[Cite as *Johnson v. Melton*, 2011-Ohio-792.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

SUMMER L. JOHNSON,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-07-160
	:	O P I N I O N
- vs -		2/22/2011
	:	
ROBERT J. MELTON,	:	
Defendant-Appellant.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. JS2006-1310

Summer L. Johnson, 8945 Eagleview Drive, West Chester, Ohio 45069, plaintiff-appellee, pro se

Lyn Alan Cunningham, 8310 Princeton-Glendale Road, Hamilton, Ohio 45069, for defendant-appellant

HENDRICKSON, J.

{¶1} Defendant-appellant, Robert J. Melton, appeals the Butler County Juvenile Court's decision regarding modification of child support. For the reasons set forth below, we affirm the juvenile court's decision.

{¶2} This is the second time this court has had to review this case. We previously determined in Melton's earlier appeal that the juvenile court's failure to attach a child support worksheet to the child support order mandated a reversal. See *Johnson*

v. Melton, Butler App. No. CA2009-10-256, 2010-Ohio-1522. On remand, the juvenile court complied with our previous judgment and attached a child support worksheet to its order. This matter is now before us once again.

{¶3} Melton and plaintiff-appellee, Summer L. Johnson, are the parents K.M. In 2006, the juvenile court ordered Melton to pay $694.95 per month in child support for K.M., based on a determination that Melton's annual income was $26,000 and Johnson's annual income was $13,084.50, less a $6,300 credit for child care expenses.

{¶4} Melton failed to pay the court-ordered support, and later pled guilty to a felony charge of nonsupport. Melton subsequently moved to reduce his child support obligation based on lost employment and wages. Melton also argued that Johnson no longer had the same child care expenses.

{¶5} In a hearing before the magistrate, Melton offered testimony and presented several years of W-2s to support his claim that he only earned approximately $14,000 to $15,000 per year. However, Melton also admitted that in his current employment he earned $13.50 per hour and worked 40 hours week, although he was unable to work four months out of the year based on the seasonal nature of his occupation. Even though Johnson was present at the hearing, she offered no evidence into the record.

{¶6} The magistrate issued a decision estimating Melton's income was $19,440 per year, based on $13.50 per hour, for 40 hours week, for eight months of the year. Because neither party offered any evidence regarding Johnson's current income or expenses, the magistrate presumed Johnson's income and expense information from the 2006 child support worksheet was still current and entered it into the new worksheet. The magistrate then determined Melton's new obligation plus arrearage as $730.68 or $699.25 per month, depending on whether health insurance was provided. Comparing

these numbers to the previous obligation, the magistrate concluded there was a substantial change in circumstances warranting modification of the previous child support order.

{¶7} Melton filed objections to the magistrate's decision. Johnson did not file a response. The juvenile court overruled Melton's objections and adopted the magistrate's decision and order as the findings and order of the juvenile court. Melton now raises the same assignment of error he argued in his previous appeal.[1]

{¶8} "THE TRIAL COURT ERRED TO THE PREJUDICE IF [SIC] APPELLANT IN CREDITING APPELLEE/OBLIGEE WITH WORK-RELATED DAY CARE EXPENSES IN THE ABSENCE OF ANY EVIDENCE THAT SHE IS CURRENTLY EITHER EMPLOYED OR IN NEED OF WORK RELATED DAY CARE."

{¶9} Within his single assignment of error, Melton presents three arguments related to the juvenile court's use of Johnson's previous income and child care expenses to calculate current child support obligations. First, Melton contends the juvenile court abused its discretion when it relied on numbers from a defective and/or flawed child support worksheet. Second, because Johnson failed to prove her child care expenses by a preponderance of the evidence, Melton argues the juvenile court abused its discretion in allocating those expenses to Johnson. Finally, Melton maintains the juvenile court abused its discretion by failing to comply with R.C. 3119.05(A), which requires verification of each parent's income for the purpose of calculating child support.

{¶10} "Whether a prior order for child support should be modified is within the sound discretion of the [juvenile] court, and its decision in that regard may be reversed

1. Johnson failed to file an appellate brief in this case. Pursuant to App.R. 18(C), if an appellee fails to file a brief in response to appellant's brief, this court "may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action."

on appeal only for an abuse of that discretion." *Woloch v. Foster* (1994), 98 Ohio App.3d 806, 810. A

juvenile court abuses its discretion when its decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶11} Melton's first argument is premised on the following language in the magistrate's decision and order:

{¶12} "Moreover, it is clear that father has never made the income that the current order of support is based on, and that the current child support order is one he is unable to pay."

