

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

SUMMER L. JOHNSON,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-10-256
- vs -	:	<u>OPINION</u>
	:	4/5/2010
ROBERT J. MELTON,	:	
Defendant-Appellant.	:	

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

Eric J. Fernandez, 4761 Port Union Road, Hamilton, Ohio 45011, for plaintiff-appellee

Lyons & Lyons Co., L.P.A., Lyn Alan Cunningham, 8310 Princeton-Glendale Road, West Chester, Ohio 45069, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Robert J. Melton, appeals a Butler County Court of Common Pleas, Juvenile Division, decision modifying child support. We reverse the juvenile court's decision.¹

{¶2} Melton and plaintiff-appellee, Summer L. Johnson, are the parents of now ten-year-old K.M. In July 2006, the juvenile court ordered Melton to pay \$681.32 plus

1. Pursuant to Loc.R. 6(A), we have sua sponte removed this case from the accelerated calendar and placed it on the regular calendar for the purposes of issuing this opinion.

two percent poundage for a total of \$694.95 per month in child support for K.M. This amount was based on a finding by the juvenile court that Melton's income was \$26,000 annually and a finding that Johnson's income was \$13,084.50 per year, less a \$6,300 credit for child care expenses.

{¶13} The following year, Johnson filed motions for contempt against Melton for failure to pay child support. Melton was subsequently indicted for and pled guilty to one count of felony nonsupport of dependents and sentenced to six months in prison. On September 29, 2008, Melton filed a motion to reduce child support in the juvenile court while his criminal case was pending. In his motion, Melton stated that there was a change in circumstances based on lost employment and loss of earnings. Melton also maintained that Johnson's child care expenses were no longer necessary, or in the alternative were excessive.

{¶14} On July 21, 2009, the juvenile court held a hearing on Melton's motion to reduce his child support obligation. Melton testified that he earns approximately \$14,000 to \$15,000 per year, and he supplied tax documentation into evidence in support of his claim. Because his work was seasonal, Melton also explained that he was unable to work four months out of the year. Melton further testified that he earns \$13.50 per hour, and works approximately 40 hours per week. Although present at the hearing, Johnson did not provide the juvenile court with any testimony.

{¶15} Three days later, the magistrate issued a decision and order finding that Melton had never made more than \$15,246.96 per year; and that he "never made the income that the current order of support is based on * * * which he is unable to pay." The magistrate estimated that Melton's annual income was \$19,440 based on \$13.50 per hour, 40 hours per week, eight months of the year. The magistrate then stated that Johnson offered no testimony regarding her current income or expenses or any other

factors regarding child support. Because no current information was offered, the magistrate used Johnson's income and expense information from the 2006 child support worksheet to determine the 2009 child support obligation. The magistrate found that Melton's new obligation would be either \$608.90 plus two percent poundage, plus \$121.78 arrearage for a total of \$730.68, or \$582.71 plus two percent poundage, plus \$116.54 arrearage for a total of \$699.25 per month, depending on whether health insurance is provided. Because the difference in the amount of support ordered was greater than ten percent as compared to the new calculations, the magistrate concluded there was a substantial change in circumstances warranting modification of the previous support order.

{¶6} Melton filed objections to the magistrate's decision, arguing the magistrate erred by finding that his income was \$19,440 per year, and by using information from the previous child support worksheet to determine Johnson's income and expenses. Johnson did not file a response to Melton's objections. The juvenile court overruled Melton's objections to the magistrate's decision and adopted the decision and order as the findings and order of the juvenile court.² Melton filed a timely appeal raising a single assignment of error.

{¶7} "THE TRIAL COURT ERRED TO THE PREJUDICE OF 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."

{¶8} Before addressing Melton's assignment of error, we must address the fact

2. The juvenile court's entry states, "[t]he Objection filed on 7-31-09 to the Magistrate's Decision and Order of 7-23-09 is hereby overruled and the report is adopted as the findings and orders of this Court." Because the trial court provided no additional analysis, we must rely on the magistrate's decision in addressing Melton's assignment of error.

that no child support worksheet was attached to the child support order.³ *Brown v. Brown*, Madison App. No. CA2008-08-021, 2009-Ohio-2204, ¶87; *DeBrosse v. Debrosse* (Mar. 20, 2000), Butler App. No. CA98-11-230 at 3. "R.C. 3119.01 et seq., requires completion of a child support worksheet before a child support order or modification of a child support order is entered; and the trial court must include this document in the record." *Brown* at ¶87, citing *Marker v. Grimm* (1992), 65 Ohio St.3d 139, 142. "This requirement is mandatory and must be followed literally and technically in all material respects." *Varner v. Varner*, 170 Ohio App.3d 448, 2007-Ohio-675, ¶8, citing *Marker* at 142. Moreover, "[t]he trial court [must] follow this requirement in order to ensure that its order is subject to meaningful appellate review." *Id.* "Therefore, the trial court's failure to attach the child support worksheet to the child support order constitutes sufficient grounds for reversal and remand of this matter." *Brown* at ¶87, citing *Marker* at 143-144.

{¶9} Judgment reversed and remanded with instructions to complete and/or attach a child support worksheet to the modified child support order. The assignment of error is overruled, as without the child support worksheet this court cannot discern the basis, if any, for the ordered modification of child support.

YOUNG, P.J., and HENDRICKSON, J., concur.

3. Based upon a careful reading of the record, we believe that a worksheet may have been completed by the magistrate. However, there is no copy of the worksheet within the record. More importantly, there is no worksheet attached to either the magistrate's decision or the trial court's order adopting the magistrate's decision.