[Cite as *York v. York*, 2011-Ohio-5872.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

JENNIFER L. YORK,	:	
Plaintiff-Appellant,	:	CASE NO. CA2011-03-016
	:	O P I N I O N
- vs -		11/14/2011
	:	
GEREMY HAYES YORK,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 1010DR000821

Jennifer L. York, 1182 Forest Run Drive, Batavia, Ohio 45103, plaintiff-appellant, pro se

Geremy Hayes York, 18744 Runnymede Street, Reseda, California 91335, defendant-appellee, pro se

HUTZEL, J.

{¶1} Plaintiff-appellant, Jennifer L. York (Mother), appeals from a decision of the Clermont County Court of Common Pleas, Domestic Relations Division, decreasing the child support obligations of defendant-appellee, Geremy Hayes York (Father). We affirm the decision of the domestic relations court.

{¶2} The parties were divorced in Georgia in 2005. Under the terms of their

divorce decree, Mother was named the custodial parent of the parties' minor son, Brenden, and Father was granted parenting time with him. Father was ordered to pay Mother $500 per month in child support and an additional $125 per month toward a child support arrearage that had accrued under a temporary order issued during the divorce proceedings. After the divorce, Father moved to California, and Mother moved to Ohio with Brenden.

{¶3} In 2010, Father registered the Georgia divorce decree in the Clermont County Court of Common Pleas, Domestic Relations Division, and moved for a decrease in his child support obligations under the decree. The magistrate ordered that Father's monthly child support payment be decreased to $321.03 plus a 2 percent processing fee, and that his monthly child support arrearage payment be decreased to $64.20 plus a 2 percent processing fee, after finding that Mother's annual income was $78,047, and that Father's annual income should be imputed to be $32,705. The domestic relations court adopted the magistrate's decision on these issues and made it the order of the court.

{¶4} Mother now appeals, assigning the following as error:

{¶5} Assignment of Error No. 1:

{¶6} "THE JUDGE RULED IN ERROR BASING INCOME INFORMATION FOR CHILD SUPPORT CALCULATION OFF OF APPELLEE'S SOCIAL SECURITY STATEMENT." [sic]

{¶7} Mother argues the trial court erred in using the average of Father's income from 2008 and 2007 rather than the average of his income from 2009 and 2008 in calculating his child support obligations. We disagree.

{¶8} In computing an obligor parent's child support obligation, a trial court may average the parent's income over a reasonable number of years when the parent's income is unpredictable or inconsistent. See, e.g., *Marquard v. Marquard* (Aug. 9, 2001),

Franklin App. No. 00AP-1345 at *2. The trial court has discretion on whether or not to do so, and the trial court's decision on the matter will not be reversed unless the decision constitutes an abuse of discretion, i.e., the decision is arbitrary, unconscionable or unreasonable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. A trial court's judgment is unreasonable when it lacks a rational basis, *Rowe v. Rowe* (1990), 69 Ohio App.3d 607, or there is no sound reasoning process to support it. *Vaughn v. Vaughn*, Warren App. No. CA2007-02-021, 2007-Ohio-6569, ¶12, citing *AAA Enterprises, Inc. v. River Place Community Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161.

{¶9} The evidence showed that Father worked as a construction worker in 2007, earning an income of $22,204, and as a car salesman from 2008 to the present, earning $43,206 in 2008 and $62,402 in 2009. At the time of the hearing, Father testified that his income was $14,180 as of October 27, 2010.

{¶10} The trial court refused Father's request to base his income for child support purposes on his 2010 income because Father failed to provide any corroboration of the amount of his income, such as commission checks, and had not worked at his current place of employment for more than a year. The trial court also refused Mother's request to base Father's income for child support purposes on his 2009 income of $62,402, because the amount of his income for that year was an "aberration," as it was skewed by the extra income he received as a result of the federal government's "cash-for-clunkers" program. Instead, the trial court used the average of Father's income from 2008 and 2007, which was $32,705, for purposes of determining his child support obligation.

{¶11} Mother argues the trial court erred by not using Father's 2009 income for child support purposes, because the cash-for-clunkers program lasted for only three weeks, and Father testified that he earned only $10,000 for one month as a result of it. However, as the trial court noted, the $32,705 in annual income that the trial court

imputed to Father was more than he had earned in his entire employment history except for 2008 and 2009. Because there is some evidence to support the trial court's finding that Father's 2009 income was an aberration, the trial court's decision not to use Father's 2009 income and to impute annual income to him of $32,705 is rational and based on a sound reasoning process, and therefore is not an abuse of discretion. See *Vaughn*, 2007-Ohio-6569 at ¶12, citing *AAA Enterprises, Inc.*, 50 Ohio St.3d at 161.

