

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

MARY OSSAI-CHARLES,	:	
	:	CASE NOS. CA2010-12-129
Petitioner-Appellee,	:	CA2011-01-007
	:	
- vs -	:	<u>OPINION</u>
	:	8/1/2011
	:	
GREGORY CHARLES,	:	
	:	
Petitioner-Appellant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 05 DR 29468

Moskowitz & Moskowitz, James H. Moskowitz, 2900 Carew Tower, 441 Vine Street, Cincinnati, Ohio 45202, for petitioner-appellee

James R. Kirkland, 130 West Second Street, Suite 840, Dayton, Ohio 45402, for petitioner-appellant

RINGLAND, J.

{¶1} Appellant/cross-appellee, Gregory Charles (Husband), appeals from the decisions of the Warren County Court of Common Pleas, Domestic Relations Division, regarding a number of issues, including, but not limited to, health insurance, uncovered health care expenses, findings of contempt, payment of attorney fees and court costs, the exchange of tax returns, as well as his child and spousal support obligations, following his divorce from appellee/cross-appellant, Mary Ossai-Charles (Wife). Wife cross-appeals from

the same decisions. For the reasons outlined below, we affirm the decisions of the trial court.

{¶2} Husband, who currently resides in Atlanta, Georgia, and Wife, who lives in Warren County, were married on August 26, 1989. The couple had two children, Itse (Daughter), born April 14, 1990, who was emancipated on June 2, 2008, and Diallo (Son), born July 24, 1992, who was scheduled to be emancipated on June 5, 2011.

{¶3} On July 1, 2005, Wife filed a complaint for legal separation. Husband and Wife were subsequently divorced on September 27, 2006.

{¶4} On May 22, 2008, in anticipation of Daughter's impending emancipation, the Warren County Child Support Enforcement Agency (CSEA) issued an administrative decision recommending Husband's monthly child support obligation be reduced. The CSEA's administrative recommendation ultimately triggered the filing of numerous motions by both parties requesting, among other things, a modification to Husband's child and spousal support obligations, findings of contempt, and attorney fees.

{¶5} On August 10, 2009, following a lengthy hearing on the matter that ultimately concluded on April 14, 2009, the magistrate issued a decision addressing the litany of issues raised by the parties' numerous motions. Both parties subsequently filed objections to the magistrate's decision.

{¶6} On January 4, 2010, after partially sustaining two of Husband's objections, the trial court adopted the magistrate's decision and issued what it declared to be a final appealable order. Both parties then appealed to this court.

{¶7} On August 2, 2010, this court issued a decision dismissing the parties' appeals for lack of a final appealable order. See *Ossai-Charles v. Charles*, 188 Ohio App.3d 503, 2010-Ohio-3558. In so holding, this court found "[t]he trial court's order adopting the magistrate's decision that left unresolved the question whether an arrearage or overage

exists in [Husband's] child- or spousal -support accounts, and if so, its amount, is not a final order under R.C. 2505.02(B)(1) because it is not an order 'that in effect determines the action and prevents a judgment.'" Id. at ¶18.

{¶8} On August 6, 2010, the magistrate filed an order requiring the CSEA to conduct an audit of Husband's child and spousal support accounts.

{¶9} On November 1, 2010, following an October 4, 2010 hearing on the matter, the magistrate issued a "Decision on the Determination of Arrearages" finding Husband had arrears totaling \$27,373.53, inclusive of administrative fees, resulting from his child and spousal support obligations. Husband subsequently filed objections to the magistrate's decision.

{¶10} On December 23, 2010, the trial court issued a decision summarily overruling Husband's objections to the magistrate's decision "without further consideration" after finding he "failed to file a transcript of the hearing before the Magistrate." The trial court then adopted the magistrate's decision in full.

{¶11} Husband and Wife now appeal from the trial court's decisions, raising a total of 14 assignments of error for review.

{¶12} Husband's Assignment of Error No. 1:

{¶13} "THE TRIAL COURT ERRED WHEN IT FAILED TO FIND ANY COMPELLING REASON WHY [HUSBAND] SHOULD NO LONGER BE HEALTH INSURANCE PROVIDER."

