TRIAL COURT ABUSED ITS DISCRETION IN OVERSTATING THE VALUE [of]

> APPELLANT'S OWNERSHIP INTEREST IN KIDDIE WEST PEDIATRICS.
>
> ASSIGNMENT OF ERROR II: THE TRIAL COURT ABUSED ITS DISCRETION IN DETERMINING THE AMOUNT AND DURATION OF SPOUSAL SUPPORT AND MAKING THE AWARD NON-MODIFIABLE.
>
> ASSIGNMENT OF ERROR III: THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN DETERMINING THE INCOMES OF THE PARTIES FOR PURPOSES OF CALCULATING SUPPORT.
>
> ASSIGNMENT OF ERROR IV: THE TRIAL COURT ERRED AS A MATTER OF LAW IN DETERMINING CHILD SUPPORT WITHOUT REFERENCING SHARED PARENTING.
>
> ASSIGNMENT OF ERROR V: THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOCATING ALL FIVE OF THE PARTIES' MOTOR VEHICLES TO APPELLEE.

{¶10} By her first assignment of error, appellant challenges the trial court's conclusion that appellant held an ownership interest in Kiddie West valued at $268,300 as being against the manifest weight of the evidence and an abuse of discretion. Appellant maintains that in arriving at its conclusion, the trial court improperly relied upon the valuation provided by appellee's business valuation expert, William Ditty ("Ditty"). Appellant argues that Ditty either disregarded or failed to properly evaluate several factors which significantly impacted the value of her ownership interest.

{¶11} Preliminarily, we note that a trial court enjoys broad discretion in the division of property in divorce cases, and its decision will not be reversed absent an abuse of discretion. *Middendorf v. Middendorf,* 82 Ohio St.3d 397, 1998-Ohio-403. A trial court abuses its discretion when it acts in an unreasonable, arbitrary or unconscionable fashion. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶12} Although a professional license is not marital property, "a professional business 'may be evaluated as any other business.' " *Barone v. Barone* (Sept. 1, 2000), 6th Dist. No. L-98-1328, quoting *Josselson v. Josselson* (1988), 52 Ohio App.3d 60, 63. "Ohio courts have not specified that only one method of valuation is appropriate when dividing marital property." *Herrmann v. Herrmann* (Nov. 6, 2000), 12th Dist. No. CA99-01-006, citing *Clymer v. Clymer* (Sept. 21, 2000), 10th Dist. No. 99AP-924. Rather, an equitable division of marital property depends upon the totality of the circumstances such that a flat rule for valuation is not appropriate in a property division. *Herrmann,* citing *Clymer,* citing *Hoyt v. Hoyt* (1990), 53 Ohio St.3d 177, 180, and *Braswell v. Braswell* (June 15, 1992), 12th Dist. No. CA91-09-162.

{¶13} Ohio courts have recognized several methods for valuing a business, including: (1) capitalization of net profits (or straight capitalization); (2) capitalization of excess earnings; (3) the IRS method (known as the "formula" approach), which subtracts a reasonable rate of return on tangible assets and salary from average earnings; (4) market value; and (5) buy-sell agreements. *Herrmann*, citing *Kell v. Kell* (Dec. 14, 1993), 4th Dist. No. 92CA1931. When valuing a business, a trial court is neither required to use a particular valuation method nor is precluded from using any method. *Clymer.*

{¶14} The valuation of property in a domestic relations case is a question of fact. *Covert v. Covert,* 4th Dist. No. 03CA778, 2004-Ohio-3534, ¶6. Such issue is subject to review under a manifest weight of the evidence standard. Id. Consequently, the trial court's judgment is not subject to reversal as long as it is supported by some competent, credible evidence. This standard is highly deferential; even "some" evidence is sufficient to sustain the judgment and to prevent a reversal. Id.

{¶15} The trial court heard extensive testimony regarding the valuation of appellant's ownership interest in Kiddie West from Ditty and from appellant's expert witness, Gail Jamison ("Jamison"), a certified public accountant whose accounting firm prepares appellant's individual tax returns and Kiddie West's corporate tax returns and financial statements. Ditty testified that in conducting the valuation of appellant's ownership interest in Kiddie West, he reviewed the close corporation agreement and financial documentation from 2004 through October 2008. Ditty valued Kiddie West using the "income" or "capitalization of earnings" method, which, as explained by Ditty, uses actual financial information regarding the corporation's performance and creates a capitalization rate that creates a value associated with the actual economic benefit and opportunity associated with the corporation. This court has noted that "[t]he 'income method' or 'capitalization of earnings method' is the most widely used method to compute the value of a business." *Heller v. Heller,* 10th Dist. No. 07AP-871, 2008-Ohio-3296, ¶16. Ditty thoroughly explained his reliance on this method, as well as the data and assumptions he used in his valuation.

{¶16} Ditty concluded that appellant owned 34 of the 100 shares of stock Kiddie West is authorized to issue. Using the income or capitalization of earnings method of valuation, Ditty valued those shares at $7,890 per share, for a total of $268,300. Ditty testified that although he reviewed the mathematical formula contained in paragraph 4(e) of the close corporation agreement pertaining to the mandatory sale of stock by a shareholder, he did not include the value contained therein in his calculation. However, Ditty testified that because of the existence of the close corporation agreement, he applied a discount of 35 percent to the value of appellant's shares due to appellant's

inability to sell her shares on the open market without approval of the other shareholders. He also applied a minority shareholder discount rate of 29.1 percent to the value of appellant's shares.

{¶17} In contrast, Jamison testified that she did not believe the income or capitalization of earnings method was the best method for evaluating a medical practice. Rather, Jamison valued appellant's ownership interest in Kiddie West using only the mathematical formula contained in paragraph 4(e) of the close corporation agreement pertaining to the mandatory sale of stock by a shareholder. Pursuant to this formula, Jamison divided the net book value of the corporation by 100, the number of shares the corporation is authorized to issue. Using this method of valuation, Jamison opined that, based upon the corporation's October 31, 2008 financial statements, the stock's value was $386.80 per share. Upon concluding that appellant owned only 24 shares of stock, Jamison valued appellant's ownership interest at $9,283.20.

{¶18} The trial court concluded that Jamison was not the most credible source for valuation of appellant's ownership interest in Kiddie West. Indeed, the court found that "Jamison greatly hedges her responses and is neither certain nor credible in her valuation methodologies" (Judgment Entry-Decree of Divorce, 12), and that "Ms. Jamison's desperate attempts to protect Plaintiff (her employer) negatively impact her credibility." (Judgment Entry-Decree of Divorce, 13.) The court determined that "Kiddie West Pediatrics' 'net book value' [as calculated in the close corporation agreement] is an accounting fiction established to assist the corporation/shareholders in calculating a favorable tax basis. Kiddie West Pediatrics is a close corporation amongst peers and friends, and none of these dealings are 'arm's-length' transactions." (Footnote omitted.)

