



{¶ 2} Mother and Father were divorced in 2005. Two children were born issue of their marriage. Under the parties' divorce decree, Mother was designated residential parent for the children. The trial court made no order of parenting time for Father in the decree, because at the time of the divorce, Father was incarcerated for a felony crime of violence in which Mother and the parties' children were victims. However, the trial court stated in the divorce decree that it would consider a written petition from Father for parenting time upon his release from prison and his completion of the trial court's mandatory parenting class. The trial court ordered Father to pay \$0 per month for child support. The trial court found that this amount was a downward deviation from the basic child support schedule and worksheet. The trial court found that the downward deviation was appropriate because of Father's incarceration and his resulting inability to produce any income to contribute financially to the children and because Father agreed to convey to Mother all his interest in the parties' real estate to provide a home for her and the children. The trial court stated that Father's release from prison "will constitute a significant change in these circumstances" and that "[u]pon that event, any party may move the Court to modify its child support orders in this matter."

{¶ 3} Following his release from prison, Father completed the trial court's mandatory parenting class, and in February 2011, he filed a motion to modify the parenting schedule for the parties' minor children. Mother filed a motion requesting establishment of a child support order. On November 23, 2011, an "Agreed Child Support Judgment [Entry]" was filed that required Father, consistent with the basic child support schedule and worksheet, to pay \$473.57 in monthly child support for the parties' minor children, effective August 9, 2011.

{¶ 4} A two-day hearing was held on Father's motion to modify the parenting schedule. During the hearing, Father requested that the trial court deviate from the basic child support schedule and decrease his child support obligation to zero. On March 14, 2012, the magistrate issued a decision recommending that Father have parenting time with

the children on Tuesday and Thursday nights and every other weekend from Friday night to Sunday night. The magistrate further determined that a deviation of child support from the applicable child support schedule and worksheet would "not be just, appropriate or in the best interest of the children[,]" and therefore recommended that child support as established by the November 23, 2011 agreed child support judgment entry "remain in full force and effect without deviation." Father filed no objection to the magistrate's decision, and the trial court adopted it as the order of the court.

{¶ 5} On February 19, 2013, Father filed an "Emergency Verified Motion for Change of Custody." Father's motion did not specifically raise any issue with regard to child support. The magistrate issued a decision on March 12, 2014, recommending that Mother be retained as residential parent of the minor children. However, the magistrate, finding a significant change of circumstances of one of the parties' children, further recommended that Father's parenting time be increased and that Father have parenting time with the children on an "alternating week" basis. Child support was not addressed by this magistrate's decision. The trial court adopted the magistrate's decision without objection. No appeal was filed from the ruling.

{¶ 6} On April 3, 2014, Father filed a motion requesting that his child support obligation be decreased to zero based on his having obtained an equal amount of parenting time with the children as Mother. After holding a hearing on the matter, the magistrate issued a decision, denying Father's motion for a decrease in child support. The magistrate determined that (1) there was not a ten percent change in the newly calculated child support from the existing child support order, (2) neither party carries health insurance for the children, and (3) there was no substantial change of circumstances not contemplated at the time of the issuance of the original child support order.

{¶ 7} Father filed objections to the magistrate's decision, and the trial court overruled

them, finding that Father's May 2012 move from his parents' home was not a "substantial change of circumstances not contemplated at the time of the issuance of the November 23, 2011 child support order" as the record did not reflect that Father "contemplated spending the rest of his life with his parents" and that Father's increased parenting time with the children of one and one-half days every two weeks was not a substantial change of circumstances that was sufficient enough to support Father's request for a child support deviation to \$0.

{¶ 8} It is from this ruling that Father now appeals, assigning the following as error:

{¶ 9} THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO DECREASE HIS CHILD SUPPORT ORDER.

{¶ 10} Father argues the trial court erred in refusing to reduce his child support obligation on the basis that he failed to show the occurrence of a substantial change of circumstances not contemplated at the time the last child support order was issued or modified. Father contends that there was such a change of circumstances in this case as he was given "significant extra parenting time per year" with the children and the reasons on which the trial court previously had relied in 2012 in refusing to deviate downward from the basic child support schedule and worksheet no longer exist, and therefore a reduction in his current child support obligation was justified.

{¶ 11} A trial court's ruling on a motion to modify child support is reviewed under an abuse-of-discretion standard, and will not be overturned absent an abuse of discretion, i.e., the ruling is unreasonable, arbitrary or unconscionable. *Le v. Bird*, 12th Dist. Butler No. CA2005-04-090, 2006-Ohio-204, ¶ 5. Additionally, a trial court's ruling on the existence or nonexistence of "a substantial change of circumstances that was not contemplated at the time of the issuance of the original child support or the last modification of the child support order[,]" for purposes of R.C. 3119.79(C), is reviewed under an abuse-of-discretion standard.

*Humiston v. Humiston*, 9th Dist. Medina No. 04CA0076-M, 2005-Ohio-4363, ¶ 13-23.

{¶ 12} R.C. 3119.02 requires a court to calculate child support using the statutory worksheet applicable to the parties' parenting arrangement. R.C. 3119.03 creates a rebuttable presumption that a child support calculation made under the basic child support schedule and applicable worksheet is the correct amount of child support to be paid.

{¶ 13} R.C. 3119.79(C) states as follows:

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.

(Emphasis added.)