{¶14} In his first assignment of error, Husband argues that the trial court erred by adopting the magistrate's decision requiring him to maintain Son's health insurance instead of "heed[ing his] repeated request to have the health insurance transferred to [Wife's] name and that process be changed." We disagree.

{¶15} The trial court's decision in domestic relations matters are generally reviewed under an abuse of discretion standard. *Kranz v. Kranz*, Warren App. No. CA2008-04-054, 2009-Ohio-2451, ¶4; *Zornes v. Zornes*, Clermont App. No. CA2005-05-042, 2006-Ohio-877, ¶12, citing *Booth v. Booth* (1989), 44 Ohio St.3d 142, 143. An abuse of discretion is more than error of law or judgment; it requires a finding that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Anderson v. Anderson*, Warren App. No. CA2009-03-033, 2009-Ohio-5636, ¶11; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. In turn, "[s]ince it is axiomatic that a trial court must have discretion to do what is equitable upon the facts and circumstances of each case, it necessarily follows that a trial court's decision in domestic relations matters should not be disturbed on appeal unless the decision involves more than an error of judgment." *Gamble v. Gamble*, Butler App. No. CA2006-10-265, 2008-Ohio-1015, ¶3. In making such a determination, this court must "refrain from the temptation of substituting [our] judgment for that of the trier-of-fact, unless the lower court's decision amounts to an abuse of discretion." *Rapp v. Pride*, Butler App. No. CA2009-12-311, 2010-Ohio-3138, ¶28, citing *Martin v. Martin* (1985), 18 Ohio St.3d 292, 295.

{¶16} In support of his argument that the trial court erred by adopting the magistrate's decision regarding Son's health insurance, Husband claims that he "provided four compelling reasons to the trial court to support his request for the court to transfer the minor child's health insurance to [Wife's] name." Most notably, Husband claims Son's health insurance should be transferred to Wife's name because she "fails to communicate" with him regarding their son's health care expenses.

{¶17} In this case, the magistrate, after hearing testimony from both parties and wading through the extensive evidence regarding this issue, determined that "there [was] no

compelling reason to change the health insurance orders at this point in the process" since Husband "has insurance available through his employment and there are only two years left in the child's minority for coverage to be an issue." In addition, the magistrate, in an effort to "avoid unnecessary confusion," declined to make any further modification to its February 23, 2009 "Entry Concerning Medical Expenses" requiring Husband to, among other things, contact providers "to give his permission to be listed as the primary name/obligor/guarantor" so that "all of the bills will go to [him]." The trial court, besides modifying the February 23, 2009 entry instructing Wife to "forward a copy of any health care bill she receives for her son to [Husband] immediately," adopted the magistrate's decision requiring Husband to maintain Son's health insurance in full.

{¶18} After a thorough review of the record, it is clear that Husband has health insurance available for Son through his employment at a cost of \$1,010.88 per year, which, we note, certainly coincides with the parties' divorce decree requiring him to provide health insurance "so long as it is available to him at a reasonable cost." The same, however, cannot be said for Wife. While Wife may not have been as forthcoming with information regarding Son's medical expenses, any concerns Husband may have with Wife's failure to communicate with him regarding their son's health care expenses has been resolved by the trial court's February 23, 2009 entry. Therefore, because the trial court must have discretion to do what is equitable upon the facts and circumstances of each case, we find no error in the trial court's decision. Accordingly, Husband's first assignment of error is overruled.

{¶19} Husband's Assignment of Error No. 2:

{¶20} "THE TRIAL COURT ERRED WHEN IT FAILED TO FIND THAT [WIFE] SHOULD BE FULLY RESPONSIBLE FOR ALL HEALTHCARE EXPENSES IN EXCESS OF 30 DAYS PAST DUE FOR THE UNEMANCIPATED CHILD AND FAILED TO FIND [WIFE] IN CONTEMPT FOR HER FAILURE TO FOLLOW THE FINAL DECREE AND JUDGMENT

OF DIVORCE."

