

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STACY MONTAGUE	:	JUDGES:
	:	Hon: W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon: John W. Wise, J.
	:	Hon: John F. Boggins, J.
-vs-	:	
	:	Case No. 2002CA00244
MICHAEL SIMMS	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Stark County Court of Common Pleas, Case No. J 85849

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: April 21, 2003

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Gwin, P.J.

{¶1} Appellant Michael Simms appeals a judgment of the Stark County Common Pleas Court, Family Court Division, ordering him to pay child support to

appellee Stacy Montague for the parties' minor child Mallorie in the amount of \$304.26 per month:

{¶2} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FAILING TO ENFORCE THE SETTLEMENT AGREEMENT.

{¶3} "THE TRIAL COURT ERRONEOUSLY APPLIED THE STATUTE OF FRAUDS.

{¶4} "THE TRIAL COURT ERRED IN APPLYING THE DOCTRINE OF MUTUAL MISTAKE.

{¶5} "THE LOWER COURT ERRED IN FAILING TO RULE ON THE APPELLANT'S REQUEST FOR ATTORNEYS FEES."

{¶6} On October 31, 2002, appellant filed a motion to reallocate parental rights and responsibilities concerning the parties' minor child. The parties negotiated, and agreed to equally split the parenting time with the child. While the parties had initially agreed to child support in the amount of \$105 per month, prior to the agreement being reduced to writing or being presented to the court for consideration, appellee withdrew her consent to the terms of the agreement, and on November 21, 2001, she filed a motion for clarification of the child support computation. On December 7, 2001, appellant filed a motion to enforce the terms of the child support agreement.

{¶7} The case proceeded to a hearing before a magistrate. Following the hearing, the magistrate found that the parties had agreed to a sum of \$105 per month, based on a computer software program which generated the guideline worksheet amount. The magistrate found that under this non-statutory approach, appellant's annual child support obligation is reduced by appellee's annual obligation. The

magistrate concluded that the automatic offset approach used by the computer software is contrary to Ohio law.

{¶8} The magistrate proceeded to calculate support pursuant to the statutory guidelines. The guideline amount, as computed by the worksheet, would have required appellant to pay \$465.53 per month. The magistrate then found that based on the parties agreement for a fifty percent deviation, to adjust for the new parenting time schedule, the child support amount would be \$304.26 per month.

{¶9} Following objections to the magistrate's report, the court entered judgment in accordance with the decision of the magistrate.

I, II, & III

{¶10} In his first three assignments of error, appellant argues that the court erred in failing to enforce the child-support agreement, based on principles of general contract law.

{¶11} However, a trial court has an obligation to test any proposal of the parents to see if it meets the child support guidelines, even if the parties agree between themselves to a different amount, or agree that only one party shall assume all support. *DePalmo v. DePalmo* (1997), 78 Ohio St. 3d 535, 539-40. The law favors settlements. *Id.* at 540. However, the difficult issue of child support may result in agreements that are suspect. *Id.* In custody battles, choices are made, and compromises as to child support may be reached for the sake of peace or as a result of unequal bargaining power. *Id.* The compromises may be in the best interest of the parents, but not of the child. *Id.* Thus, the legislature has assigned the court to act as the child's watchdog in the matter of support. *Id.*

{¶12} In the instant case, the court tested the proposal of the parents, and found that it did not comply with the child support guidelines. The court found that the proposal as calculated by the parties was generated by a faulty computer software program. The court then proceeded to enter an amount in accordance with the guidelines, and in accordance with the agreement of the parties concerning shared parenting time. The court did not abuse its discretion in rejecting the agreement of the parties as not being in the best interest of the child, and ordering a support amount in accordance with the guidelines.

{¶13} Appellant's first, second, and third assignments of error are overruled.

IV

{¶14} Appellant argues that the court erred in failing to grant his request for attorney fees, based on his proposition that appellee unreasonably refused to honor the terms of the settlement agreement. As we have rejected appellant's argument that the settlement agreement was enforceable, the fourth assignment of error is overruled.

{¶15} The judgment of the Stark County Common Pleas Court, Family Court Division, is affirmed.

By Gwin, P.J.,

Wise, J., and

Boggins, J., concur

Topic: Child support – agreement between parties