(Judgment Entry-Decree of Divorce, 14.) The court expressly refused to utilize appellant's proffered value of Kiddie West based upon the formula in the close corporation agreement, stating that: "(1) transactions that define share value are the inborn and self-serving creations of the physicians themselves, (2) the overall value of the practice did not take into consideration key variables, and (3) Plaintiff's expert witness proved herself to be incompetent and severely lacking in credibility – *with respect to share value.*" (Emphasis sic, footnote omitted.) (Judgment Entry-Decree of Divorce, 17.) Instead, the court adopted Ditty's valuation. The court noted that while Ditty's valuation was not "perfect," his valuation was "based upon established economic criteria and fiscal expertise rather than the interests of self-preservation." (Judgment Entry-Decree of Divorce, 17.) Accordingly, the court valued appellant's portion of Kiddie West, as of December 31, 2007, at $268,300, the figure espoused by Ditty.

{¶19} Appellant takes issue with Ditty's valuation, and the trial court's reliance thereon, in several respects. Appellant argues that Ditty either disregarded or failed to properly evaluate several factors which significantly impact the value of appellant's ownership interest.

{¶20} Appellant first contends that Ditty failed to consider Kiddie West's October 2008 interim financial statement, which appellant alleges demonstrated declining revenues, profits, and incomes from the same period in 2007. Contrary to appellant's contention, Ditty testified that he reviewed the income statement and balance sheet for Kiddie West for the interim period ending October 31, 2008. Ditty testified that review of this documentation did not impact his valuation because he utilized the income approach which is driven by activity contained within the income statement and the revenue

volumes were on track with what had transpired in the previous four years. He further explained that changes within a balance sheet are not necessarily indicative of any one item, as a balance sheet is simply a snapshot of a particular moment in time. When asked specifically on cross-examination why a decline in revenue, income, and profits from October 31, 2007 to October 31, 2008 did not affect his valuation, Ditty explained:

> When I had financial documents, I did not only have just year-end financial documents but I had month-to-month documents as well which I could see how there was an ebb and flow in terms of revenues and profitabilities within the practice. They would shift considerably from time to time.
>
> The particular pattern that I noted was that while there seemed to be arguably somewhat depressed profitability with the firm throughout the year, that by year end and maybe it is because the way insurance carriers paid or whatever, that I don't know, but by the end, the year end typically was better than the running numbers that were showing up throughout the year. Hence, I did not see a pattern in the '08 numbers, that limited time period, that distracted me from the previous four years of analysis that I had done.

(Tr. 815-16.)

{¶21} Ditty's testimony clearly establishes that he reviewed and considered Kiddie West's October 31, 2008 interim financial statements. Nonetheless, appellant argues that "since Mr. Ditty did not examine the year-end figures for 2008, there was no way to verify that this 'pattern' [of lower revenues] continued in 2008." (Appellant's brief, 6.) Ditty acknowledged that he did not see the year-end figures for 2008; however, he testified that the "pattern" he mentioned was established in the previous four years' worth of monthly data, and he saw nothing in the monthly patterns up to and including October 31, 2008 that gave him "particular concern." (Tr. 816.)

{¶22} Appellant points to no testimony contradicting Ditty's opinion that the October 31, 2008 financial statements had no impact on his December 31, 2007 valuation. Moreover, the trial court found Ditty's testimony on this issue to be credible. Indeed, the trial court noted that Ditty "very intelligently and articulately explains that he pored over Kiddie West Pediatrics' financial documents, not only for just year's end, but month-to-month as well," and that Ditty "reasonably concludes that *nothing* in the year-end figures for 2008 affected the established pattern as revealed in his analysis of the previous 4 years' worth of data." (Emphasis sic.) (Journal Entry-Decree of Divorce, 16.)

{¶23} Appellant next argues that Ditty failed to consider the impact of the close corporation agreement on his valuation and arbitrarily applied a 35 percent non-marketability discount rate and a 29.1 percent minority shareholder discount rate to the valuation. Contrary to appellant's assertions, Ditty testified extensively about the close corporation agreement and thoroughly explained his reasons for not including the formulas contained therein in his valuation. Specifically, Ditty testified that the formula specified in the close corporation agreement did not accurately reflect the true economic value of the practice and did not represent an arm's-length transaction for a buyer and seller. Ditty explained that the close corporation agreement does not represent the stock's true value; rather, the agreement is merely a document whereby the partners in the medical practice agreed upon an orderly process for buying and selling shares to each other. Ditty further stated that the formula in the close corporation agreement was not pertinent because it ignored significant assets of the entity, such as accounts receivable and goodwill, yet included liabilities.

{¶24} The trial court found Ditty's testimony to be credible on this issue, expressly rejecting the use of the close corporation agreement in valuing appellant's ownership interest, finding, as noted above, that "transactions that define share value are the inborn and self-serving creations of the physicians themselves" and "the overall value of the practice did not take into consideration key variables." (Judgment Entry-Decree of Divorce, 17.)

{¶25} Appellant also takes issue with Ditty's application of a 35 percent non-marketability discount rate and a 29.1 percent minority shareholder discount rate, arguing that both rates were arbitrarily selected and unrelated to the specific circumstances of Kiddie West or the close corporation agreement.

{¶26} In discussing the impact of the close corporation agreement, Ditty explained that he applied a standard 35 percent non-marketability discount rate to the value of appellant's ownership interest because the close corporation agreement prohibited her from unilaterally selling her shares on the open market. Ditty testified that applying this discount reduced the value of appellant's shares by over one-third. Ditty noted that the 35 percent discount rate had been used by at least one Ohio court as a reasonable marketable discount associated with professional firms.

{¶27} The case upon which Ditty relied, *Barone*, supports his testimony. In that case, a certified valuation analyst testified that a 35 percent non-marketability discount rate is the "average" used in valuing a physician's interest in a close corporation surgical practice. Despite this testimony, the analyst applied a 15 percent discount rate. In determining the value of the physician's interest in the practice, the trial court applied the average rate for discount for non-marketability, 35 percent, rather than the 15 percent

discount utilized by the expert. On appeal, the court found no abuse of discretion in the trial court's use of the 35 percent discount rate, stating that " '[t]he trial court has broad discretion to develop some measure of value' and such valuations of marital assets will not be reversed absent an abuse of discretion." Id., quoting *Goode v. Goode* (1991), 70 Ohio App.3d 125, 132. Accordingly, based upon *Barone,* Ditty's application of a 35 percent non-marketability discount rate was not arbitrary. Moreover, we note that appellant points to no evidence establishing that Ditty should have applied a different non-marketability discount rate.