{¶21} In his second assignment of error, Husband initially alleges the trial court erred by failing to hold Wife responsible for their children's past due healthcare expenses. However, although he made such allegation within his assignment of error, Husband has failed to provide this court with any argument in support of his claim within his appellate brief. As a result, because Husband failed to comply with App.R. 16(A)(7), which requires one to present, among other things, "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions," we decline to address that issue here. App.R. 12(A)(2); *Campell v. Campell*, Warren App. No. CA2009-04-039, 2009-Ohio-6238, ¶29; *In re T.G.*, Butler App. Nos. CA2005-10-444, CA2005-12-521, 2006-Ohio-5504, ¶36; *Williams v. Williams* (Dec. 16, 1996), Butler App. No. CA96-01-015, at 8.

{¶22} Also in his second assignment of error, Husband argues that the trial court erred by not finding Wife in contempt for failing to forward Son's medical bills to him within 30 days as required by their divorce decree. However, although he does provide some argument in support of this claim within his appellate brief, after a thorough review of the record, including an extensive review of Husband's June 30, 2008 filing entitled "Motion," we find Husband never requested the trial court to find Wife in contempt for failing to forward Son's medical bills to him. Instead, Husband merely requested "that there be a finding regarding the fact that [Wife] is not sending medical bills within the 30 days as Ordered by the Final Decree and Judgment of Divorce," that "[Wife] be ordered to cease and refrain from naming [him] as a guarantor on accounts," that "[Wife] have the bills placed in her name and submit them in the proper form," and that she "provide the medical insurance so the insurance is in her name[.]" Without requesting the trial court to find Wife in contempt for

failing to forward their son's medical bills to him, we simply cannot say the trial court erred by failing to do so sua sponte. Therefore, because we find no error in the trial court's decision, Husband's second assignment of error is overruled.

{¶23} Husband's Assignment of Error No. 3:

{¶24} "THE TRIAL COURT ERRED WHEN IT DID NOT FIND [WIFE] IN CONTEMPT FOR NON PAYMENT OF TUITION, AND FOUND [HUSBAND] OWED ADDITIONAL MONIES TOWARD TUITION."

{¶25} In his third assignment of error, Husband argues that the trial court erred by adopting the magistrate's decision overruling his motion for contempt alleging Wife failed to pay Daughter's private school tuition and by ordering him to reimburse Wife for paying his portion of said tuition. However, after a thorough review of the record, including Husband's August 24, 2009 objections to the magistrate's decision, as well as his November 23, 2009 supplemental objections to the magistrate's decision, we find Husband never objected to the magistrate's decision finding his motion for contempt "unfounded," nor did he object to the magistrate's decision ordering him to reimburse Wife "since she paid all of the tuition owing for the last year, other than [Husband's] payment of \$1,587.98[.]"

{¶26} It is well-established that "if a party fails to object to a conclusion of law or finding of fact issued by a magistrate, pursuant to Civ.R. 53, the party is precluded from raising the issues on appeal." *Koeller v. Koeller*, Preble App. No. CA2006-04-009, 2007-Ohio-2998, ¶15; *Allgeier v. Allgeier*, Clinton App. No. CA2009-12-019, 2010-Ohio-5313, ¶23. Therefore, because he never objected to the magistrate's decision regarding these two claims, Husband may not now raise these issues on appeal. See Civ.R. 53(D)(3)(b)(ii), (iv); see, e.g., *Ruble v. Ruble*, Butler App. No. CA2010-09-019, 2011-Ohio-3350, ¶46. Accordingly, Husband's third assignment of error is overruled.

{¶27} Husband's Assignment of Error No. 4:

{¶28} "THE TRIAL COURT ERRED WHEN IT FOUND [HUSBAND] IN CONTEMPT IN LIGHT OF EVIDENCE OF HIS SUBSTANTIAL COMPLIANCE WITH THE SPIRIT AND TERMS OF THE COURT'S ORDERS AND OTHER EQUITABLE FACTORS."

{¶29} In his fourth assignment of error, Husband argues that the trial court erred by adopting the magistrate's decision finding him in contempt for failing to make additional child and spousal support payments from bonuses he received as required by their divorce decree. In support of this claim, Husband argues that he should not be found in contempt because he "paid what he could out of his bonuses towards child support and spousal support, but was forced to divert the funds towards legal expenses in defending himself against fruitless litigation by [Wife]." This argument lacks merit.

