[Cite as *Boone v. Holmes*, 2015-Ohio-2242.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

LaShae D. Boone,	:	
Plaintiff-Appellee,	:	
		No. 14AP-449
v.	:	(C.P.C. No. 07JU-9542)
Santonio B. Holmes, Jr.,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 9, 2015

Sowald Sowald Anderson & Hawley, and *Marty Anderson*, for appellee.

Butler, McKeon & Associates, P.A., and *Bonnie J. Butler*; *Paul R. Panico*; and *Adam S. Eliot*, for appellant.

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

BRUNNER, J.

{¶ 1} This matter concerns an appeal filed by defendant-appellant, Santonio B. Holmes, Jr., of an order and entry of the trial court increasing his monthly child support obligation from $4,000, as established in the November 2, 2009 agreed judgment entry of the trial court, to $6,500.

I. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} According to the order and entry appealed, appellant is also responsible for making additional payments for extraordinary health insurance, private school tuition, books, uniforms and other required or necessary fees, and prospective college expenses for his daughter, born to plaintiff-appellee, LaShae Boone.

{¶ 3} Appellee requested an administrative child support modification from the Franklin County Child Support Enforcement Agency, and on May 3, 2012 the agency recommended that appellant be ordered to pay $1,266.70 per month, plus processing charges. Appellee then filed a request for an administrative adjustment court hearing, and objected to the recommendation, which, as the trial court's magistrate observed in her decision, was limited to the amount appellant would pay if the parties' combined annual income were exactly $150,000.00, and did not consider appellant's obligation on a case-by-case basis or the needs and standards of living as required by R.C. 3119.04(B). After a hearing before the magistrate, the magistrate recommended that the trial court order appellant to pay monthly child support in the amount of $4,248.71. Appellee filed objections to the magistrate's decision. The trial court sustained them and ordered appellant's monthly child support to increase to $6,500.00. The trial court ordered appellant to pay appellee's attorney fees in the amount of $8,500.00.

II. ASSIGNMENT OF ERROR

{¶ 4} Appellant appeals assigning a sole assignment of error[1]:

> The trial court erred as a matter of law, abused its discretion and reached a decision against the manifest weight of the evidence in its child support order.

III. DISCUSSION

{¶ 5} The parties are the parents of a minor child born February 14, 2006. Appellant is a professional football player and was employed by the New York Jets at the time of trial. Appellant's gross annual income at the time of the 2009 establishment order was $2,875,000.00. The trial court used his 2011 gross income of $8,314,794.00 in determining the amount of child support he was required to pay. His support obligations for two other children with different mothers were $6,500.00 and $4,000.00 respectively per month in 2012. Appellee's income in 2009 was $14,248.00. At time of the hearing

[1] Appellant's brief included a second assignment of error against the award of counsel fees, but it has been withdrawn. Appellee somewhat vaguely asks that we not consider appellant's brief "except as may be noted" in her own brief, because appellant's brief was filed the morning after the due date. Appellant more appropriately should have filed a motion for leave to file his brief instanter. Nevertheless, since appellee has not filed a motion to strike and makes no claim of prejudice from the slightly untimely filing, we consider both briefs as if timely filed and without objection to the slight delay in the filing of appellant's brief.

she was employed as an assistant retail store manager at the rate of $8.50 per hour. The trial court found her annual income to be $18,302.10. She has ambitions to be a professional singer and entertainer. Although appellant and appellee's father have contributed to the costs of cosmetic surgery and studio time, she has not earned any substantial income from her endeavors in entertainment. While her current boyfriend does not contribute to her living expenses, her parents have helped to make up her $2,000-$2,500.00 financial shortfall each month. She is indebted for approximately $800.00 to her mother, and for student loans and attorney fees.

{¶ 6} Child support orders are reviewed under an abuse of discretion standard. *Booth v. Booth*, 44 Ohio St.3d 142, 144 (1989). A trial court generally has considerable discretion in the calculation of child support. Absent an abuse of discretion, an appellate court will not disturb a child support order. *Pauly v. Pauly*, 80 Ohio St.3d 386, 390 (1997). Unless the trial court's modification of its original support award was unreasonable, arbitrary or unconscionable, we will not overturn its determination on appeal. *See Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 7} According to appellant, the reason the trial court ordered increased child support (by 62.5 percent and $30,000 annually) is that he could afford to pay it. Changes in child support orders are governed by R.C. 3119.79(C):

> If the court determines that the amount of child support required to be paid under the child support order should be changed due to a substantial change of circumstances that was not contemplated at the time of the issuance of the original child support order or the last modification of the child support order, the court shall modify the amount of child support required to be paid under the child support order to comply with the schedule and the applicable worksheet through the line establishing the actual annual obligation, unless the court determines that the amount calculated pursuant to the basic child support schedule and pursuant to the applicable worksheet would be unjust or inappropriate and would not be in the best interest of the child and enters in the journal the figure, determination, and findings specified in section 3119.22 of the Revised Code.