{¶28} Similarly, we find that Ditty's application of a 29.1 percent minority shareholder discount rate was not arbitrary. Ditty expressly testified that the 29.1 percent figure was "not an arbitrary figure picked by me." (Tr. 843.) Rather, Ditty stated that the 29.1 percent discount was a typical discount associated with actual sales of medical practices and was derived from Mergerstat statistics analyzing industries such as medical practices. Ditty explained that Mergerstat is "an industry standard for finding premiums and discounts." (Tr. 842.) Ditty testified that he used the 29.1 percent discount figure, which is based upon national statistics, because he could not find any statistics related to medical practice sales in Ohio. Ditty stated that had he chosen not to use a minority interest discount due to the lack of Ohio statistics, he would have valued appellant's shares 29.1 percent higher. Although he could not explain precisely how Mergerstat calculated the discount, Ditty testified that "using a national standard for minority discounts was more fair than ignoring discounts all together and having an inflatedly large number." (Tr. 843.) Based on the foregoing testimony, we cannot conclude that Ditty's application of a 29.1 percent minority shareholder discount rate was arbitrary. Moreover,

we note that appellant points to no evidence establishing that Ditty should have applied a different minority shareholder discount rate.

{¶29} Ditty expressly rejected appellee's counsel's contention that "the only real measure of [the value of appellant's] shares is the Close Corporation Agreement." (Tr. 844.) Ditty testified that the figures he utilized in valuing appellant's ownership interest were derived, in part, from viable statistics from the United States Department of Labor or from other national standards used to value stock in medical practices, including non-marketability and minority shareholder discounts. Ditty noted that "in his professional opinion," such figures were "vastly more objective than something written by a couple of people, couple of lawyers in a closed door session coming up with a document called the Close Corporation Agreement where they have a particular vested interest in the dollar amount that they arrive at for one reason or the other; whereas, this is a reflection of the economic reality and the benefit associated with being a partner in this firm, getting a salary from it, and having a sense of economic opportunity." (Tr. 845-46.)

{¶30} Appellant next challenges Ditty's valuation on grounds that it does not take into account the possible retirement of Dr. Backes, the president and majority shareholder of Kiddie West. Appellant contends that Dr. Backes' decision to sell appellant ten shares of his stock evidences his intent to decrease his ownership stake and role in Kiddie West. Appellant further contends that Ditty admitted that Dr. Backes' retirement would have a negative impact on Kiddie West's future financial picture.

{¶31} Initially, we note that the transcript is completely devoid of any indication that Dr. Backes intends to retire from Kiddie West in the near future. Dr. Backes, who testified in appellant's case-in-chief, did not aver that he planned to retire. Contrary to

appellant's assertion, Dr. Backes' testimony regarding his agreement to sell ten shares of his stock to appellant in no way suggests that he is contemplating leaving Kiddie West. Indeed, Dr. Backes has routinely sold shares of his stock to other physicians in the practice. (Plaintiff's Exhibit 59, Share Journal for Kiddie West.)

{¶32} Furthermore, appellant mischaracterizes Ditty's testimony regarding Dr. Backes' possible retirement from Kiddie West. During cross-examination, counsel for appellant asked Ditty a hypothetical question concerning whether Dr. Backes' departure would affect his valuation of appellant's ownership interest in the medical practice. Ditty opined that a failure to replace Dr. Backes would negatively impact the practice and its valuation; however, Ditty further opined that replacement of Dr. Backes by a renowned pediatrician might have an extremely positive impact on the practice and its valuation. Ditty found either scenario to be "purely speculative," however, and, as a consequence, refused to consider the possibility of Dr. Backes' departure in conducting his valuation. (Tr. 856.) We note that the trial court characterized the notion of Dr. Backes' retirement as "wholly speculative." (Judgment Entry-Decree of Divorce, 12, fn. 2.) Moreover, appellant offered no testimony or documentary evidence regarding the effect, if any, of Dr. Backes' retirement on the valuation of Kiddie West.

{¶33} Appellant next contends that Ditty failed to account for how Kiddie West's growing reliance on Medicaid patients affects the valuation of the business. Dr. Backes testified that due to a shift in demographics in the area served by Kiddie West, Kiddie West has an increased number of patients who rely on government support such as Medicaid. He further testified that Ohio has placed caps on certain government payments, which decrease the amount of money paid to physicians. Jamison testified

that approximately 80 percent of Kiddie West's patients are on Medicaid and that Kiddie West's percentage of revenue collected from Medicaid has decreased over the past four years from 55 percent to 38 percent.

{¶34} When questioned on cross-examination about Kiddie West's increased reliance on Medicaid patients and its affect on the value of the corporation, Ditty responded that he could not comment because he was not a Medicaid expert. However, Ditty later testified that in his valuation, he considered overall market conditions external to Kiddie West, including the "impact of insurance, what the government is doing * * * how health care is in general, the growth patterns." (Tr. 852.) Although appellant avers that Medicaid is a "significant factor affecting the value of the business," she does not explain how it affects the valuation. The trial court heard Ditty's testimony regarding the Medicaid issue and presumably factored that testimony into its analysis. As noted above, the trial court concluded that while Ditty's valuation was not "perfect," it was, contrary to Jamison's valuation, based on "established economic criteria and fiscal expertise." (Judgment Entry-Decree of Divorce, 17.)

{¶35} Appellant next maintains that Ditty failed to take into account the Stock Purchase Agreement between Dr. Backes and appellant for the sale of ten shares of Kiddie West stock. In this agreement, Dr. Backes agreed to sell ten shares of his stock to appellant at a price of $3,000 per share. Appellant contends this $3,000 per share purchase price should represent the stock's fair market value, not the $7,890 per share value advocated by Ditty, and that the trial court abused its discretion in ignoring the per share value set forth in the Stock Purchase Agreement. We disagree.

{¶36} Initially, we note that neither Jamison, appellant's own expert, nor Dr. Backes, Kiddie West's president and majority shareholder, adopted the $3,000 per share value set forth in the Stock Purchase Agreement. Jamison testified that the per share value of appellant's shares was $362.80 pursuant to the formula contained in the close corporation agreement. Similarly, Dr. Backes testified that the net book value of a share, calculated pursuant to the formula set forth in the close corporation agreement, is a "little less than $400 a share." (Tr. 386.) As noted above, Ditty testified that the close corporation formula does not accurately reflect the true economic value of the business and does not represent an arm's length transaction between a buyer and seller because it ignores significant valuation standards such as assets like accounts receivable and goodwill, but includes liabilities.

{¶37} Moreover, the Stock Purchase Agreement itself evidences that the $3,000 per share price does not reflect the true value of the stock. Paragraph 5(b)(i) provides that "[t]he purchase price set forth in Section 2 of this Agreement [$3,000 per share] is not based on historical earnings, the book value of the Shares or any other objective criteria and should not be deemed to be an indication of the Shares' value." (Plaintiff's Exhibit 21.) Accordingly, the trial court did not abuse its discretion in failing to adopt the $3,000 per share purchase price contained in the Stock Purchase Agreement.

{¶38} Finally, appellant contends the trial court abused its discretion in determining that she owns 34 shares of Kiddie West stock. Appellant contends the evidence establishes that she owns only 24 shares. We disagree.