{¶ 14} R.C. 3119.79(C) provides that a court may modify a child support order if it finds that there has been 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. If the court finds that there has been a substantial change of circumstances, it must modify the amount of child support to comply with the basic child support schedule and applicable worksheet unless it determines that a child support deviation is appropriate under R.C. 3119.22. R.C. 3119.22 allows a court to deviate from the child support amount calculated under the basic child support schedule if it determines that the amount calculated using the basic child support schedule would be unjust or inappropriate and not in the best interest of the child. R.C. 3119.23 provides the court with a

number of factors to consider when determining if a deviation should be granted.

{¶ 15} Here, the trial court never reached the question of whether a deviation of child support was appropriate under R.C. 3119.22, using the factors set forth in R.C. 3119.23, as the trial court found that there was no substantial change of circumstances that was not contemplated at the time of the last modification of the child support order. Initially, when the parties were divorced in 2005, the amount of Father's child support obligation was set at zero dollars due to his imprisonment, and Father was advised that this amount could be revised upward when he was released from prison. On November 23, 2011, the parties filed an agreed order establishing an actual child support order for Father in the amount of \$473.57 per month. In 2012 the magistrate denied Father's motion for a downward deviation of his child support to zero dollars and recommended that the parties' November 23, 2011 agreed order remain in effect. No objection to the magistrate's decision was raised, and the trial court adopted and approved the magistrate's decision. Therefore, the point at which we must determine whether or not a substantial change of circumstances took place in this case is November 23, 2011, which is the date on which the "last modification of the child support order" was issued.

{¶ 16} In her March 14, 2012 decision, the magistrate recommended denying Father's request to deviate from the basic child support schedule based on four of the factors listed in R.C. 3119.23. First, the magistrate acknowledged that as to the "[e]xtended parenting time" factor in R.C. 3119.23(D), the recently amended parenting schedule did provide Father with more parenting time. Second, the magistrate noted that as to the "[b]enefits that either parent received from remarriage or sharing living expenses with another person" factor in R.C. 3119.23(H), Mother was remarried and Father resided with his parents, and that while both parties benefitted from shared living expenses, Father had the added security of not worrying that he will lose his house if he has an unexpected expense and is unable to pay

rent or make a mortgage payment. Third, the magistrate noted that as to the "[s]ignificant in-kind contributions from a person, including, but not limited to, direct payments for lessons, sports equipment, schooling, or clothing" factor in R.C. 3119.23(J), a deviation from the basic child support schedule would require an order of shared expenses for the children, and since the parties were unable to communicate to provide for the sharing of the children's expenses, the children would witness further conflict between their parents. Fourth, the magistrate noted that as to the "physical and emotional conditions and needs of the child" factor in R.C. 3119.23(M), the parties' "children do not need to witness any more turmoil between the parents" and "[a]ny requirement that the parties communicate to assure the children's expenses are being paid will only result in behavior that is harmful to the [children]." The magistrate concluded that based on these four factors, "it would not be just, appropriate or in the best interest of the children to deviate from the basic child support schedule." Father filed no written objections to the magistrate's decision, and the trial court adopted it, without objection.

{¶ 17} Father argues on appeal that the trial court's reasons for rejecting his 2012 request to deviate from the basic child support schedule no longer exist, since he moved out of his parents' home in May 2012 and is "living independently" and Mother and Father are sharing expenses for the children without the need of communicating with each other. Father also points out that he now has one and one-half days more parenting time with the children every two weeks for a total of 39 extra days of parenting time per year. Father contends that these changes constitute a "substantial change of circumstances that were not contemplated at the time of the issuance of the original support order or the last modification of the child support order," under R.C. 3119.79, and justify a modification of child support under that same section. We find Father's arguments unpersuasive.

{¶ 18} Initially we note that Father's claim of unanticipated changed circumstances

relating to his move from his parents' home and the ability of Mother and he to share the children's expenses without need of communication relate to March 2012 when the magistrate denied his first motion to modify child support. As cited above, R.C. 3119.79(C) provides that unanticipated changed circumstances relate back to the time that the child support order was originally issued or was last modified. The March 2012 magistrate's decision neither established nor modified Father's child support, but rather retained the existing child support order established by the November 23, 2011 agreed entry. Therefore, the focus should be on the circumstances existing as of November 2011 and not in March 2012. The record does not reflect Father's living arrangement or the state of communication between Mother and Father in November 2011. Nonetheless, we will address Father's claims as to these alleged unanticipated changed circumstances.

{¶ 19} Contrary to what Father contends, the trial court did not abuse its discretion in finding that Father's move from his parents' home did not constitute a substantial change of circumstances. As the trial court noted, there is nothing in the record to suggest that Father intended to reside with his parents indefinitely. Additionally, the fact that Father has moved out of his parents' home, thereby making his housing situation less secure, is counterbalanced by the fact that Father, like Mother, is now remarried to someone who is employed.

{¶ 20} Father's claim that he and Mother have found a way to share the children's expenses without having to communicate with one another is not a substantial change of circumstances. Instead, it shows that the parties remain hostile to each other, and therefore the trial court's underlying concern that the children will be exposed to this continuing hostility remains.

{¶ 21} Finally, while Father now has an additional one and one-half days with the children every two weeks, for an extra 39 days of parenting time per year, this is not so great



an increase to cause this court to believe that the trial court abused its discretion in refusing to find that this fact constituted a "substantial change of circumstances."

{¶ 22} The trial court's weighing of the changed circumstances advanced by Father as supporting downward modification of child support is subject to an abuse-of-discretion standard of review. The trial court's resolution was not an abuse of discretion. Accordingly, Father's assignment of error is overruled.

{¶ 23} Judgment affirmed.

PIPER, P.J., and S. POWELL, J., concur.