

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

K.A.M.

Appellee

v.

H.R.M.

Appellant

IN THE SUPERIOR COURT
OF PENNSYLVANIA

No. 1214 EDA 2018

Appeal from the Order Entered March 20, 2018
In the Court of Common Pleas of Chester County
Domestic Relations at No.: 00084N2006; PACSES # 924115730

BEFORE: OTT, STABILE, and McLAUGHLIN, JJ.

MEMORANDUM BY STABILE, J.:

FILED MAY 1, 2019

Appellant H.R.M. ("Father") appeals from the March 20, 2018 order of the Court of Common Pleas of Chester County ("trial court"), directing, among other things, Father to pay child support for his four minor children with K.A.M. ("Mother").¹ Upon review, we affirm.

Following their marriage on May 13, 2000,² Father and Mother separated in or around December 2014 and January 2015. Their marriage produced four minor children: H.F.M., M.R.M, H.A.M., and E.G.M (collectively "Children"). Mother filed a complaint for spousal and child support on January 19, 2016. The trial court entered an interim order of support on February 16, 2016,

¹ Because this case affects minor children, we have abbreviated the parties' names

² Unless otherwise noted, these facts are taken from the trial court's March 20, 2018 and July 18, 2018 Opinions.

directing Father to pay \$3,096.00 in child support. Following two days of hearings, which commenced on December 19, 2016 and concluded on May 8, 2017,³ Hearing Officer Erin Downing ("Officer Downing") issued a report and recommendation (the "Report") on July 12, 2017.

With respect to Mother, Officer Downing found that she is a healthy 44-year-old woman who has not worked outside the home since 2008 when she held a sales position for USA Today. Mother holds a bachelor's degree from Muhlenberg College and earned \$60,000.00 to \$65,000.00 per year before she was laid off. Based upon Mother's age, experience, education, and the ages of the Children, Officer Downing attributed an earning capacity to her for an entry-level, clerical-type position at \$30,000.00 per year, which translates to a monthly net income of \$2,207.00.

Officer Downing found that Father has a 47% ownership interest in L.F. Lambert Spawn Company, Inc. ("Lambert"), a family-owned S-corporation that develops, produces and sells mushroom spawn and mushroom supplies. Officer Downing further found that Father's father owns 100% of all class A stock while Father and Father's brother each own 47% of class B non-voting stock. Father's father owns the remaining 6% of class B stock. As a result, Father's father controls corporate distributions. The owners of Lambert are paid distributions throughout the year based on quarterly tax estimates. These distributions are used to pay the company's tax liabilities as it is a pass-

³ Hearing Officer Julie Malloy-Good presided over the first day of the hearing on December 19, 2016.

through entity. The required estimated tax payments are based on the prior year's income figures, which can result in either an overpayment or underpayment of taxes. Lambert operates on a fiscal year starting in July and ending in June of the following year.

Officer Downing found that ordinary business income suffered a suspiciously severe decline. As Officer Downing noted, a 14.2% change in sales from the period ending in December 31, 2015 to December 31, 2016 resulted in 88.4% loss in net income. Despite the loss in net income, Officer Downing pointed out that Lambert showed an increase in retained earnings, total shareholder equity and investments. Officer Downing found that Father's 2015 net annual income was \$698,258.00 (or \$58,168.00 net monthly).⁴ She further found that Father's net 2016 income was \$278,156.00 (or \$23,180.00 net monthly).⁵ Officer Downing included Father's receipt of a distribution for

⁴ Father's 2015 net income:
\$229,172 (W-2 wages)
\$2,030 (401K match)
\$3,000 (Personal use of company car)
+\$640,000 (Distribution)
\$874,602 Gross annual income
- \$176,344 (Tax liability)
\$698,258.00 Net annual income
/12 = \$58,1588 Net monthly income.