{¶39} On direct examination, Jamison testified that between 2001 and 2004, appellant purchased 24 shares of stock in Kiddie West. In 2005, appellant entered into a

written agreement with Dr. Backes to purchase an additional ten shares from him. Jamison testified that appellant defaulted on that purchase after having paid slightly less than half of the total purchase price. Jamison identified a letter dated October 15, 2008 (Plaintiff's Exhibit 23) from Dr. Backes notifying appellant that she would be in default on payment for the ten shares if full payment were not received by November 15, 2008. The letter further stated that the four shares she had paid for in full would be sold back to the corporation pursuant to the mandatory sale provision in the close corporation agreement at the net book value as outlined in that agreement, and the six shares she had not yet paid for in full would be returned to Dr. Backes with no reimbursement to appellant. Jamison testified that as of the time of trial, appellant had paid for only 24 shares. Jamison also identified a November 13, 2008 letter she wrote to appellant's counsel regarding the value of appellant's shares as of October 31, 2008. (Plaintiff's Exhibit 19.) In that letter, Jamison averred that appellant owned 24 shares of Kiddie West from stock purchases she had entered into prior to 2005.

{¶40} On cross-examination, Jamison testified that as of the time of trial, the ten shares of stock appellant purchased pursuant to the 2005 Stock Purchase Agreement remained in appellant's name, as they had not yet been transferred back to the corporate treasury or Dr. Backes because of the temporary restraining order issued in the course of the divorce proceedings. Accordingly, Jamison testified that appellant still owns 34 shares. Jamison also identified a spreadsheet of stock ownership changes she prepared for Kiddie West, which includes the ten-share purchase in 2005. (Defendant's Exhibit 5.) Jamison admitted that this document states that appellant owns 34 shares. Jamison further identified a May 30, 2007 fax she wrote to appellee's former counsel confirming

appellant's ownership of 34 shares. (Defendant's Exhibit 76.) Jamison also identified appellant's Schedule K-1 for 2006 and 2007, both of which depict appellant's 34 percent shareholder ownership in Kiddie West. (Defendant's Exhibits 19, 23.)

{¶41} Appellant testified that as of the time of trial, she has 34 shares of stock in her name. She averred, however, that at the conclusion of the court proceedings, she will lose all rights to the ten shares governed by the Stock Purchase Agreement as part of the mandatory sale after a default; accordingly, she will own only 24 shares.

{¶42} Dr. Backes testified on direct examination that he sent appellant a default letter on October 15, 2008. He further testified that after he sent the default letter, he received a letter from appellee's attorney stating that he was not permitted to proceed with the default because of the temporary restraining order. Dr. Backes further stated that if appellant paid no more money toward the purchase, he would pay her for the four shares she has already paid for and the rest would go back into the corporate treasury.

{¶43} On cross-examination, Dr. Backes admitted that his October 15, 2008 default letter stated that the corporation planned to enact the default provisions on December 15, 2008 if full payment were not received by that date. Accordingly, if appellant made payment in full between the date of the letter, October 15, 2008, and December 15, 2008, she would own all ten shares, for a total of 34. Dr. Backes also identified Kiddie West's corporate federal tax returns, including Schedule K-1, for 2005, 2006, and 2007, all of which depict appellant as holding a 34 percent ownership interest in Kiddie West. (Defendant's Exhibits 73, 74, 75.) On redirect, Dr. Backes testified that appellant had not paid for the last ten shares and that the October 15, 2008 default letter had not been issued at the time the tax returns were filed. Upon questioning by the court,

Dr. Backes testified that appellant received shareholder distributions based upon her owning 34 shares.

{¶44} The trial court concluded that appellant owns 34 shares of Kiddie West stock, stating, "[i]n reviewing a number of financial documents all prepared by Ms. Jamison in the normal course of her business and signed by Dr. Backes, it becomes crystal clear that Plaintiff owns 34% of the 100 shares in Kiddie West Pediatrics." (Judgment Entry-Decree of Divorce, 12.) The trial court noted Jamison's inconsistent testimony on the issue, as well as Dr. Backes' testimony "clarif[ying]" that appellant owns 34 shares. (Judgment Entry-Decree of Divorce, 13.)

{¶45} We discern no abuse of discretion in the trial court's conclusion that appellant owns 34 shares of stock in Kiddie West. The trial court's function, as trier of fact, is to resolve disputes of fact and weigh the credibility of the testimony and documentary evidence. *Bechtol v. Bechtol* (1990), 49 Ohio St.3d 21, 23. We defer to the trial court because "the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. Here, the court carefully and methodically reviewed the witnesses' testimony and the voluminous documentary evidence provided by the parties, weighed the credibility of the witnesses, and based its decision upon competent, credible evidence.

{¶46} In summary, Ditty, a recognized business valuation analyst, employed the income or capitalization of earnings method to determine the value of appellant's 34 shares of Kiddie West stock. Ditty's valuation thoroughly considered the close

corporation agreement that encumbered appellant's shares, the non-marketability of those shares, and the fact that appellant is a minority shareholder. Appellant's numerous challenges to Ditty's credibility and propriety of his valuation methods essentially ask this court to reweigh the credibility of Ditty's methods. When reviewing evidence presented at trial, an appellate court must not reweigh the evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus. A thorough review of the record demonstrates that the trial court heard extensive evidence regarding the methodology Ditty used to value appellant's ownership interest. The court accepted Ditty's testimony despite appellant's efforts to discredit it with the same arguments she now raises on appeal. We will not reweigh the evidence or second-guess the trial court's determination that Ditty's testimony in valuing appellant's share of Kiddie West was the more credible evidence. The trial court did not abuse its discretion in adopting Ditty's valuation over the valuation advanced by appellant's expert, Jamison. Accordingly, the first assignment of error is overruled.

{¶47} Appellant's second assignment of error argues that the trial court abused its discretion in determining the amount and duration of spousal support and in making the award non-modifiable. As noted above, the trial court awarded spousal support to appellee in the amount of $1,200 per month for a period of 42 months. The trial court specifically stated that it did not retain jurisdiction over the issue to further modify its award. (Judgment Entry-Decree of Divorce, 40.)

{¶48} R.C. 3105.18(B) provides that, upon the request of a party, and after the trial court determines the division of property, the court may award reasonable spousal support to that party. R.C. 3105.18(C)(1) enumerates 14 factors the trial court must

consider in determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, terms of payment, and duration of spousal support. The factors include: (1) the income of the parties from all sources; (2) the relative earning abilities of the parties; (3) the ages and physical, mental, and emotional condition of the parties; (4) the parties' respective retirement benefits; (5) the duration of the marriage; (6) the extent to which a party appropriately may seek employment outside the home in light of custodial responsibilities to a minor child of the marriage; (7) the standard of living established during the marriage; (8) the parties' education; (9) the relative assets and liabilities of the parties, including any court ordered payments; (10) the contribution of each party to the other's education, training or earning ability; (11) the time and expense necessary for the spouse who is seeking spousal support to acquire, if sought, the education, training or job experience to qualify the spouse to obtain appropriate employment; (12) the tax consequences, for each party, of a spousal support award; (13) either party's lost income production capacity resulting from that party's marital responsibilities; and (14) any other factor the court expressly finds to be relevant and equitable.