{¶30} Contempt of court is defined as "disobedience of an order of a court * * * which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *Hueber v. Hueber*, Clermont App. Nos. CA2006-01-004, CA2006-02-019, CA2006-02-020, 2007-Ohio-913, ¶16, citing *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, paragraph one of the syllabus. To support a contempt finding, the moving party must establish by clear and convincing evidence that a valid court order exists, that the offending party had knowledge of the order, and that the offending party violated such order. *Underleider v. Underleider*, Clermont App. Nos. CA2010-09-069, CA2010-09-074, 2011-Ohio-2600, ¶36; *Arthur Young & Co. v. Kelly* (1990), 68 Ohio App.3d 287, 295. A finding of contempt, however, "does not require proof of purposeful, willing, or intentional violation of a trial court's prior order." *Townsend v. Townsend*, Lawrence App. No. 08CA9, 2008-Ohio-6701, ¶27, citing *Pugh v. Pugh* (1984), 15 Ohio St.3d 136, 140, 472.

{¶31} "An appellate court will not reverse a trial court's decision in a contempt proceeding absent a showing of an abuse of discretion." *Willis v. Willis*, 149 Ohio App.3d 50, 2002-Ohio-3716, ¶59; *Castanias v. Castanias*, Warren App. No. CA2009-04-036, 2009-Ohio-6171, ¶11. As noted above, an abuse of discretion is more than error of law or judgment; it requires a finding that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Anderson*, 2009-Ohio-5636 at ¶11; *Blakemore*, 5 Ohio St.3d at 219.

{¶32} As the parties' divorce decree clearly states, Husband "shall pay to [Wife] 30% of any bonus received * * * during the term of this spousal support order" as additional spousal support, as well as "8.8% of any bonuses received" as additional child support. Nothing in the record, nor anything in the decree itself, indicates Husband's additional child and spousal support obligations were conditioned upon the amount of legal fees he incurred in fully litigating this matter. In turn, just as the trial court found, and for which we agree, "[Husband's] employment of an attorney is not relevant to this contempt finding."

{¶33} That being said, after a thorough review of the record, it is clear that Husband has failed to make the necessary additional child and spousal support payments as required by their divorce decree on at least four occasions between September of 2006 and December of 2007, and, as Husband testified, "some more from 2008." In fact, when asked if he "acknowledg[ed] that [he was] behind on the payment of bonus monies" Husband admitted that he was behind on his child and spousal support obligations because he "[had] to pay for attorney fees," "had to pay retainer fees," and "had to pay to defend [himself] since by law I'm able to be able to defend myself."

{¶34} While substantial compliance with a court order can be a defense to a contempt charge, nothing in the record convinces this court that Husband's repeated failure to pay his child and spousal support obligations resulting in \$11,391.04 in arrears would constitute substantial compliance. *McCree v. McCree*, Mahoning App. No. 08 MA 109, 2009-Ohio-

2639, ¶27; *Robinson v. Robinson*, Summit App. No. 21440, 2003-Ohio-5049, ¶19; *State ex rel. Celebrezze v. Gibbs* (1991), 60 Ohio St.3d 69, 75. Therefore, because the record clearly indicates Husband knowingly diverted funds from the numerous bonuses he received to pay for his legal fees instead of paying his child and spousal support obligations, we find no abuse in the trial court's decision finding Husband in contempt. Accordingly, Husband's fourth assignment of error is overruled.

{¶35} Husband's Assignment of Error No. 5:

{¶36} "THE TRIAL COURT ERRED WHEN IT DID NOT EVENLY DIVIDE COURT COSTS AND ORDERED [HUSBAND] RESPONSIBLE FOR A PORTION OF [WIFE'S] ATTORNEY FEES."

{¶37} In his fifth assignment of error, Husband argues that the trial court erred by adopting the magistrate's decision ordering him to pay Wife \$6,500 in attorney fees and by not equally dividing court costs between the parties. We disagree.