⁵ Father's 2016 net income:
\$226,304 (W-2 wages)
\$1,699 (401K match)
\$3,000 (Personal)
+\$202,000 (Distributions)
\$432,973 Gross annual income

\$640,000.00 to determine his 2015 income. Likewise, Officer Downing included a distribution for \$202,000.00 to calculate Father's 2016 income. Based on her findings, Officer Downing issued a two-tiered support order. Tier one spans from January 19, 2016 to June 30, 2016 and directs Father to pay \$8,734.00 per month in child support.⁶ Tier two runs from July 1, 2016 forward and imposes upon Father a monthly child support obligation of \$3,934.00.⁷

Father timely filed thirteen exceptions to the Report.⁸

- \$154,817 (Corrected Tax Liability)
\$278,156 Net annual income
/12 = \$23,180 Net monthly income

As the trial court noted, Officer Downing used an incorrect tax liability amount to calculate Father's net income for 2016. As a result, Officer Downing attributed to Father a net income amount of \$294,872.00 for 2016, instead of \$278,156.00.

⁶ Tier one calculation:

\$58,188 (Father's net monthly income) (96.35%)
+\$2,207 (Mother's net monthly income) (3.65%)
\$60,395 Total monthly income available

\$9,064.49 (Basic child support obligation)
\$8,734 (Father's 96.35% share) ($\$9,065 \times .9635$).

⁷ Tier two calculation:

\$23,180 (Father's net monthly income) (91.31%)
+\$2,207 (Mother's net monthly income) (8.69%)
\$25,387 Total monthly income available

\$4,435 (Basic child support obligation)
\$3,934 (Father's 91.31% share) ($\$4,435 \times .9131 = \$4,050 - \$116$ health insurance adjustment).

⁸ Mother also filed exceptions, which the trial court denied in part.

1. [Officer Downing] erred when she calculated [Father's] income available for support, including but not limited to, in the following ways:
 - a. [Officer Downing] used a July 1 to June 30 fiscal year for determining [Father's] income, for which there is no authority to do so;
 - b. [Officer Downing] used income received by [Father] in 2014 and 2015 to determine his income available for support in 2016 despite having evidence of [Father's] 2016 income because the trial was concluded in May 2017;
 - c. [Officer Downing] did not determine the taxes accurately insofar as she used a calendar year of January to December to determine taxes but a fiscal year of July 1 to June 30 to determine gross income;
 - d. [Officer Downing] double counted \$281,402 in her calculations insofar as she included it in income available for support and as a credit toward tax obligations[;]
 - e. [Officer Downing] erred in not deducting the amount of federal tax actually paid by the parties in 2016, which information testified to and was available to the [Officer Downing] in the parties' joint return;
 - f. [Officer Downing] erred in estimating the parties['] 2016 tax obligation instead of using the actual taxes paid.
2. [Officer Downing] erred in not admitting into evidence the parties' joint 2016 tax return insofar as the return is a joint return and available to both parties.
 - a. [Officer Downing] erred in permitting off the record and unsworn input from [Mother's] "expert" from the audience of the courtroom to influence her decision as to the admissibility of a joint tax return[.]
3. [Officer Downing] erred in determining that "funds are available to [Father] when needed" when, in fact, most funds received by [Father] were loans that require repayment.
4. [Officer Downing] erred in making this recommendation that is unfair and confiscatory.

5. [Officer Downing] erred in making this recommendation insofar as it is not attendant to the circumstances of the parties as the evidence clearly provided.
6. [Officer Downing] erred in making this recommendation insofar as she did not consider the reasonable needs of [Father].
7. [Officer Downing] erred in calculating [Father's] income available [for] support insofar as she attributed as income funds that are not actually received by or available to [Father].

Father's Exceptions, 8/1/17, at 1-2 (unnumbered).

On March 20, 2018, the trial court, *inter alia*, denied Father's exceptions, concluding that they did not merit relief. In so doing, the trial court found:

[Officer] Downing tiered the order to avoid saddling [Father] with the application of 2015's income to the entire lengthy period of time open for consideration at the time of the hearing. The division of support orders into more than one segment, or tier, occurs frequently when there is a significant change in income during the relevant time period. 2015 was the last complete tax year available for [Officer Downing's] consideration. 2015's calculations are based upon actual distribution and actual taxes for the corresponding tax year. . . . 2015 was the only reliable information available to [Officer Downing] when she made her determination; it was reasonable to base [Father's] early 2016 income on his 2015 figures because he did not provide anything concrete that was more recent and that left [Officer Downing] little choice.

. . . .

If [Father] had better evidence as to his 2016 income, it was his responsibility to present it at the hearing. In deciding a support matter the [trial court] would always prefer to have the freshest and best evidence to do so.

. . . .