{¶49} A trial court has broad discretion to determine the proper amount of spousal support based upon the particular facts and circumstances of each case. *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67. While the decision to award spousal support is discretionary, an appellate court reviews the factual findings to support that award under a manifest weight of the evidence standard. *Freeland v. Freeland*, 4th Dist. No. 02CA18, 2003-Ohio-5272, ¶14.

{¶50} The trial court need not comment on each of the R.C. 3105.18(C)(1) factors; rather, the record need only demonstrate that the court considered them in making its award. *MacMurry v. Mayo*, 10th Dist. No. 07AP-38, 2007-Ohio-6998, ¶6-7, citing *McClung v. McClung*, 10th Dist. No. 03AP-156, 2004-Ohio-2401, ¶21. A trial court must indicate the basis for its award in sufficient detail to enable a reviewing court to determine whether the award is fair, equitable, and in accordance with the law. *Lepowsky v. Lepowsky*, 7th Dist. No. 04 CO 42, 2006-Ohio-667, ¶51.

{¶51} Preliminarily, we note that appellant concedes that the trial court examined each of the 14 factors set forth in R.C. 3105.18(C)(1). Appellant takes issue, however, with the trial court's factual findings pertaining to two of the 14 factors. In particular, appellant contends that the trial court miscalculated the parties' income and relied upon erroneous facts regarding the parties' standard of living. Appellant contends that these errors resulted in a flawed conclusion regarding the amount and duration of spousal support.

{¶52} We first address appellant's contention that the trial court miscalculated appellant's income. "With respect to spousal support calculations, courts in Ohio have held that 'where a substantial error occurs due to mathematical miscalculations, * * * an abuse of discretion may be shown.' " *Anspach v. Anspach*, 11th Dist. No. 2006-G-2706, 2006-Ohio-6344, ¶29, quoting *Gockstetter v. Gockstetter* (June 23, 2000), 6th Dist. No. E-98-078. However, this court has stated that "reliance upon inaccurate factual information does not always rise to the level of an abuse of discretion. Rather, the results of such misplaced reliance constitute reversible error only if they are so 'culpably and grossly violative of facts and logic that it evidences not the exercise of will but the perversity of

will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather passion or bias.' " *Lancione v. Lancione* (Sept. 20, 1994), 10th Dist. No. 94APF03-308, quoting *Fetters v. Fetters* (Aug. 17, 1993), 5th Dist. No. CA-439.

{¶53} In determining appellant's income for purposes of spousal support, the trial court utilized the same figure it used in its calculation of child support. To that end, the court found appellant's average annual income to be $244,278. The trial court arrived at this figure by averaging appellant's income for 2005, 2006, and 2007. In particular, the court, relying on Defendant's Exhibits 78 and 79,[1] determined appellant's 2005 income to be $264,108, including $212,108 in gross income plus $52,000 in Schedule K-1 distributions. Relying on Defendant's Exhibits 18 and 19, the court determined appellant's 2006 income to be $241,076, including $206,305 in gross income plus $15,000 in Schedule K-1 distributions. Finally, relying on Defendant's Exhibits 21 and 22, the court determined appellant's 2007 income to be $227,650, including $189,920 in gross income plus $17,468 in Schedule K-1 distributions. (Judgment Entry-Decree of Divorce, 23.) Appellant contends that the trial court failed to recognize that the gross income set forth in her 2005, 2006, and 2007 federal income tax returns includes her Schedule K-1 distributions; therefore, according to appellant, the trial court, in essence, erroneously doubled her Schedule K-1 income. Appellant further contends that the evidence upon which the trial court relied in calculating her income does not support its conclusion.

{¶54} A review of the record reveals that the trial court did not count appellant's Schedule K-1 distributions twice. There does, however, appear to be some merit to

[1] We note Defendant's Exhibits 78 and 79 were never formally admitted into evidence. However, appellant does not argue on appeal that the trial court erred in relying on these exhibits as having not been admitted; rather, appellant argues that the exhibits do not support the trial court's findings.

appellant's claim that the trial court miscalculated appellant's 2005 income. Defendant's Exhibit 78, the parties' joint federal income tax return, lists the parties' income as $212,108. The Wage Statement attached to the income tax return lists appellant's wages as $182,458 and appellee's wages as $29,650, for a total of $212,108. In its decision, the trial court attributed the $212,108 solely to appellant, when, as noted, that figure appears to reflect the parties' joint income for 2005. We disagree with appellant's assertion, however, that the trial court miscalculated appellant's Schedule K-1 distribution for 2005. Defendant's Exhibit 79 lists appellant's Schedule K-1 distribution from Kiddie West as $52,000. Regarding 2006, Defendant's Exhibit 18 reveals that appellant's *gross pay* for 2006 was $206,305.24; Defendant's Exhibit 19 lists appellant's Schedule K-1 distribution from Kiddie West as $15,000. As to 2007, Defendant's Exhibit 21 reveals that appellant's *gross pay* was $189,.920.42; Defendant's Exhibit 23 lists appellant's Schedule K-1 distribution from Kiddie West as $17,000; in addition, Defendant's Exhibit 22 lists appellant's Schedule K-1 distribution from The Medical Group of Ohio, Ltd., as $468. In addition, Jamison verified the gross income figures for 2006 and 2007, as well as the Schedule K-1 distribution figures for 2005, 2006, and 2007. Moreover, appellant admitted during her testimony that she received Schedule K-1 distributions of $52,000 in 2005, $15,300 in 2006, and $17,000 in 2007.

{¶55} The trial court did not abuse its discretion in calculating appellee's income. As it did for appellant's income, the trial court determined appellee's income for purposes of spousal support to be the same as that used for child support purposes, i.e., $35,695. The court noted that the $35,695 figure included both appellee's annual net wages of

$25,291 and his annual military disability pay of $10,404. (Judgment Entry-Decree of Divorce, 30, fn. 22.)

{¶56} Appellant does not dispute the trial court's determination that appellee receives $10,404 in military disability income. Rather, appellant takes issue with the determination that appellee's income from his trucking business is $25,291. As noted by appellee in his brief, appellant's contention is curious, as the income figure for appellee adopted by the trial court was calculated by appellant's accountant, Jamison, who testified that appellee's 2007 federal income tax return, which showed a business loss of $2,798 (Plaintiff's Exhibit 1) contained several errors; accordingly, she prepared a recalculated tax return, which includes adjustments for errors in Plaintiff's Exhibit 1. As noted by the trial court, this recalculated tax return, Plaintiff's Exhibit 18, lists appellee's 2007 business income as $25,291. Accordingly, competent, credible evidence supports the trial court's determination of appellee's income.