{¶12} Consequently, Mother's first assignment of error is overruled.

{¶13} Assignment of Error No. 2:

{¶14} "THE JUDGE RULED IN ERROR BY FINDING THAT APPELLANT MUST ONLY PAY 30% OF THE MINOR CHILD'S MEDICAL BILLS."

{¶15} Mother argues the trial court erred by making Father responsible for only 30 percent of Brenden's medical expenses left unpaid by insurance. We disagree with this argument.

{¶16} R.C. 3109.05 provides that both parents are responsible for their child's health care expenses left unpaid by health insurance. A trial court has discretion in determining the amount that each parent should pay for a child's uninsured medical expenses. See *Collins v. Collins*, Marion App. No. 9-10-53, 2011-Ohio-2339, ¶24.

{¶17} The trial court's decision to require Father to pay only 30 percent of Brenden's uninsured medical expenses is consistent with the ratio of the parties' individual incomes to the parties' total income, as set forth in the child support worksheet. The trial court's decision to decrease Father's obligation to pay for Brenden's uninsured medical expenses is also supported by the disparity in the parties' incomes. Therefore, the trial court did not abuse its discretion in ordering Father to pay only 30% of Brenden's uninsured medical expenses. Cf. *Collins* at ¶24 (there was not such a disparity in the parties' incomes to require the parent who earns more to pay more for the uninsured

medical expenses of the parties' child).

{¶18} Mother also argues that Father did not make any request for modification of the Georgia divorce decree's order requiring that such costs be split evenly between the parties. However, Father did make such a request in his May 24, 2010 "Post Decree Motion and Affidavit," in which he asked the domestic relations court to modify the "health care provisions" of the parties' Georgia decree.

{¶19} Therefore, Mother's second assignment of error is overruled.

{¶20} Assignment of Error No. 3:

{¶21} "THE JUDGE RULED IN ERROR STATING THAT EXPENSES FOR APPELLANT'S TENANT WERE NOT MENTIONED IN TESTIMONY."

{¶22} Mother argues the trial court erred by considering the $600 she receives monthly from her roommate as income to her for purposes of computing the parties' child support obligations, because the trial court excluded evidence of the expenses she incurs in renting the room. We disagree with this argument.

{¶23} Mother contends that the trial court erred in finding "that expenses for [her] tenant were not mentioned in testimony," because the transcript shows this issue was discussed in the hearing held by the magistrate. However, in its ruling on this issue, the trial court stated:

{¶24} "Mother argued that all of her expenses attributable to earning her rental income should have been considered. Mother, however, offered no such evidence during the hearing. Mother's income was properly based upon all of her available resources."

{¶25} A review of the transcript in this case supports the trial court's refusal to offset the $600 that Mother receives in rent with the expenses she allegedly incurs as a result of renting space in her house to her roommate, because the transcript shows that Mother failed to present sufficient evidence showing what her expenses actually were.

{¶26} When Father cross-examined Mother about her "renter," she denied that the man to whom she rented the space in her house was her "renter," insisting, instead, that he was her "roommate" (but denying that he was her boyfriend). Mother also testified that someone at the IRS had told her the money she received from her roommate was not considered income because the space he rented from her was not a separate residence. However, the magistrate correctly informed Mother that it was the trial court's responsibility to determine what constitutes income for child support purposes.

{¶27} When the magistrate noted that the definition of "income" for purposes of child support was "very expansive," Mother asserted that she actually received only $300 per month from her roommate, as the remainder of the $600 rent payment went towards paying her roommate's utilities. When the magistrate asked if her roommate's utilities were billed separately, Mother acknowledged they were not, but implied that her roommate paid for his utilities and other expenses through his rent payment. The magistrate then told Mother that her attorney would be able to ask her additional questions on the issue. However, Mother's attorney did not ask her any further questions on this issue.

{¶28} In her objections to the magistrate's decision, Mother listed a number of expenses she incurred as a result of renting space in her house, including "electric, cable, internet, water, trash, lawn, pool upkeep, bug service and maintenance," as well as "depreciation expenses." Mother argued that as a result of these expenses, the amount she receives as rent "should be significantly reduced." On appeal, however, Mother argues the $600 monthly rent payment she receives from her roommate should be reduced to zero, since she pays $300 in monthly expenses *before* depreciation is taken into account, and sustains a net loss *after* such depreciation is taken into account. We find this argument unpersuasive.