Father tried to introduce his 2016 personal tax return at the second day of the hearing but [Officer Downing] did not allow it as it had not previously been provided to [Mother].

Trial Court Opinion, 3/20/18, at 11-13. Father timely appealed to this Court.

The trial court directed Father to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. Father complied, raising seventeen prolix assertions of error:

1. The final support order dated March 20, 2018 should be vacated because the trial court relied upon 'piecemeal data' which was speculative evidence at best to calculate [Father]'s net income available for support, including, but not limited to testimony from [Mother's] "expert" which was not stated to any degree of professional certainty as required by the rules of evidence.
2. [The trial court] and [Officer Downing] erred as a matter of law and abused their discretion, and denied [Father] due process, by relying upon the testimony of Ryan Haag, whose testimony was speculative and who failed to state his opinion to any degree of professional certainty as required by the rules of evidence.
3. The final support order dated March 20, 2018 should be vacated because the proceedings were grossly unfair and prejudicial to [Father] where one hearing officer started the proceedings in December of 2016 and allowed in evidence of [Father's] 2016 income and the second hearing officer concluded the proceedings but refused to admit a jointly filed and signed 2016 tax return at the second hearing.
4. [The trial court] erred as a matter of law and abused its discretion, and denied [Father] due process, in including income received by [Father] in 2014 and 2015, and inconsistently admitting or excluding evidence of [Father's] income for 2016, during the proceedings, in calculating [Father's] net income available for support in 2016, despite having evidence of [Father's] 2016 income.
5. [The trial court] erred as a matter of law, abused its discretion and denied [Father] due process in finding that [Father] was able to make any decision to take pass-through distributions which finding was contrary to the overwhelming evidence presented that only [Father's] father was able to make distributions because he alone had the voting stock.
6. [The trial court] erred as a matter of law and abused its discretion, and denied [Father] due process, in calculating fiscal year income in contravention of Superior Court's decision in ***Spahr v. Spahr***, [869 A.2d 548 (Pa. Super. 2005)], which provides that distributions should be attributed to "the year the

income is earned and tax liability accrued, no matter when the tax payment is made.”⁹ **Spahr**, 869 A.2d at 553.]

7. [The trial court] erred as a matter of law and abused its discretion, and denied [Father] due process, in failing to deduct the actual amount of taxes paid by the parties in 2016, evidence of which should have been admitted into evidence in

⁹ For purposes of background, in **Spahr**, we considered whether a 2003 corporate distribution made to the husband solely for paying his 2002 federal tax was counted properly towards his 2003 income. The husband claimed that the distribution was made in accordance with tax law and his established business practice, and rejected the suggestion that the tax payments were made to lower his 2003 support obligation. **Id.** at 551-52. We concluded the trial court did not abuse its discretion in including the husband’s 2003 corporate distribution in his 2003 net income. **Id.** at 553.

The **Spahr** Court also observed that the husband had manipulated his cash-flow in order to reduce his 2003 income. First, he paid “all of his 2003 taxes in 2003,” without deferring his payment for the fourth quarter of 2003 until April of 2004, as had been his customary practice. **Id.** at 553. By paying his 2003 taxes before his actual tax liability was ascertained, the husband overpaid, thus lowering his 2003 net income, and did not receive a refund for that overpayment until 2004. Second, the husband “also attributed his 2002 fourth quarter payment to 2003” because it was paid in April of 2003. As a result, he had reduced his 2003 income by manipulating his tax payments. We noted, “it may be important to trace cash flow in this way for various business purposes, but determination of income for support is not one of them.” **Id.** We added that “Pennsylvania case [law] does not accept the cash flow argument . . . ‘We could not permit an individual to overpay his taxes all year, and then exclude the amount of his overpayment from calculation of that individual’s income.’” **Id.** Thus, we concluded that

all taxes connected to one year of income are calculated for that year, no matter when paid. To do otherwise would allow serious manipulation of yearly income. The court does not find that [the h]usband has attempted such a manipulation, but the effect of his cash flow analysis produces the same result. **For support purposes, tax liability must be attributable to the year the income is earned and tax liability accrued, no matter when the tax payment is made.**

Id. (emphasis added). In addition, we determined that corporate distributions made to relieve a party of his tax liability **are income for the purposes of support. Id.**

this case because it was available to both parties on the jointly filed and jointly signed 2016 tax return.