{¶57} Appellant next contends that the trial court's mathematical errors in determining the parties' incomes contributed to its "incorrect and lopsided view" of the parties' standard of living. Appellant takes issue with the court's conclusion that there is an "extreme disparity in the present standards of living" between the parties and that appellee "survives at a lower standard." (Judgment Entry-Decree of Divorce, 38.) Appellant argues that the trial court relied too heavily on the fact that appellee currently resides in his motor home in a FEMA trailer park in Louisiana. Appellant contends that this "one-sided description" of appellee's living arrangement fails to account for the fact that his monthly payment on the motor home and the rental fees to park the vehicle exceed $1,200, and that appellee admitted that he never looked into the cost of renting an

apartment. Appellant contends that the motor home is a "luxury vehicle" that provides appellee with a higher standard of living than the trial court attributed to him.

{¶58} Upon review of the trial court's decision, we cannot find that the trial court relied too heavily on appellee's current living arrangement in assessing the standard of living established by the parties. As required by R.C. 3105.18(C)(1)(g), the trial court thoroughly reviewed the standard of living established by the parties over the entire course of their marriage, not just the parties' current living arrangements. To that end, the court noted the history of the parties' living arrangements, including the fact that they lived in a modest home for the first few years of their marriage in order to pay off appellant's significant student loan debt, and then upgraded to a significantly larger home valued at $460,000. The court further noted that appellant resides in this home with the children. The trial court also assessed the evidence regarding appellee's budget and spending, and the disparity in the parties' incomes.

{¶59} Although, as noted, a review of the record indicates that appellant's claim has some merit due to the trial court's miscalculation of appellant's 2005 income, no "gross deviation from logic or reason" is present in this case. *Lancione.* Even when the trial court's miscalculation is taken into account, appellant's income still exceeds appellee's by an amount sufficient to permit appellant to pay the spousal support award. Further, when we consider the significant disparity in income, we cannot find an abuse of discretion in the amount of the award.

{¶60} Nor do we find an abuse of discretion in the duration of the spousal support award. We do not agree with appellant's contention that the trial court applied a "blanket mathematical approach" and "rigid formula" rather than giving "thoughtful consideration"

to the totality of circumstances involved in this case. At trial, appellee testified that he would need, at a minimum, two to three years of spousal support in the range of $1,000 to $1,500 per month in order to establish his trucking business. As noted by the trial court, appellee based his request upon the fact that he spent the early years of his marriage contributing toward the repayment of appellant's substantial student loan debt and, up until the time he was served with appellant's complaint for divorce, turned over to appellant's sole discretion every paycheck he ever earned, and allowed appellant to manage the family finances without interference from him. The court further noted that appellee works 12-15 hours per day to earn roughly 15 percent of appellant's salary. Although the trial court did not expressly state its reasons for its 42-month award, it deemed the marriage one of "intermediate duration," and we note that the award is only for six months longer than appellee requested. Nothing in the trial court's analysis suggests that the trial court blindly awarded one year of spousal support for every three years of marriage. Rather, the trial court conducted a thorough and well-reasoned analysis of the statutory factors and concluded, based upon the totality of the circumstances, that appellee was entitled to spousal support for a period of 42 months.

{¶61} Appellant's final argument pertaining to spousal support is that the trial court erred by failing to retain jurisdiction to modify its award. Appellant argues that the court's decision does not allow for a change in the financial condition of either party. Appellant contends that appellee's employment and income are "highly unpredictable" given that he lives in a motor home and can move quickly and easily from location to location in search of new and more lucrative work opportunities. Appellant likewise contends that her earning situation is subject to change, citing the decline in her shareowner distributions

and the "unstable" nature of Kiddie West. Appellant further notes that the decision does not address the possibility of cohabitation or remarriage on the part of appellee.

{¶62} R.C. 3105.18(E)(1) provides that a trial court does not have jurisdiction to modify the amount or terms of a spousal support award unless the court determines that the circumstances of either party have changed and the divorce decree contains a provision specifically authorizing the court to modify the amount or terms of the award. The decision to retain jurisdiction to modify an award of spousal support is left to the sound discretion of the trial court. *Deacon v. Deacon*, 8th Dist. No. 91609, 2009-Ohio-2491, ¶63, citing *Johnson v. Johnson* (1993), 88 Ohio App.3d 329. "Although Ohio courts generally agree that a trial court abuses its discretion in failing to reserve jurisdiction when imposing an indefinite award of spousal support, the same does not automatically apply when the court imposes a limited time period." *Deacon,* citing *Johnson,* citing *Nori v. Nori* (1989), 58 Ohio App.3d 69. Rather, an appellate court must consider the totality of circumstances and the specific facts of each case in determining whether a trial court abused its discretion in declining to retain jurisdiction. *Deacon*, citing *Nori.*

{¶63} A trial court abuses its discretion in failing to reserve spousal support jurisdiction where there is a substantial likelihood that the economic conditions of either or both parties may change significantly within the period of the award. *Newman v. Newman*, 5th Dist. No. 2003 CA 00105, 2004-Ohio-5363. Contrary to appellant's proposition, the facts and circumstances of this case do not suggest a substantial likelihood that the economic conditions of either party will change significantly within the three and one-half year period of the award. Appellant is a practicing physician and a shareholder in her medical practice, whose income from 2005 through 2007 remained

relatively steady. Appellee has a high school education and is employed as a truck driver; his income also remained relatively stable from 2005 through 2007.

{¶64} Appellant's contentions regarding the decline in her shareowner distributions and the instability of Kiddie West are unavailing. As noted by the trial court in its discussion of the valuation of appellant's ownership interest in Kiddie West, Ditty vehemently disputed appellant's assessment that Kiddie West had a negative growth rate and was unconcerned that appellant experienced variations in her income from 2005 to 2007 because at all relevant times, her salary was significantly above the industry average.

{¶65} Similarly, we find no merit to appellant's contention that appellee's owning the motor home provided him the ability to attain more lucrative employment. Appellee testified that he intended to remain in Louisiana until he could make enough money to pay off his dump truck and move to Ohio. We further note that appellee's financial circumstances are likely to decline once the divorce is finalized, as appellee will have to pay for his own health and dental insurance. Because there is little likelihood that the economic conditions of either party and the disparity in the parties' incomes will change significantly in the next three and one-half years, the trial court did not abuse its discretion in failing to reserve jurisdiction to modify the spousal support award.

{¶66} With regard to appellant's contention regarding the trial court's failure to address the possibility of appellee's cohabitation or remarriage, we note that the trial court is not required to reserve jurisdiction to terminate spousal support in the event of remarriage or cohabitation. *Newman*, citing *McClusky v. Nelson* (1994), 94 Ohio App.3d 746, and *Jordan v. Jordan* (1996), 117 Ohio App.3d 47. Accordingly, the trial court did

not abuse its discretion in failing to maintain jurisdiction over the issue of spousal support. Appellant's second assignment of error is overruled.

{¶67} Appellant's third assignment of error contends the trial court erred and abused its discretion in determining the parties' incomes for purposes of calculating child support. More particularly, appellant contends the trial court failed to include spousal support in appellee's income and should not have averaged appellant's annual income for 2005, 2006, and 2007.