{¶29} A careful review of the transcript in this case shows that Mother failed to present sufficient evidence of the specific amounts of the expenses she allegedly incurred as a result of renting space in her house to her roommate. While Mother may have been entitled to deduct certain expenses she incurred to offset the rental income she received from her roommate, she failed to provide the trial court with the necessary information as to the specific amounts of her expenses to allow for such an offset in this case.

{¶30} Furthermore, while Mother raised the issue of depreciation in her objections to the magistrate's decision, she failed to offer any evidence or argument on the proper amount of depreciation she would have been entitled to take as a result of her roommate's occupancy of the space in her house. The trial court was not required to speculate as to what Mother's actual expenses were. Therefore, we conclude that the trial court did not abuse its discretion by considering the entire monthly rental payment Mother receives from her roommate as income to her for child support purposes.

{¶31} Thus, Mother's third assignment of error is overruled.

{¶32} Assignment of Error No. 4:

{¶33} "THE JUDGE RULED IN ERROR THAT APPELLANT SHALL HAVE PLENTY OF TIME TO DELIVER THE MINOR CHILD TO THE AIRPORT WITHOUT CONSIDERATION TO TRAVEL DISTANCE."

{¶34} Mother argues the trial court erred in finding that she would have adequate time to deliver Brenden to the airport to visit with Father, because it is a hardship for her and Brenden to have to travel to the airport in Dayton, and that it would be much more convenient for them to travel to the airport in the Greater Cincinnati area since that airport is much closer to where she lives and works. Consequently, she requests that Brenden "be flown in and out of an airport within reasonable distance of thirty miles or less; [sic] before 7:30 a.m. and after 4:30 p.m. Monday through Friday, or anytime on the weekend."

We find this argument unpersuasive.

{¶35} Mother did not specifically object to the magistrate's decision on the ground that the magistrate failed to require Father to use an airport that was no more than 30 miles away from her residence, and therefore she has waived this issue for purposes of appeal. See Civ.R. 53(D)(3)(b)(ii) ("An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection[,]") and Civ.R. 53(D)(3)(b)(iv) ("Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion *** unless the party has objected to that finding or conclusion as required by Civ.R. 53[D][3][b].")

{¶36} Furthermore, the trial court did not abuse its discretion by overruling the objections that Mother did raise as to the magistrate's decision on Brenden's travel arrangements, to wit: that the magistrate should have awarded her "reasonable time/date/cost choices so that she can have minimal interruption when dropping off and picking up [Brenden] from the airport[,]" and required Father to provide her with "the date and *** several options [regarding] plane tickets[,]" after which she would "then let [Father] know which one to buy, based on her schedule," and reimburse [him] for her half [of the expense of the plane ticket]." There was ample evidence presented in this case to support the trial court's finding that the parties had difficulty in agreeing on the details of Brenden's travel arrangements for his visitation with Father, and there was nothing unreasonable in the trial court's determination that requiring Father to give Mother 60 days written notice of his intent to exercise his visitation rights should provide Mother adequate time to deliver Brenden to the airport for his visitation with Father.

{¶37} Therefore, Mother's fourth assignment of error is overruled.

{¶38} Assignment of Error No. 5:

{¶39} "THE JUDGE RULED IN ERROR ON REPAYMENT STRUCTURE BASED

ON THE FALSE INCOME PROVIDED."

{¶40} Mother argues the trial court erred by decreasing Father's monthly payment on his child support arrearage to $64.20 per month, because this repayment structure gives Father 90 months to finish paying his child support arrearage, and it already has taken him too long to pay back the arrearage. However, R.C. 3123.21(A) provides that "an order to collect current support due under a support order and any arrearage owed by the obligor under a support order pertaining to the same child or spouse shall be rebuttably presumed to provide that the arrearage amount collected with each payment of current support equal at least twenty per cent of the current support payment."

{¶41} Here, the trial court's decision to decrease Father's monthly payment on his child support arrearage to $64.20 is in keeping with the rebuttable presumption established by R.C. 3123.21(A), since this amount is at least 20 percent of Father's current monthly child support payment, which the trial court had decreased to $321.03. In light of the income disparity between the parties, we cannot say that the trial court abused its discretion in rejecting Mother's request to require Father to pay a greater amount toward his child support arrearage. Cf. *State ex rel. Donovan v. Zajec*, (June 23, 2000), Geauga App. No. 98-G-2199 (trial court erred by fashioning a repayment program that would take 22.5 years to complete).

{¶42} Accordingly, Mother's fifth assignment of error is overruled.

{¶43} Judgment affirmed.

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