8. [The trial court] erred as a matter of law, abused its discretion, and denied [Father] due process, and severely prejudiced [Father] in the presentation of his case by failing to admit the evidence of the parties' 2016 joint tax return and to utilize said return in the calculation of [Father's] support obligations because:
 - A. The tax return was the best evidence available where the parties' income is at issue for purposes of calculating support and where the 2016 income tax was the most recent evidence.
 - B. A joint return available to both parties does not deprive any party of notice of its content.
 - C. Exclusion of the tax return for 2016 deprived [Father] of due process.
 - D. The door had been opened for the returns during the hearing held before [Officer] Malloy-Good in the first day of hearing and [Officer] Downing abused her discretion depriving [Father] the opportunity to offer this evidence.
9. [The trial court] erred as a matter of law and abused its discretion and denied [Father] due process in holding that the record did not contain any evidence that [Mother] ever saw or signed the 2016 joint tax return.
10. [The trial court] and [Officer Downing] abused their discretion in calculating [Father's] income available for support by averaging the taxable income for a three year period, where one year was skewed by an involuntary distribution made by the S-corporation owned by [Father's] father.
 - A. There is no evidence to support a finding that the distribution was anything other than an anomaly in the parties' joint income caused by a mandatory distribution in a prior year.
 - B. There is no evidence to support a finding that the amount of the distribution, while potentially an asset subject to distribution, should have been included as income for purposes of support when there was testimony that the funds were used toward marital debt, also subject to equitable distribution.
11. [The trial court] erred as a matter of law and abused its discretion and denied [Father] due process in finding that [Officer Downing] looked at [Father's] total financial picture

when [Officer Downing] refused to do so when she refused to allow [Father] to submit critical evidence of his 2016 financial picture, that being the parties' jointly filed and signed 2016 tax return.

12. [The trial court] erred as a matter of law and abused its discretion, and denied [Father] due process, by not using the evidence that was admitted into the record of this case concerning [Father's] earnings in 2016 to calculate his net income for purposes of support and instead relying on financial documents from previous years which did not represent the state of the corporation in 2016 because of a substantial loss of product, nor [Father's] financial resources as of 2016.
13. [The trial court] erred as a matter of law and abused its discretion, and denied [Father] due process, holding that [Officer Downing's] use of the 2015 income information was reasonable to use in 2016 because [Father] did not provide anything concrete that was more recent, when a review of the record demonstrates [Father] clearly did provide 2016 income information including his paystubs, W-2, balance sheets, distribution and tax analysis in addition to his testimony and that of the CFO of Lambert Spawn.
14. [The trial court] erred as a matter of law and abused its discretion, and denied [Father] due process, in upholding a finding by [Officer Downing], unsupported by any evidence, that funds were "available when needed", to [Father] despite [Father's] testimony of his barely getting by.
15. [The trial court] erred as a matter of law and abused its discretion, and denied [Father] due process, in upholding [Officer Downing's] misgivings or suspicion of [Father's] income fluctuations, thus upholding [Officer Downing's] clear negative inference about [Father's] income without competent evidence to support the inference, which inference led to an unfair support obligation which was not attendant to the circumstances of the parties.
16. [The trial court] erred as a matter of law and abused its discretion and denied [Father] due process when it failed to properly take into consideration the contamination of the corporation's product which was the cause of the drastic change in the corporation's finances in 2016 and 2017 and which was not refuted by [Mother].
17. [The trial court] and [Officer Downing] erred as a matter of law and abused their discretion and denied [Father] due process when they failed to take into consideration the substantial change in [Father's] ability to meet his reasonable needs because of the substantial change in the company's finances in 2016 and 2017.

Father's Rule 1925(b) Statement, 5/24/18, at 1-6 (unnumbered) (unnecessary capitalizations and footnote omitted) (sic). In response, the trial court issued a Pa.R.A.P. 1925(a) opinion.

On appeal, Father presents only two issues for our review in connection with his child support obligations:

[I.] Did the trial court err and/or abuse its discretion in calculating Father's income?

[II.] Did the trial court err in its calculation of Father's 2016 support obligation by failing to apply the appropriate rules relating to high income cases?