{¶68} A trial court has considerable discretion in the calculation of child support, and, absent an abuse of discretion, an appellate court will not disturb a child support order. *Pauly v. Pauly*, 80 Ohio St.3d 386, 1997-Ohio-105. There is no abuse of discretion where there is some competent, credible evidence supporting the trial court's decision. *Ross v. Ross* (1980), 64 Ohio St.2d 203.

{¶69} We first address appellant's argument that the trial court erred in failing to include the spousal support award as part of appellee's income. As noted, the trial court ordered that appellant must pay appellee $1,200 per month, which is $14,400 per year. R.C. 3119.01(C)(7) includes "spousal support actually received" in the definition of "gross income." In addition, R.C. 3119.05(B) provides that "the amount of any court-ordered spousal support actually paid shall be deducted from the gross income of that parent to the extent that payment under the child support order or that payment of the court-ordered spousal support is verified by supporting documentation." The R.C. 3119.022 child support computation worksheet similarly provides for such an adjustment. The trial court complied with R.C. 3119.05(B)(5) by deducting the $14,400 spousal support award from appellant's gross income on the child support worksheet it prepared. Both parties

agree, however, that the trial court failed to include the $14,400 spousal support award in calculating appellee's gross income. As such was required by R.C. 3119.01(C)(7), the trial court erred in failing to do so. *Warren v. Warren,* 10th Dist. No. 09AP-101, 2009-Ohio-6567, ¶30.

{¶70} However, under the facts and circumstances of this case, we find the trial court's error to be harmless. The inclusion of the $14,400 spousal support would actually increase appellee's monthly child support obligation. As we note in our discussion of appellant's fourth assignment of error, infra, the trial court found that the calculated guideline child support figure was unjust, inappropriate, and not in the best interest of the children because of the disparity in the parties' incomes and because appellee needs to conserve his limited resources so he can visit his children in Ohio. Accordingly, the court ordered a deviation to zero. Under these circumstances, we must assume that the trial court would have made the same decision, that is, to order a deviation to zero, had it correctly calculated appellee's child support obligation at the higher amount. See *Crum v. Walters,* 10th Dist. No. 02AP-818, 2003-Ohio-1789, ¶22, citing *Hallworth v. Republic Steel Corp.* (1950), 153 Ohio St. 349, paragraph three of the syllabus (error is considered harmless if it can be said that, in the absence of the error, the trier of fact would probably have made the same decision).

{¶71} We next turn to appellant's contention that the trial court erred in averaging appellant's income. As noted above, the trial court used the average of appellant's 2005, 2006, and 2007 gross annual incomes in calculating child support. R.C. 3119.05(H) provides that, "[w]hen the court * * * calculates gross income, the court * * * when appropriate, may average income over a reasonable period of years." The decision to

use income averaging is within the sound discretion of the trial court, and will not be reversed absent an abuse of that discretion. *Rhoades v. Priddy-Rhoades,* 10th Dist. No. 06AP-740, 2007-Ohio-2243, ¶11, citing *Scott G.F. v. Nancy W.S.,* 6th Dist. No. H-04-015, 2005-Ohio-2750. Income averaging is particularly appropriate where income is unpredictable or inconsistent. *Rhoades* at ¶11, citing *Marquard v. Marquard* (Aug. 9, 2001), 10th Dist. No. 00AP-1345.

{¶72} In this case, the evidence offered at the hearing established that both components of appellant's income, i.e., her salary and her shareholder distributions, were somewhat inconsistent over the three-year period from 2005 to 2007. Based on the difference in appellant's income and shareholder distributions from year to year, we cannot say that the trial court abused its discretion when it elected to use income averaging to calculate appellant's gross annual income.

{¶73} Appellant next contends that, pursuant to R.C. 3119.05(D), the trial court erred in averaging appellant's overtime, commissions, and bonuses from the period 2005 to 2007 rather than using the total of overtime, commissions, and bonuses received during the year immediately prior to the computation, which, in this case, would have been 2007. Appellant's analysis erroneously assumes that appellant's shareholder distributions constitute overtime, commissions or bonuses for purposes of R.C. 3119.05(D). As they do not, her argument is without merit. Appellant's third assignment of error is overruled.

{¶74} Appellant's fourth assignment of error argues that the trial court erred as a matter of law in determining child support without referencing shared parenting. More specifically, appellant contends that the trial court failed to conduct the proper statutory

analysis pertaining to shared parenting and erred in deviating from appellee's child support obligation based upon speculative travel expenses.

{¶75} It is undisputed that the trial court issued a shared parenting order pursuant to the parties' stipulation. 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; however, the court may deviate from that amount if the court finds that the amount would be unjust or inappropriate for either the child or either parent and would not be in the child's best interest because of extraordinary circumstances of the parents or because of any of the factors set forth in R.C. 3119.23. R.C. 3119.24(B) enumerates its own criteria for deviations due to the parents' extraordinary circumstances. *Frick v. Frick,* 6th Dist. No. WD-03-075, 2004-Ohio-6898, ¶75.

{¶76} Here, the trial court first computed the combined child support obligation under the basic child support schedule and applicable worksheet for a combined gross income of $150,000. That computation resulted in a total monthly child support obligation of $353.06. The trial court determined that the guideline amount of $353.06 per month would be unjust, inappropriate and/or not in the best interest of the children pursuant to R.C. 3119.22 and 3119.23. Upon examining the R.C. 3119.23 factors upon which evidence was adduced at the hearing, the court made several specific findings.

{¶77} Considering R.C. 3119.23(D), the court stated:

> (D) *Extended parenting time/extraordinary costs associated with parenting time.* Defendant testifies that in 2008 he visited the children 3 times. In 2007, testifies that he visited the children in Ohio 7 times. In 2006, he maintains that he visited with the children in Ohio 10 times. He claims that a <u>one-way</u>

> airline ticket for the final divorce proceeding cost $100. Defendant indicates that he typically drives back and forth between Ohio and Louisiana, but does not track his actual travel expenses for the 960-mile one way drive. He does recall that the cost of gas has historically been approximately $350 to $400 one way.
>
> Plaintiff complains that although Defendant was awarded a deviation in his child support obligation (to zero) due to his alleged travel expenses, he did not avail himself of all the parenting time awarded him. * * * Plaintiff estimates that Defendant's 7 trips to Ohio in 2007 cost him only $631 per trip. She also asserts that most of his 2007 visits were made in conjunction with court-related appearances.
>
> Lastly, while Plaintiff complains that Defendant did more sending of extravagant gifts in 2008, (e.g., the ATV, a Nintendo DS, a portable keyboard and various DVD's) than actual visiting, she concedes that (*unlike her professional situation*) Defendant's business consists of him alone and that Defendant earns no leave time – therefore, any time spent away from work directly results in lost income.

(Judgment Entry-Decree of Divorce, 28-29.)