{¶38} Pursuant to R.C. 3105.73(B), "in any post-decree motion or proceeding that arises out of an action for divorce, * * * the court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable." In determining whether an award is equitable, the court may consider "the parties' income, the conduct of the parties, and any other relevant factors the court deems appropriate, but it may not consider the parties' assets." R.C. 3105.73(B); *Theurer v. Foster-Theurer*, Warren App. Nos. CA2008-06-074, CA2008-06-083, 2009-Ohio-1457, ¶57. "The decision to award attorney fees and allocation of court costs is within the sound discretion of the court." *Bauman v. Faught*, Clermont App. Nos. CA2006-11-101, CA2006-11-102, 2008-Ohio-166, ¶38; *Rand v. Rand* (1985), 18 Ohio St.3d 356, 359.

{¶39} After a thorough review of the record, we find no error in the trial court's

decision adopting the magistrate's decision ordering Husband to pay Wife \$6,500 in attorney fees and to pay court costs. As the magistrate found, and for which we certainly agree, Husband "intentionally or unintentionally obfuscated the issues in the case," thereby causing Wife to incur substantial unnecessary attorney fees and costs. See *Foppe v. Foppe*, Warren App. No. CA2010-06-056, 2011-Ohio-49, ¶35. Furthermore, while Husband claims "[e]very court appearance since 2006 has been initiated by [Wife]," a brief review of the record clearly indicates otherwise. In turn, just as the trial court found, if Husband wishes to complain about attorney fees and court costs, "he has only himself to blame." Therefore, because we find no abuse in the trial court's decision ordering Husband to pay Wife \$6,500 in attorney fees and to pay court costs, Husband's fifth assignment of error is overruled.

{¶40} Husband's Assignment of Error No. 6:

{¶41} "THE TRIAL COURT ERRED WHEN IT ORDERED THAT THE PARTIES STILL EXCHANGE THEIR TAX RETURNS BY APRIL 30TH OF EACH YEAR DURING THE TERM OF THE SPOUSAL SUPPORT."

{¶42} In his sixth assignment of error, Husband argues that the trial court erred by adopting the magistrate's decision ordering the parties to exchange their tax returns each year during Wife's spousal support term. We disagree.

{¶43} As noted above, the trial court's decisions in domestic relations matters, such as the case here, are generally reviewed under an abuse of discretion standard. *Kranz*, 2009-Ohio-2451 at ¶4; *Zornes*, 2006-Ohio-877 at ¶12, citing *Booth*, 44 Ohio St.3d at 143.

{¶44} As is clear from the record, the parties' willingness to communicate and cooperate with each other throughout this matter has been a constant struggle. With that in mind, by ordering the parties to exchange their tax returns for the remainder of Wife's spousal support term, which, coincidentally, will end on August 4, 2011, the trial court was

simply attempting to reach some finality in this contentious relationship. In addition, while Husband has claimed this order merely creates "a situation where one or the other can file additional motion because this step was not followed," we find it appropriate to remind both parties that the filing of any additional motions will be necessary only if they somehow fail to follow the trial court's unambiguous instructions. Therefore, because we find no abuse in the trial court's decision, Husband's sixth assignment of error is overruled.

{¶45} Husband's Assignment of Error No. 7:

{¶46} "THE TRIAL COURT ERRED IN NOT STRIKING THE TESTIMONY OF [HUSBAND'S CURRENT] WIFE, AS SHE WAS NOT A PARTY TO THE CASE, NOR WAS HER TESTIMONY RELEVANT TO THE LITIGATION BEFORE THE COURT."

{¶47} In his seventh assignment of error, Husband argues that the trial court erred by overruling his February 27, 2009 "Motion to Strike Testimony" of Taliseia Charles, his current wife, which she provided at a December 5, 2008 motion hearing regarding her 2007 and 2008 salary. In support off this claim, Husband argues that her testimony was "irrelevant" and had "no substantial bearing on the obligations between [the parties.]" Husband, however, did not object to the magistrate's August 10, 2009 decision overruling his motion to strike his current wife's testimony. Therefore, just as we found in his third assignment of error, because Husband failed to object to the magistrate's decision overruling his motion to strike, he may not now raise this issue on appeal. Accordingly, Husband's seventh assignment of error is overruled.