{¶ 8} Where the parents' combined income is greater than $150,000 per year R.C. 3119.04(B) provides the method for determining the appropriate child support obligation. The court:

> [S]hall 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 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.

{¶ 9} Since the combined income of the parents exceeds $150,000, the trial court was required to make a case-by-case analysis to determine the appropriate amount of child support. We previously have held that where the parents' combined income exceeds $150,000, the trial court may consider the deviation factors provided in R.C. 3119.23 as part of its case-by-case analysis, but is not required to consider those factors. *Wolf-Sabatino v. Sabatino*, 10th Dist. No. 12AP-1042, 2014-Ohio-1252, ¶ 48; *Galloway v. Khan*, 10th Dist. No. 06AP-140, 2006-Ohio-6637, ¶ 45; *Wolfe v. Wolfe*, 10th Dist. No. 04AP-409, 2005-Ohio-2331, ¶ 28. Factors for granting a deviation from the basic child support schedule include the disparity in income between the parties or households (R.C. 3119.23(G)); the relative financial resources, other assets and resources, and needs of each parent (R.C. 3119.23(K)); and the standard of living and circumstances of each parent and the standard of living the child would have enjoyed if the parents had been married (R.C. 3119.23(L)).

{¶ 10} "When making a child support determination under R.C. 3119.04(B), the court must not only look to the standard of living of the child, but to that of the parents as well." *Siebert v. Tavarez*, 8th Dist. No. 88310, 2007-Ohio-2643, ¶ 36. Under the predecessor to R.C. 3119.79, an increased economic need was not a requirement for obtaining an increase in child support as long as it was shown "that an increase in the obligor's income would result in at least a ten percent change in the amount of child

support." *Pratt v. McCullough*, 100 Ohio App.3d 479, 482 (12th Dist.1995), citing *Sobb v. Maxon*, 6th Dist. No. L-91-395 (Oct. 16, 1992); R.C. 3113.215(B)(4) (Repealed).

{¶ 11} Appellee presented a budget of monthly expenses totaling $8,129.00, and testified to additional expenses for traveling gymnastics and track activities, now that her daughter is older and involved in these sports at a high level for her age. Appellee accompanies her to these activities and provides practically all of the parenting time, except for occasional visits with her father at home, or out-of-state where appellant lives. Appellee notes that extrapolating from the guideline support percentages applicable to gross incomes not exceeding $150,000 would yield a monthly amount of $69,596.63. The trial court reviewed expenses for the child in detail. Appellant's essential point is that the additional economic needs relate only to the child's extracurricular activities, amount to approximately $5,000 per year, and do not justify a 62.5 percent, $30,000 annual increase for child support. He argues for the marginal $248.71 monthly increase the magistrate recommended.

{¶ 12} Appellant relies heavily on *Pearlstein v. Pearlstein*, 11th Dist. No. 2008-G-2837, 2009-Ohio-2191, which found no abuse of discretion in the trial court's decision not to deviate from the child support guidelines, and, in lieu of an upward deviation due to the disparity between the wife's gross annual income of $25,000 and the husband's at $461,654, to require the husband to pay current and prospective private school tuition, uncovered medical expenses and fees for extracurricular activities and camp. But compelling in the instant matter is appellant's very high but transitory income as an NFL player. His $8,314,794 gross income for 2011 represented an almost 190 percent increase since the agreed judgment entry, and his playing contract alone was expected to increase to far greater levels in 2012 and 2013. Without explicitly stating so, the trial court decided to place the child's support at the same level appellant must provide to his child in Florida[2].

{¶ 13} In *Douglas v. Douglas*, 2d Dist. No. 2002-CA-91, 2003-Ohio-2518, ¶ 15, the Second District affirmed a professional football player's child support obligation of $14,478.91 (including processing fees) as appropriate and within the trial court's

[2] The Florida support order excludes uncovered medical and housing expenses for the child, who has special needs. The child's home is provided under a trust.

discretion. The court observed that the amount represented just over 11 percent of his net income and did not take into account any bonuses or investment earnings:

> In addition, the trial court reasonably took note of the "limited life-span" of Douglas' NFL career when considering an appropriate level of child support. Although the child support award in the present case is substantial, the trial court did not abuse its discretion in recognizing that Douglas' ability to command a multi-million-dollar salary likely will be limited to the relatively short duration of a career playing professional football. * * * Finally, the trial court did not abuse its discretion when it found its child support award justified based on the standard of living of the parties and the minor child. Although Brianna was only three years old, the trial court noted that it was considering not only her standard of living, but also the standard of living of her parents. The trial court also noted that its award took into consideration the standard of living Brianna would have enjoyed if the parties had remained married. In light of Douglas' 1.5 million annual net income, the trial court did not abuse its discretion in awarding $170,340.09 per year to allow Brianna to maintain a standard of living that she likely would have enjoyed if the parties had not divorced

Id. at ¶ 19.

