IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

CHERYL H. PALAZZOLO, n/k/a HAMILTON,	:	APPEAL NO. C-100386 TRIAL NO. DR-0401589
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
DAVID F. PALAZZOLO,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

On August 7, 2006, the Hamilton County domestic relations court entered a decree of divorce that terminated the marriage of plaintiff-appellee, Cheryl Palazzolo n/k/a Hamilton ("Cheryl"), and defendant-appellant, David Palazzolo ("David").[2] The decree incorporated a separation agreement that set forth the parties' obligations to each other and their two daughters, Nina and Natalie.

Under the agreement, Cheryl was designated as the residential parent and legal custodian of their daughters. David was to pay spousal support for up to 36 months, but he was not required to pay child support during the same period. The agreement provided, however, that Cheryl was to initiate proceedings at the end of the spousal-support period to set child support. In the meantime, Cheryl was generally responsible for Nina and Natalie's expenses, and she was specifically instructed to pay for the girls'

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.
[2] T.d. 94.

extracurricular activities. Also during this period, David was to pay for their daughters' health insurance, a portion of their uninsured medical expenses, and Natalie's kindergarten tuition.

On May 14, 2009, Cheryl moved to set child support. The magistrate entered findings of fact and conclusions of law to which Cheryl filed six objections. The trial court sustained all but one and adopted the magistrate's decision as modified.[3] Relevant to this appeal, the court held David in contempt for failing to pay his share of uninsured medical expenses. The court also added the following amounts to the child-support worksheet: (1) $650 in "annual child care expenses for the children" attributable to Cheryl;[4] (2) $9,242 in "annual gross income" attributable to David;[5] and (3) $2,000 in a deviation to David's actual annual obligation.[6] Finally, the trial court evenly split the costs of Nina and Natalie's extracurricular activities between David and Cheryl. David now appeals, raising five assignments of error.

In his first assignment of error, David asserts that the trial court erred in holding him in contempt for failing to pay a portion of his daughters' uninsured medical expenses. When reviewing a trial court's decision to hold a party in contempt, we apply an abuse-of-discretion standard.[7] Thus, we will not reverse the trial court's decision unless the court acted "unreasonably, arbitrarily, or unconscionably."[8]

"A prima facie case of civil contempt is made when the moving party proves both the existence of a court order and the nonmoving party's noncompliance with the

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[3] T.d. 145
[4] See R.C. 3119.022, line 19.
[5] See R.C. 3119.022, line 7a.
[6] See R.C. 3119.022, line 27a.
[7] *Masters v. Masters*, 1st Dist. No. C-090518, 2010-Ohio-5961, at ¶10.
[8] *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 219, 219, 450 N.E.2d 1140.

terms of that order. The burden then shifts to the nonmoving party to establish a defense for its noncompliance."[9]

Here, the trial court held that David owed Cheryl $242.50 in uninsured medical expenses under the divorce decree. Thus, David had violated an existing court order. Accordingly, the burden shifted to David to defend his noncompliance. The trial court noted that David had "entered no evidence as to why he did not make this payment in full except to say that he was willing to put the disputed amount before the judge."[10] After thoroughly reviewing the record, we cannot say that the trial court abused its discretion in this instance. We, therefore, overrule David's first assignment of error.

We next consider David's second, third, and fourth assignments of error together because they concern amounts set by the trial court on the child-support worksheet. In his second assignment of error, David contends that the trial court erred in adding $650 to line 19 to reflect summer daycare expenses incurred by Cheryl. In his third assignment of error, David asserts that the trial court erred in adding $9,242 to line 7a to reflect his annual net rental income and contributions by his employer to his healthcare spending account. In his fourth assignment of error, David argues that the trial court erred by adding a $2,000 to line 27a because his actual annual obligation would have otherwise been "unjust or inappropriate."[11] We disagree,

Although we generally review child-support determinations under an abuse-of-discretion standard, R.C. 3119.02 requires courts to calculate a child-support obligation "in accordance with the basic child support schedule, the applicable worksheet, and the other provisions of 3119.02 to 3119.24 of the Revised Code." These requirements must

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[9] *Wolf v. Wolf*, 1st Dist No. C-090587, 2010-Ohio-2762, at ¶4.
[10] T.d. 145 at 2.
[11] See R.C. 3119.022, line 27a.

be "literally and technically followed."[12] Nevertheless, so long as the trial court relied on some competent, credible evidence in following these mandates, we will not reverse its findings.[13]

In this case, the applicable child-support worksheet was provided by R.C. 3119.022. On line 19, the worksheet calls for the annual childcare expenses incurred by each parent. The magistrate set this amount for Cheryl at $595 before any applicable tax credit. But relying on Cheryl's testimony,[14] the trial court entered $1,244 to reflect an additional $650 in summer childcare expenses.[15] Because the trial court based its decision on competent, credible evidence, it did not abuse its discretion.