{¶48} Husband's Assignment of Error No. 8:

{¶49} "THE TRIAL JUDGE FURTHER ERRED IN NOT RENDERING A DECISION ON [HUSBAND'S] OBJECTIONS TO THE MAGISTRATE'S DECISION."

{¶50} In his eighth assignment of error, Husband argues that the trial court committed "substantial error" by summarily overruling his objections to the magistrate's November 1,

2010 "Decision on the Determination of Arrearages" by finding he failed to file a transcript of the October 4, 2010 hearing. In support of this claim, although acknowledging his failure to file a transcript, Husband argues that the trial court's decision was improper since "there was no transcript to prepare."

{¶51} After a thorough review of the record, however, it is clear that the magistrate held a hearing on October 4, 2010 regarding Husband's arrearages and that no transcript of this hearing was submitted to the trial court. In turn, while the events of October 4, 2010 hearing may have been inconsequential, without the benefit of a transcript, the trial court simply could not conduct a complete and proper review of magistrate's findings. This is particularly true in light of the magistrate's September 2, 2010 order, which stated, in pertinent part, "if either party intends to challenge the accuracy of the [CSEA] audit, counsel for that party shall bring any evidence supportive that challenge to the October 4th conference[.]" The trial court, therefore, without the benefit of a transcript, was free to adopt the magistrate's findings without any further consideration of Husband's objections. See Civ.R. 53(D)(3)(b); *Stevens v. Stevens*, Warren App. Nos. CA2009-02-028, CA2009-06-073, ¶23; *Dressler v. Dressler*, Warren App. Nos. CA2002-08-085, CA2002-11-128, ¶29, see, also, *Hayne v. Hayne*, Medina App. No. 07CA0100-M, 2008-Ohio-4296, ¶22-24. Accordingly, Husband's eighth assignment of error is overruled.

{¶52} Husband's Assignment of Error No. 9:

{¶53} "THE TRIAL COURT ERRED IN DETERMINING THE ARREARAGE OR OVERRAGE AMOUNT PAID BY [HUSBAND] IN SUPPORT BY THE CONVOLUTED METHODS IT EMPLOYED IN ARRIVING AT A FIGURE."

{¶54} In his ninth assignment of error, Husband argues that the trial court erred by adopting the magistrate's decision finding he had arrears totaling \$27,373.53, inclusive of administrative fees, resulting from his child and spousal support obligations as such finding

"was clearly in error in the math it performed in the amount still owed." However, just as we found in his eighth assignment of error, Husband failed to provide the trial court with a transcript of the October 4, 2010 hearing. The trial court, therefore, was once again free to adopt the magistrate's decision regarding Husband's arrearages without any further consideration of his objections. Accordingly, Husband's ninth assignment of error is likewise overruled.

{¶55} Wife's Cross-Assignment of Error No. 1:

{¶56} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IMPUTED INCOME TO [WIFE] OF \$50,000.00."

{¶57} In her first cross-assignment of error, Wife argues that the trial court erred by adopting the magistrate's decision imputing \$50,000 of income to her. We disagree.

{¶58} When considering the relative earning abilities of the parties, "Ohio courts do not restrict their inquiry to the amount of money actually earned, but may also hold a person accountable for the amount of money a person could have earned if [she] made the effort." *Brown v. Brown*, Madison App. No. CA2008-08-021, 2009-Ohio-2204, ¶59. Whether a person is voluntarily underemployed and the amount of income to be imputed "are matters to be determined by the trial court based upon the facts and circumstances of each case." *Theurer*, 2009-Ohio-1457 at ¶29, quoting *Rock v. Cabral* (1993), 67 Ohio St.3d 108, paragraph one of the syllabus. A trial court's determination with respect to these matters will not be disturbed on appeal absent an abuse of discretion. *Williams v. Williams*, Warren App. No. CA2006-09-103, 2007-Ohio-2996, ¶24.