{¶ 14} In appellant's case, the trial court recognized that his $8,314,794 gross income for 2011, a combination of salary, investments, self-employment and other income, was nearly three times what he was earning at the time of the original agreed judgment in 2009. Appellant's NFL contract alone was due to increase further from $1,000,000 in 2011, to $7,750,000 in 2012, and to $13,000,000 in 2013. The $6,500 monthly award ($78,000 annually) represents less than 1 percent of appellant's gross income for 2011. Including this amount, appellant's total child support obligations are just over 2.45 percent of his gross income. While the trial court properly based child support on the parties' gross income under R.C. 3119.04(B), reducing appellant's income by half (roughly to account for taxes as the Second District did for its analysis in *Douglas*) places appellant's total support payments at less than 5 percent of the hypothetical net income.

{¶ 15} Other, similar cases in this particular body of jurisprudence do not indicate that the new amount the trial court awarded is out of line. In *Pratt*, the Twelfth District affirmed an increase of a lottery-winning father's child support obligation to 10.145 percent of his annual income of $307,692.30, since "his enormous increase in income due to his lottery winnings constitutes a change of circumstances substantial enough to require a modification of the amount of the existing child support order." *Id*. at 481.

{¶ 16} Decisions in other state jurisdictions also evince that a court may, in its discretion, find a substantial increase in a parent's income to warrant a corresponding increase in child support, in view of supplying the child with a standard of living the child may enjoy if her parents were married. *See Finley v. Scott*, 707 So.2d 1112, 1117 (Fla.1998) (affirming $5,000 monthly payment where mother was raising child on much lower standard of living than would be established by father, if child were living at father's current lifestyle as professional athlete with $266,926 gross income per month); *In re Keon C.*, 344 Ill.App.3d 1137, 1144 (2003) (affirming $8,500 monthly child support for son of professional basketball player whose contract income increased from $1.4 million to approximately $4.5 million between 2001 and 2003); *Hector v. Raymond*, 692 So.2d 1284, 1287-88 (La.App.1997) (affirming $6,000 monthly child support from professional football player with contract for $1.2 million bonus and $4.5 million to be paid over three years, even though mother presented no evidence of child's need to the extent of award; "support requirements were based on a situation which did not take into consideration the standard of living that [the child] would be entitled to were he to reside with his father"). As one court has stated succinctly, "a substantial change in income, by itself, could support a modification." *Smith v. Freeman*, 149 Md.App. 1, 22 (2002) (vacating order denying increase in child support where lower court did not recognize father's substantial increase in income as an independent, valid ground on which the court, in its discretion, could have increased child support).

{¶ 17} The child's economic needs have increased, though not nearly as dramatically as appellant's income, as she has grown since the agreed judgment entry in 2009. We observe on our review of the record that the trial court thoroughly reviewed the evidence that had been presented to the magistrate, including the details of the expenses presented, the standards of living of both parties and of the child, and also the parties'

agreement previously found to meet the financial needs and best interest of the child. The court acknowledged the significant increase in the child's extracurricular athletic expenses since the original agreed judgment, as well as appellant's very limited parenting time, although he "appears to have a frugal lifestyle rather than engage in a lavish spending that one might associate with a professional athlete." (Decision and Entry, 19.) The court found that some of appellee's listed expenses for the child's athletic interests, grooming, and travel, appeared to be unreasonable in light of her own income: "For example, $800.00 per month for clothing for a 6 year old is clearly inflated." (Decision and Entry, 19.)

{¶ 18} However, in accordance with R.C. 3119.04(B) and 3119.23(G), (K) and (L), the court found that, while appellee was not entitled to a windfall or to any spousal support, notwithstanding the incidental benefit to appellee, the child "should share in Defendant Father's professional success with a standard of living that reflects same, and therefore, the concept of need is not just that of basic needs, but those commensurate with the lifestyle of a parent often dependent upon wealth, culture and values." (Decision and Entry, 19.) The court decided that as long as appellant provided health insurance for the child, his "monthly child support obligation shall be $6,500.00 plus processing charge, and $107.42 in cash medical support, plus processing charge." (Emphasis deleted.) (Decision and Entry, 19.)

{¶ 19} The increased support payment will not sustain a terribly extravagant lifestyle or approach what likely would have been available to the child had the parties been married. Appellee demonstrated a relatively modest increase in the child's economic needs and a prodigious increase in appellant's income as a star NFL player, a career with a limited life span, as the court observed in *Douglas*. Under the circumstances, we cannot conclude that the trial court's modification of child support was "so 'unreasonable, arbitrary, or unconscionable' as to connote an abuse of discretion." *Pratt* at 482, quoting *Blakemore* at 219.

IV. CONCLUSION

{¶ 20} We therefore overrule appellant's sole assignment of error, and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations,

Juvenile Branch, increasing appellant's support obligation to $6,500 monthly, plus the processing charge.

Judgment affirmed.

KLATT and SADLER, JJ., concur.