Father's Brief at 3 (unnecessary capitalizations omitted).¹⁰

The well-settled standard of review in a child support case provides:

When evaluating a support order, this Court may only reverse the trial court's determination where the order cannot be sustained on any valid ground. We will not interfere with the broad discretion afforded the trial court absent an abuse of the discretion or insufficient evidence to sustain the support order. An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be either manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused. In addition, we note that the duty to support one's child is absolute, and the purpose of child support is to promote the child's best interests.

Silver v. Pinsky, 981 A.2d 284, 291 (Pa. Super. 2009) (*en banc*) (citation omitted).

¹⁰ From our review of Father's appeal, we understand it to challenge the trial court's order only with respect to the child support obligations it assigns. To the extent Father intended—and we discern no such intent—his appeal to challenge the trial court's award for spousal support, we lack jurisdiction to consider such an issue. ***See Capuano v. Capuano***, 823 A.2d 995, 998-99 (Pa. Super. 2003) (explaining that portion of trial court order attributable to child support is immediately appealable; however, portion of order allocated to spousal support is interlocutory during pendency of divorce).

It also is well established:

Support orders must be fair, non-confiscatory and attendant to the circumstances of the parties. When a payor spouse owns his own business, the calculation of income for child support purposes must reflect the actual available financial resources of the payor spouse. Further, **all benefits flowing from corporate ownership must be considered in determining income available to calculate a support obligation.** Therefore, the owner of a closely-held corporation cannot avoid a support obligation by sheltering income that should be available for support by manipulating salary, perquisites, corporate expenditures, and/or corporate distribution amounts.

Spahr, 869 A.2d at 552 (quotation marks, citations and brackets omitted) (emphasis added).

In Pennsylvania, child support awards are made in domestic relations matters in accordance with specific statutory guidelines, in a complex system that accounts for the obligor's capacity to pay and the reasonable needs of the particular children. **Commonwealth v. Hall**, 80 A.3d 1204, 1216 (Pa. 2013). Indeed, "[t]he guidelines provide extremely detailed instructions for calculating spousal and child support awards based on the obligor's net income from all sources[.]" **Id.** at 1217.

As a general rule, "the amount of support to be awarded is based upon the parties' monthly net income." Pa.R.C.P. No. 1910.16-2. Rule 1910.16-2(a) provides that "[m]onthly gross income is ordinarily based on **at least a six-month average** of a party's income. The support law [(Domestic Relations Code or "DRC")], 23 Pa.C.S.[A.] § 4302, defines the term 'income' and includes income from any source." Pa.R.C.P. No. 1910.16-2(a) (emphasis added).

Section 4302 of the DRC defines income as follows:

“Income.” Includes compensation for services, including, but not limited to, wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; **income derived from business**; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; all forms of retirement; pensions; income from discharge of indebtedness; **distributive share of partnership gross income**; income in respect of a decedent; income from an interest in an estate or trust; military retirement benefits; railroad employment retirement benefits; social security benefits; temporary and permanent disability benefits; workers' compensation; unemployment compensation; other entitlements to money or lump sum awards, without regard to source, including lottery winnings; income tax refunds; insurance compensation or settlements; awards or verdicts; **and any form of payment due to** and collectible by an individual **regardless of source**.

23 Pa.C.S.A. § 4302 (emphasis added).

Rule 1910.16-2 provides that to arrive at monthly net income, the court shall deduct specific items from the monthly gross income. Pa.R.C.P. No. 1910-16-2(c). In particular, Rule 1910.16-2 provides in relevant part:

(1) Unless these rules provide otherwise, the trier-of-fact shall deduct only the following items from monthly gross income to arrive at monthly net income:

- (i) federal, state, and local income taxes;
- (ii) unemployment compensation taxes and Local Services Taxes (LST);
- (iii) F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments;
- (iv) mandatory union dues; and
- (v) alimony paid to the other party.

Pa.R.C.P. No. 1910.16-2(c)(1).

With the foregoing principles in mind, we note that Father's first issue, whether the trial court erred "in calculating Father's income," is a broad and

vague challenge to the trial court's calculation of his income. Specifically, Father does not identify the grounds upon which he believes the trial court erred. **See** Pa.R.A.P. 2116(a) ("No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby."). In fact, were we to respond to Father's question presented literally, its review arguably would encompass all aspects of what constitutes the parties' income for purposes of support. We, however, decline to find waiver on this ground, because Father attempts to narrow the issue in the argument section of his brief. We will, however, address only those arguments in support of his first issue that were preserved below,¹¹ *i.e.*, raised in Father's exceptions and included in his Rule 1925(b) statement, and are fairly comprised by the question presented.