{¶13} Based on this statement, Melton contends the juvenile court found the previous support calculation "inaccurate and untrustworthy." Because there was an error in the calculation of *his* earnings, Melton maintains that there is reason to suspect *all* of the figures used in the previous worksheet. As a result, Melton argues the juvenile court abused its discretion in relying on numbers from a "flawed" and "defective" worksheet. In support of his contention, Melton relies on *Tarr v. Walter*, Jefferson App. No. 01 JE 7, 2002-Ohio-3188, in which the Seventh District reversed, in part, a trial court's decision regarding child support. Melton cites *Tarr* for the proposition that "it is error and an abuse of discretion for the court to have relied on this flawed previous worksheet, one that it found defective in the first place."[2]

{¶14} We find Melton's rationale is flawed. First and foremost, there is no basis to believe, absent evidence to the contrary, that Johnson's income and/or expenses

2. **{¶a}** Melton's argument is premised on the following portion of the *Tarr* decision:

{¶b} "The existing worksheets were prepared and filed by CSEA. The court's judgment entry uses the presumed amount of child support as calculated by CSEA as its starting point. However, the trial court's judgment entry found that Thomas's income was $48,400. As previously stated, CSEA's worksheet only listed it as $41,990. Thus, *the trial court relied on CSEA's end result while simultaneously disagreeing with their beginning numbers. This is erroneous*." (Emphasis added.) Id. at ¶15.

were miscalculated in 2006 merely because the juvenile court later determined that Melton's income was incorrect. In other words, a mistake in the calculation of *his* income does not automatically render *her* income and/or expenses inaccurate. Moreover, Melton never appealed the 2006 child support order, on which his argument is based.

{¶15} Second, Melton's reliance on the *Tarr* decision is misplaced. While the *Tarr* court found fault in the calculation of a father's child support obligation, the decision was based on multiple errors committed by the trial court, namely failing to complete a worksheet and ordering extreme and unreasonable deviations from the presumptive amount of child support. Id. The sole statement of error cited by Melton as support for his contention is merely dicta, and not the basis for the holding in the *Tarr* decision.

{¶16} Melton next argues that Johnson had the burden to establish her expenses by a preponderance of the evidence. Because Johnson failed to carry this burden, Melton maintains the juvenile court abused its discretion by allocating daycare expenses to Johnson in the new child support obligation calculation.

{¶17} Generally, modification of a child support order is governed by the requirements of R.C. 3119.79. *Cooper v. Cooper,* Clermont App. No. CA2003-05-038, 2004-Ohio-1368, ¶18. Upon request by either party to an existing child support order, a court is required to determine whether a substantial change in circumstances exists which warrants modification of a child support order. R.C. 3119.79(A). "A substantial change in circumstances occurs where a court recalculates the actual annual obligation required pursuant to the schedule and worksheet and the resulting amount is ten percent greater or less than the existing actual annual child support obligation." *Kauza v. Kauza,* Clermont App. No. CA2008-02-014, 2008-Ohio-5668, ¶11, citing R.C. 3119.79(A).

{¶18} "In order to justify the modification of an existing support order, the moving party must demonstrate a substantial change of circumstances which 'render[s] unreasonable an order which once was reasonable.'" *Carson v. Carson* (1989), 62 Ohio App.3d 670, 673, quoting *Bright v. Collins* (1982), 2 Ohio App.3d 421, 425. In other words, the burden of proof rests upon the party seeking modification to show that a substantial change of circumstances exists, which warrants modification of an existing child support order.

{¶19} While we were unable to locate any case law directly on point as to the facts presented in this case, we believe the burden remains with the party moving for modification to show any decrease in the amount of a nonmoving party's expenses. Cf. *Groves v. Groves*, Clermont App. No. CA2008-06-059, 2009-Ohio-931, ¶10 (observing that the obligor, as the moving party, bore the burden of showing a change in circumstances, and to that end, advanced arguments regarding his own loss of employment and *obligee's new employment*). See, also, *Walker v. Walker*, Lake App. No. 2010-L-025, 2010-Ohio-5798, ¶10, 19, 26-27 (finding the trial court did not abuse its discretion in granting appellee's motion for modification, because appellee satisfied her burden to show she incurred daycare expenses).