{¶78} Addressing R.C. 3119.23(G) and (L), the court averred:

> (G) *Disparity in income between parties or households* and (L) *Standard of living/circumstances of each parent and the child* are similar. Plaintiff, as a physician and salaried shareholder in medical practice, has a great income advantage over Defendant, a self-employed, dump truck owner-operator.

(Judgment Entry-Decree of Divorce, 29.)

{¶79} As to R.C. 3119.23(J), the court stated:

> (J) *Significant in-kind contributions from a parent.* Plaintiff acknowledges that Defendant sends the children wonderful gifts (see Factor D), and she provides their health insurance at a marginal cost of $6,566.28 per annum and their dental costs at a marginal cost of $63.90 per annum.

(Judgment Entry-Decree of Divorce, 29.)

{¶80} Considering R.C. 3119.23(K), the court asserted:

> (K) *Financial resources and needs of each parent.* See the Standard of Living analysis in the Spousal Support section of this Decree.

(Judgment Entry-Decree of Divorce, 29.)

{¶81} The court found that the foregoing factors served as a viable basis for a deviation from appellee's guideline child support obligation; accordingly, the trial court deviated downward to zero. The court further found that appellee "needs his limited resources to enable him to periodically ***visit Ohio*** to interact with the children, their schools and their peers outside of the parenting time specifically ordered by this Court pursuant to Long Distance Rule 27 *and* outside of court appearances." (Emphasis sic.) The court further stated that it "remains concerned that, even with the deviation, Defendant is not sufficiently visiting the children in Ohio." Accordingly, the court placed appellee on notice that "should he continue to neglect his responsibilities to these children, upon motion of Plaintiff, the Court will certainly consider vacating its deviation and instead ordering full guideline support." (Judgment Entry-Decree of Divorce, 30.)

{¶82} Appellant contends that 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 the worksheet set forth in R.C. 3119.022. The trial court then considered appellee's request for a deviation by specifically addressing the relevant statutory factors in R.C. 3119.23. Following examination of those factors, the court found that the guideline amount would be unjust, inappropriate, and/or not in the best interest of the children and deviated down to zero. 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.

{¶83} Although appellant does not expressly state as much in her assignment of error, appellant also seems to suggest that the court did not conduct the analysis required by R.C. 3119.04(B) for cases involving parental income levels exceeding $150,000. It is undisputed that the parties' combined gross income exceeds $150,000. R.C. 3119.04(B) provides that "[i]f the combined gross income of both parents is greater than one hundred fifty thousand dollars per year, the court, with respect to a court child support order, * * * shall determine the amount of the obligor's child support obligation on a case-by-case basis and shall consider the needs and the standard of living of the children who are the subject of the child support order and of the parents." The statute further provides that "[t]he court * * * shall compute a basic combined child support obligation that is no less than the obligation that would have been computed under the basic child support schedule and applicable worksheet for a combined gross income of one hundred fifty thousand dollars, unless the court * * * determines that it would be unjust or inappropriate and would not be in the best interest of the child, obligor, or obligee to order that amount." The statute mandates that should the court make "such a determination, it shall enter in the journal the figure, determination, and findings."

{¶84} Thus, in cases where the parties' combined income exceeds $150,000, the court is bound by three requirements. The court must: (1) set the child support amount based on the qualitative needs and standard of living of the children and parents; (2) ensure that the amount set is not less than the $150,000-equivalent, unless awarding the $150,000-equivalent would be inappropriate (i.e., would be too much); and (3) if it decides

the $150,000-equivalent is inappropriate or unjust (i.e., awards less), then journalize the justification for that decision. *Zeitler v. Zeitler*, 9th Dist. No. 04CA008444, 2004-Ohio-5551, ¶8.

{¶85} Here, the trial court followed the statutory mandate set forth in R.C. 3119.04(B). As noted above, the court computed the combined child support obligation under the basic child support schedule and applicable worksheet for a combined gross income of $150,000. The trial court considered the relevant statutory factors set forth in R.C. 3119.23. Following that examination, the court found that the guideline amount would be unjust, inappropriate and/or not in the best interest of the children and deviated down to zero. This court has held that "[i]f a court finds that the guideline amount is unjust or inappropriate and not in the best interest of the children a court may establish a child support amount that deviates from the guideline amount." *Wolfe v. Wolfe,* 10th Dist. No. 04AP-409, 2005-Ohio-2331, ¶11. In *Wolfe,* the parties' income exceeded $150,000. The trial court determined the child support obligation by applying the child support guidelines and then considering the deviation factors in R.C. 3119.23. On appeal, the obligor argued that the trial court failed to make the case-by-case analysis under R.C. 3119.04(B) because it considered the R.C. 3119.23 deviation factors that do not apply in cases involving combined incomes greater than $150,000. This court found that "[w]hile the trial court was not required to consider the factors pursuant to R.C. 3119.23, it is not an abuse of discretion to do so in addition to computing the child support obligation on a case-by-case basis in accordance with R.C. 3119.04(B)." Id. at ¶28.

{¶86} Appellant concedes that the trial court did not abuse its discretion in considering the R.C. 3119.23 factors; however, appellant seems to argue that the trial

court did not compute the child support obligation on a case-by-case basis in accordance with R.C. 3119.04(B) and *Wolfe*. However, we note that appellant has failed to support any such contention with an argument as required by App.R. 16(A)(7). "An appellate court need not guess at undeveloped claims on appeal." *Allen v. Allen,* 10th Dist. No. 04AP-1341, 2005-Ohio-5993, ¶27.

{¶87} Appellant next contends that the trial court erred in deviating appellee's child support obligation based upon speculative travel expenses. Initially, we note that appellee's extraordinary costs associated with exercising his parenting time with the children is only one of the factors the trial court considered in its deviation analysis. Furthermore, as set forth above, the trial court thoroughly considered the evidence related to appellee's parenting time and travel expenses and apparently found appellee's testimony to be credible. As noted above, a trial court does not abuse its discretion where there is some competent, credible evidence supporting the trial court's decision. *Ross*. In addition, we cannot agree with appellant's argument that deviating the child support obligation based upon appellee's travel expenses is not in the best interest of the children. As noted by the trial court, deviating from the child support guideline amount enables appellee to conserve his limited resources so that he can periodically visit Ohio to interact with the children. Appellee's increased involvement and interaction with the children is certainly in their best interest. The fourth assignment of error is overruled.

{¶88} Appellant's fifth and final assignment of error contends that the trial court abused its discretion in awarding appellant's vehicle, a 1999 GMC Yukon, to appellee. Appellant correctly notes that the trial court's Journal Entry-Decree of Divorce contains conflicting statements regarding its award of the Yukon. However, at oral argument,

counsel for appellee stated that the Yukon is in appellant's possession and that appellee does not want it. Based upon this representation, appellant's counsel withdrew this assignment of error. Accordingly, we need not consider it.

{¶89} Having overruled appellant's first, second, third, and fourth assignments of error, and having determined that we need not address appellant's fifth assignment of error, we hereby affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

FRENCH and CONNOR, JJ., concur.

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