On line 7a, the worksheet asks for the annual gross income for each party. This is defined as "the total of all earned and unearned income from all sources during the calendar year."[16] The magistrate set David's annual gross income at $162,500, but the trial court added $9,242 to reflect $5,242 of David's annual net rental income and $4,000 contributed by his employer to his healthcare spending account.

David does not dispute that he has earned $5,242 in annual net rental income, but he contends that this amount should be offset by farming-related losses he incurred in connection with Rutherford-Palazzolo Ranch, LLC. He points to R.C. 3119.01(C)(13), which defines "self-generated income" as "gross receipts received by a parent from self-employment, proprietorship of a business, joint ownership of a partnership or

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[12] See *Varner v. Varner*, 170 Ohio App.3d 448, 2007-Ohio-675, 867 N.E.2d 857, at ¶8 (citing *Marker v. Grimm* [1992], 65 Ohio St.3d 139, 601 N.E.2d 496).
[13] See *Cameron v. Cameron*, 10th Dist. No. 06AP-793, 2007-Ohio-3994, at ¶5 (citing *Ross v. Ross* [1980], 64 Ohio St.2d 203, 208, 414 N.E.2d 426); see also *Varner* at ¶9 (holding that the trial court abused its discretion in failing to include the cost of daycare expenses on the child-support worksheet when both parents testified as to the same amount).
[14] See t.p. 195-196.
[15] As the trial court observed, Cheryl's testimony demonstrated that her nonsummer childcare expenses were $594, not $595 as entered by the magistrate. This is why, at first blush, there appears to be a $1 discrepancy in the trial court's finding.
[16] R.C. 3119.01(C)(7).

closely held corporation, and rents minus ordinary and necessary expenses incurred by the parent in generating the gross receipts." Although David argues that both the rental income and the farming losses were attributable to the same limited liability company, he has not demonstrated how those farming losses were incurred *in generating* the rental income. Relying on competent, credible evidence, the trial court properly deducted from his annual gross rental income the expenses he incurred in generating that income.

The trial court additionally relied on David's own testimony when it added the $4,000 to David's annual gross income to reflect payments made by his employer to his healthcare savings account. We, therefore, find no abuse of discretion in this instance.

Finally, on line 27a, the trial court added $2,000 as a deviation to David's actual annual obligation. Such deviations are allowed when a trial court finds that the worksheet amount would be unjust and not in the best interest of the child.[17] When entering a deviation, the trial court may consider any of several factors listed in R.C. 3119.23 and must support its decision with findings of fact.[18]

In this case, the trial court based the $2,000 deviation on David and Cheryl's disparate incomes and their respective amounts of parenting time. R.C. 3119.23(D) and (G) specifically recognize these as relevant factors to justify such a deviation. After thoroughly reviewing the record, we hold that the trial court relied on competent, credible evidence and did not abuse its discretion. Accordingly, we overrule David's second, third, and fourth assignments of error.

In his fifth assignment of error, David asserts that the trial court erred in ordering him to pay for half of the expenses for his daughters' extracurricular activities.

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[17] *Daniel v. Ilanit*, 1st Dist. No. C-060814, 2007-Ohio-5461, at ¶31.
[18] Id.

Under their separation agreement, Cheryl was generally responsible for their daughters' expenses, and she was specifically instructed to pay for the girls' extracurricular activities. David was not to pay child support while paying spousal support, but Cheryl was allowed to request child support after her spousal support ended. David now essentially argues that because the agreement initially provided that he was not responsible for "child support" and that Cheryl was to pay for Nina and Natalie's extracurricular activities, the trial court could not have ordered him to pay for these expenses at a future time.

"A trial court's modification of a prior child-support order is within its broad discretion and will not be disturbed absent an abuse of discretion."[19] In modifying David and Cheryl's responsibilities to pay for their daughters' extracurricular activities, we cannot say that the trial court acted arbitrarily, unreasonably, or unconscionably. Accordingly, we overrule David's fifth assignment of error.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., HENDON and **FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on June 3, 2011

per order of the Court _____.
Presiding Judge

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[19] *Reik v. Bowden*, 172 Ohio App.3d 12, 2007-Ohio-2533, 872 N.E.2d 1253, at ¶8.