{¶20} In the instant case, Melton based his motion upon a change both in his own income and in Johnson's childcare expenses. As the moving party, Melton had the burden of presenting evidence to the court that these two child support factors had indeed changed since the last time the court ordered child support in 2006. Melton presented evidence and testimony regarding his own decreased income which enabled him to demonstrate that there was a change of circumstances since the new child support figure was more than ten percent less than the previous child support calculation.

{¶21} In computing the new child support calculation, the trial court used the same figures for Johnson's childcare expenses as were used in 2006. Melton asserts that it was Johnson's burden, not his, to verify her day care expenses. However, as we have stated above, Melton, as the movant, bore the burden of showing that there had been a change in Johnson's childcare expenses. However, Melton neglected to produce any evidence of the alleged change in Johnson's childcare expenses. Even though Johnson was present at the hearing on his motion for modification, Melton failed to elicit any testimony from Johnson on the subject of childcare expenses. Therefore, since Melton did not carry his burden of proof regarding this issue, the trial court did not abuse its discretion by using Johnson's 2006 childcare expenses from its previous order.

{¶22} Finally, Melton argues the juvenile court violated R.C. 3119.05(A) by failing to verify Johnson's income and expenses. Melton asserts that R.C. 3119.05(A) places the burden upon a court to not only verify the parents' income information but also to produce proper evidence establishing their current and past income and personal earnings when computing child support. In support of his contention, Melton relies on *Arbogast v. Arbogast*, Medina App. No. 07-CA0087-M, 2008-Ohio-6872, in which the Ninth District Court of Appeals found a child support modification was arbitrary, in part, because the trial court failed to verify a party's income as required by R.C. 3119.05(A). However, Melton's interpretation of R.C. 3119.05(A) and reliance on *Arbogast* is misplaced.

{¶23} R.C. 3119.05(A) states in pertinent part, "[w]hen a court computes the amount of child support required to be paid under a court child support order * * * The parents' current and past income and personal earnings shall be verified by electronic means or with suitable documents, including, but not limited to, paystubs, employer statements, receipts and expense vouchers related to self-generated income, tax

returns, and all supporting documentation and schedules for the tax returns."

{¶24} It is clear from the language of the statute that a court must use certain documentation to verify each parent's income and personal earnings when calculating child support. See *Foster v. Foster*, 150 Ohio App.3d 298, 2002-Ohio-6390, ¶12. We note that prior to the passage of Am.Sub.S.B. 180, the parents, rather than the trial court, were required to verify their income and personal earnings. Thus, the enactment of Am.Sub.S.B. 180 indicates the General Assembly has decided that such verification is now the responsibility of the trial court.

{¶25} We find that the trial court properly verified the parties' income when it computed the new child support order. First, we note that, in his motion to modify child support, Melton never alleged that Johnson's income had changed. He only asserts that his income and Johnson's day care expenses had changed. Second, Melton never challenged the juvenile court's verification of Johnson's income when it rendered its 2006 child support order. Since it was not raised by Melton and Melton never challenged the court's verification of Johnson's income when it issued the 2006 child support order, the trial court properly used Johnson's 2006 income information in computing the new child support amount.

{¶26} Melton also relies on *Arbogast* to support his position that the trial court was required to verify a party's income as required by R.C. 3119.05(A). We find *Arbogast* distinguishable from the case at bar. In *Arbogast*, the husband and his attorney attempted to establish the wife's current income by verbal statements she made in chambers at the previous hearing on husband's motion to modify child support.[3] The court in *Arbogast* was actually presented with some evidence, even though

3. The wife appeared at the initial hearing on husband's motion to modify child support which was continued in progress but she did not attend the subsequent hearing on the motion.

improper, as to wife's income. Thus, it had a duty to verify her income in compliance with the requirements of R.C. 3119.05(A). Here, there was no evidence produced as to Johnson's income for the trial court to verify. Since Melton never challenged the trial court's verification of Johnson's income in 2006, he is barred by res judicata from now raising this issue.

{¶27} Melton also asserts that the trial court was required to verify Johnson's childcare expenses pursuant to R.C. 3119.05(A). However, we note that R.C. 3119.05(A) only addresses the parents' current and past income and personal earnings. This statute does not extend the verification requirement to relevant child support expenses. Thus, Melton's sole assignment of error is overruled.

{¶28} Judgment affirmed.

BRESSLER, P.J., and RINGLAND, J., concur.