{¶59} Initially, Wife argues that the trial court erred by adopting the magistrate's decision imputing \$50,000 of income to her because the "court's decision does not include a finding that [she] is voluntarily unemployed or underemployed." However, while it may be

true that neither the magistrate's decision nor the trial court's decision contain such an explicit finding, both found Wife had the "potential" to earn \$50,000 per year. "Potential income," as defined by R.C. 3119.01(C)(11), includes "[i]mputed income that the court * * * determines the parent would have earned if fully employed." These findings, therefore, are certainly implicit of a voluntary underemployment determination.

{¶60} Next, Wife argues that imputing income was inappropriate since "she has been searching for a job to no avail," and that her "income substantially declines through no fault of her own." However, although Wife's real estate business has taken a significant hit resulting from the recent downturn in the economy, which ultimately resulted in her losing her business relationship with a local builder, just as the trial court found, we see "no reason as to why [Wife] would not be able to enter into similar relationships, or in the alternative, alter the way her business is set up so as to be successful again as a real estate agent." Therefore, having found no error in the trial court's decision finding the magistrate "was appropriate in setting [Wife's] income at \$50,000 per year," Wife's first cross-assignment of error is overruled.

{¶61} Wife's Cross-Assignment of Error No. 2:

{¶62} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT CALCULATED CHILD SUPPORT USING IMPUTED INCOME OF \$50,000.00."

{¶63} In her second cross-assignment of error, Wife argues that the trial court erred by adopting the magistrate's decision regarding Husband's child support obligations "[b]ecause the imputation of income was improper." However, based on our finding in her first cross-assignment of error, Wife's second cross-assignment of error is overruled as moot.

{¶64} Wife's Cross-Assignment of Error No. 3:

{¶65} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO GRANT A DEVIATION IN CHILD SUPPORT."

{¶66} In her third cross-assignment of error, Wife argues that the trial court erred by adopting the magistrate's decision denying her request for an upward deviation on Husband's child support obligation. In support of her claim, Wife argues that an upward deviation was necessary because Son "has ADD and needs special attention and accommodation at school that could best be provided by a private school," and because Husband has "fail[ed] to exercise parenting time with the child." We disagree.

{¶67} "The purpose of the child support system is to protect the child and his best interest." *Kauza v. Kauza*, Clermont App. No. CA2008-02-014, 2008-Ohio-5668, ¶10, quoting *Richardson v. Ballard* (1996), 113 Ohio App.3d 552, 555. "The trial court possesses considerable discretion in child support matters." *Pahls v. Pahls*, Butler App. No. CA2009-01-005, 2009-Ohio-6923, ¶10, quoting *Murray v. Murray* (1999), 128 Ohio App.3d 662, 666. Therefore, "[m]atters involving child support are reviewed under the abuse-of-discretion standard." *Van Osdell v. Van Osdell*, Warren App. No. CA2007-10-123, 2008-Ohio-5843, ¶20.

{¶68} Pursuant to R.C. 3119.22, "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 section 3119.23 of the Revised Code, the court determines that the amount calculated pursuant to the basic child support schedule * * * would be unjust or inappropriate and would not be in the best interest of the child." *Zollar v. Zollar*, Butler App. No. CA2008-03-065, 2009-Ohio-1008, ¶22. The statutory factors listed in R.C. 3119.23 include, but are not limited to, the special and unusual needs of the child, the income disparity between the parties, any extraordinary costs associated with parenting time, the child's standard of living had the marriage continued, and any other relevant factor. See R.C.

3119.23(A), (D), (G), (L), (P).

{¶69} In this case, the trial court, after weighing the all evidence presented, which included an in-depth review of Husband's salary and expenses, found Husband's child support obligation, which totaled \$691.09 per month, was "sufficient to meet the child's needs." We find no abuse in the trial court's decision for the record is simply devoid of any evidence indicating an upward deviation was necessary and appropriate. In fact, Wife failed to provide any evidence indicating Son could not have received the same "special attention" by attending public school, nor any evidence establishing the amount of additional expenses she incurs as a result of Husband's failure to exercise his parenting time. Therefore, because the trial court possesses considerable discretion in child support matters, Wife's third-cross assignment of error is overruled.