Father asserts the following arguments in support of his first issue:

- a. The total distribution figure used by Officer Downing of "\$640,000 for 2015 clearly included a portion of the 2014 distributions and distributions earned in 2014." Father's Brief at 17.
- b. Father's father "was the only individual who controlled when or if a distribution of retained earnings would be given to Father." ***Id.*** at 17.

¹¹ Rule 1920.55-2, relating to exceptions to master's report, provides in relevant part that "[e]ach exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final decree, leave is granted to file exceptions raising those matters." Pa.R.C.P. No. 1920-55.2; ***see Nagle v. Nagle***, 799 A.2d 812, 821 (Pa. Super. 2002) (issue waived because it was not included in exceptions to master's report).

- c. "The [t]rial court erred when it failed to consider the uncontested evidence about the damage to the corporation in 2015 as a result of product contamination." **Id.** at 18.
- d. The trial court should have relied only on distributions Father received in the last six months of 2015. **Id.** at 17-18.
- e. The trial court erred in applying Father's \$281,402 overpayment of 2015 taxes to his 2016 net income. **Id.** at 19.
- f. Officer Downing abused her discretion in disallowing Father from introducing into evidence the parties' joint 2016 tax return. **Id.** at 20-21.
- g. "The distribution found by the [t]rial court in 2016 was grossly inflated because Father only received a small distribution to pay his state taxes in 2016." **Id.** at 21.
- h. Officer Downing's "findings against Father are not supported by the record." **Id.** at 22. Specifically, Officer Downing's finding that "Father had the capacity to withdraw funds from [Lambert] at any time he needed them and this somehow was income available to him for support." **Id.**
- i. "Mother failed to qualify Mr. Haag as an expert witness in any particular field and Mr. Haag failed to state his opinion as to Father's 2015 and 2016 income to a reasonable degree of professional certainty." **Id.** at 24.

Based on our review of the record, we conclude that Father's arguments (a), (b), (c), (g) and (i) are waived because he failed to raise them in his exceptions, **see Nagle, supra**, even though he raised them in his Rule 1925(b) statement. As we explained in **Morgan v. Morgan**, 117 A.3d 757 (Pa. Super. 2015), an issue is waived in a child support appeal where a party raises it for first time in his or her Rule 1925(b) statement. **Morgan**, 117 A.3d at 762. Argument (e) is waived because Father neither raised it in his exceptions or in his Rule 1925(b) statement; rather, he raises it for the first time on appeal. **See** Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."). Argument (h) is waived, because it is not fairly subsumed by Father's question presented. **See** Pa.R.A.P. 2116(a); **see also Krebs v. United Ref. Co. of Pa.**, 893 A.2d 776, 797 (Pa. Super. 2006) (issues not set forth in or suggested by an appellate brief's statement of questions presented are deemed waived).¹²

¹² In argument (h), Father claims that Officer Downing's finding that Father had the capacity to withdraw funds from Lambert at any time he needed them was unsupported by the record. However, this issue does not affect the calculation of support at issue. Evaluating the level of monetary and financial assistance Father received from his father in purchasing three homes, Officer Downing found that "funds seem to be available to [Father] when needed even if it's not through shareholder withdrawal from retained earnings." Report, 7/12/17, at 8 (unnumbered). Officer Downing, however, went on to add "[w]hile the potential availability of additional funds available to [Father] cannot be quantified so as to add to [Father's] monthly income, it is important to note the availability despite [Father's] testimony of his barley getting by." **Id.** Indeed, as the trial court explained, "[Officer Downing] clearly states that [Father's capacity to withdraw funds] or these additional funds are not being added as income to [Father], as no monetary value can be assigned to the

As detailed above, upon painstakingly examining Father's exceptions against his Rule 1925(b) statement and his first question presented, we conclude that Father has preserved only two assertions of error for our review: arguments (d), and (f).