{¶70} Wife's Cross-Assignment of Error No. 4:

{¶71} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ORDERED [HUSBAND] TO PAY SPOUSAL SUPPORT OF \$3,125.00 PER MONTH."

{¶72} In her fourth cross-assignment of error, Wife initially argues the trial court erred by adopting the magistrate's decision modifying Husband's spousal support obligations. In support of her claim, Wife argues that "[b]ecause the court terminated the requirement that [Husband] pay [her] a share of his bonuses, she is actually receiving less money based on [Husband's] bonus history." This argument lacks merit.

{¶73} "A trial court has broad discretion in determining a spousal support award, including whether or not to modify an existing award." *Hutchinson v. Hutchinson*, Clermont App. No. CA2009-03-018, 2010-Ohio-597, ¶16, citing *Strain v. Strain*, Warren App. No. CA2005-01-008, 2005-Ohio-6035, ¶10. Absent an abuse of discretion, therefore, a trial court's decision regarding spousal support matters will not be disturbed on appeal. *Sheehy*

v. *Sheehy*, Clermont App. No. CA2010-01-007, 2010-Ohio-2967, ¶7.

{¶74} In this case, the magistrate determined that "the bonus provision" found in their September 27, 2006 divorce decree, which, as noted above, required Husband to pay Wife "30% of any bonus received" as additional spousal support, "should be modified in order to avoid additional litigation and discord between the parties." The magistrate then recalculated Husband's spousal support obligations "to reflect the disparity in the parties' income and also to incorporate [Husband's] bonuses into his income for purposes of computing one total spousal support payment rather than having the bonus payments made as ancillary payments." Following its recalculation, the magistrate found Husband's spousal support obligation "should increase" from \$2,000 per month, plus 30 percent of any bonus received, to a flat rate of \$3,125 per month.

{¶75} In its decision adopting the magistrate's decision, the trial court, after finding "averaging of [Husband's] income with bonuses was appropriate in light of the circumstances," determined the magistrate "set the new spousal support award at the correct amount."

{¶76} After a thorough review of the record, we find no error in the trial court's decision. As noted in Husband's sixth assignment of error, the parties' willingness to communicate and cooperate with each other throughout this matter has been a constant struggle. In turn, by removing "the bonus provision" from Husband's spousal support obligation and replacing it with a flat monthly rate, the parties should, at least in theory, avoid any future litigation regarding this matter. Furthermore, while Wife may claim that she is "receiving less money based on [Husband's] bonus history," we remind Wife that Husband's subsequent bonuses, if any, had yet to be received. In turn, it is simply impossible for Wife, as well as this court, to determine if she actually would receive less spousal support from this modification. Wife's first argument, therefore, is overruled.

{¶77} Wife also argues under her fourth cross-assignment of error that the trial court erred by adopting the magistrate's decision modifying Husband's spousal support obligations "since this award was based on improperly imputed income." However, based on our finding in her first cross-assignment of error, this argument is likewise overruled as moot. Accordingly, Wife's fourth assignment of error is overruled.

{¶78} Wife's Cross-Assignment of Error No. 5:

{¶79} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IMPUTED AWARDED [WIFE] \$6,500.00 IN ATTORNEY FEES." [sic]

{¶80} In her fifth cross-assignment of error, Wife argues that the trial court erred by adopting the magistrate's decision awarding her \$6,500 in attorney fees where, according to her, she was entitled to "all of her attorney fees." However, while Husband certainly did obfuscate the issues in this case, a review of the record does not completely absolve Wife from blame for she also made claims that undoubtedly muddled the issues. Therefore, given the history of this case, as well as the conduct of the parties, we find no abuse in the trial court's decision awarding her \$6,500 in attorney fees to be "equitable." Accordingly, Wife's fifth cross-assignment of error is overruled.

{¶81} In light of the foregoing, the trial court's January 4, 2010 entry sustaining in part and overruling in part the parties' objections to the magistrate's August 10, 2009 decision, as well as the trial court's December 23, 2010 decision overruling Husband's objections to the magistrate's November 1, 2010 decision, are hereby affirmed.

{¶82} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.