We start with argument (d) that the trial court should have relied only on distributions Father received in the last six months of 2015. Father's argument is not only self-serving, but it also is bereft of any legal support.¹³ Rule 1910.16-2 contemplates that a party's monthly gross income should be based on "at least a six-month average of a party's income," and **not only** on a six-month average of a party's income, as suggested by Father. **See** Pa.R.C.P. No. 1910.16-2.

Here, Officer Downing examined Father's income for the entirety of 2015. In so doing, she tiered the support order to avoid saddling Father with

various loans from [Father's] father which allowed [Father] to purchase three homes." Trial Court Opinion, 3/20/18, at 18. The trial court concluded that "[Officer Downing] did not include these additional funds/loans in the calculation of [Father's] income." **Id.** Accordingly, because this argument does not specifically relate to the calculation of Father's income, we decline to review it.

¹³ **See** Pa.R.A.P. 2119(a) (stating that the argument shall include "such discussion and citation of authorities as are deemed pertinent."); **see also Commonwealth v. Johnson**, 985 A.2d 915, 924 (Pa. 2009) (stating that "where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived."); **In re S.T.S., Jr.**, 76 A.3d 24, 42 (Pa. Super. 2013) (stating that "mere issue spotting without analysis or legal citation to support an assertion precludes our appellate review of a matter.") (citation and quotation marks omitted)).

the application of 2015's income to the entire lengthy period of time open for consideration at the time of the hearing. The trial court explained:

The division of support orders into more than one segment, or tier, occurs frequently when there is a significant change in income during the relevant time period. 2015 was the last complete tax year available for [Officer Downing's] consideration. 2015's calculations are based upon actual distribution and actual taxes for the corresponding tax year. . . . 2015 was the only reliable information available to [Officer Downing] when she made her determination; it was reasonable to base [Father's] early 2016 income on his 2015 figures because he did not provide anything concrete that was more recent and that left [Officer Downing] little choice.

Trial Court Opinion, 3/20/18, at 11-13. Accordingly, we do not discern any abuse of discretion.

Next, in argument (f), Father claims that Officer Downing abused her discretion in disallowing Father from introducing into evidence the parties' joint 2016 tax return.

As stated earlier, when evaluating a support order, this Court may only reverse the trial court's determination where the order cannot be sustained on any valid ground. We will not interfere with the broad discretion afforded the trial court absent an abuse of the discretion or insufficient evidence to sustain the support order. ***See Silver, supra.***

Here, as the trial court explained:

At the hearing, [Father] attempted to admit his 2016 1040. Counsel for [Mother] objected as she had not been previously provided with a copy of the 2016 1040, a point with which counsel for [Father] ***did not disagree*** on the record. [Officer Downing] did not admit the 2016 1040 as [Mother] had no prior opportunity to review it. . . .

Admission of the 2016 1040 which [Mother] had not seen would have been both surprising and unfair.

Trial Court Opinion, 3/20/18, at 16 (internal citation omitted) (emphasis added). To the extent Father claims that “Mother had access to the [2016] return as she was required to sign it when it was filed with the IRS,” Father’s Brief at 21, this claim is not supported by the record. At no point did Father make this claim below or develop a record for it. As the trial court noted, and the record supports, Father’s counsel acquiesced to Mother’s objection to the admission of the parties’ 2016 return. **See** N.T. Hearing, 5/8/18, at 5-7. Moreover, the transcript reveals that Father sought to introduce the 2016 return for a very specific and limited purpose and that was to show that a \$281,000 overpayment for 2015 was applied to pay 2016 taxes. **See** at 5.

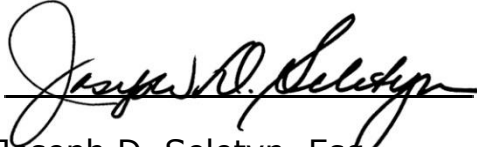
Father’s second issue that the trial court erred in failing to apply Pa.R.C.P. No. 1910.16.3-1 to this case because the parties’ combined income exceeds \$30,000 also is waived because he asserts it for the first time on appeal.¹⁴ **See** Pa.R.A.P. 302(a), *supra*.

Order affirmed.

¹⁴ This issue has limited importance because if we were to find Father’s first issue meritorious, we would remand this case to the trial court for purposes of re-calculating support in accord with Rule 1910.16-3.1.

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Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/1/19