

[Cite as *Sahr v. Sahr*, 2009-Ohio-4055.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LAWRENCE M. SAHR

Petitioner-Appellee

-vs-

CONNIE K. SAHR

Petitioner-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 09 CA 3

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Domestic Relations Division, Case
No. 05 DS 261

JUDGMENT:

Affirmed in Part; Reversed in Part and
Remanded

DATE OF JUDGMENT ENTRY:

August 12, 2009

APPEARANCES:

For Petitioner-Appellee

For Petitioner-Appellant

R. C. STOUGHTON, SR.
121 North High Street
Lancaster, Ohio 43130

Wise, J.

{¶1} Appellant Connie K. Sahr, nka Weltzheimer appeals a post-decree decision of the Fairfield County Court of Common Pleas, Domestic Relations Division. Appellee Lawrence M. Sahr is appellant's former spouse. The relevant facts leading to this appeal are as follows.

{¶2} Appellant and appellee were married in April 1991. Three children were born of the marriage: L.S., born in 1990; R.S., born in 1992, and; T.S., born in 1999.¹

{¶3} On February 3, 2006, the parties' marriage was terminated via a decree of dissolution in Fairfield County. Said decree incorporated a separation agreement and shared parenting plan. Under the shared parenting plan, L.S. was to live with appellee-father, while R.S. and T.S. were to live with appellant-mother. In addition to other companionship parameters, appellee-father was to have all three children with him during the summer when appellant-mother was at work. In addition, child support was to be paid by appellee for R.S. and T.S. in the amount of \$300.00 per month per child.

{¶4} On April 22, 2008, appellee filed a pro se post-decree motion to modify parental rights and responsibilities, seeking designation as residential parent of R.S., asserting that the child had been residing with appellee since January 2008.

{¶5} On May 16, 2008, the magistrate conducted an in-camera interview with R.S., following which the magistrate conducted an informal hearing with appellant and appellee on the record.

{¶6} On May 27, 2008, the magistrate issued a written decision recommending that it would be in the best interest of R.S. to reside with appellee. The magistrate thus

¹ It thus appears to us that L.S. was nearing emancipation when the proceedings leading to the present appeal were occurring.

“modifie[d] the prior order and plan concerning Living Arrangements under Article V, to state that [R.S.] shall live with her father and have the same companionship schedule with her mother as was indicated in the prior order for [L.S.]” Magistrate’s Decision at 2.

{¶17} The magistrate also recommended that appellant pay appellee child support of \$404.56 per month.

{¶18} On June 10, 2008, appellant filed an objection to the decision of the magistrate. Appellee thereafter filed a memorandum contra. On December 11, 2008, the trial court issued a judgment entry approving the decision of the magistrate.

{¶19} On January 9, 2009, appellant filed a notice of appeal. She herein raises the following two Assignments of Error:

{¶10} “I. THE TRIAL COURT ABUSED ITS’ (SIC) DISCRETION AND ERRED AS A MATTER OF LAW IN RULING THAT IT WAS NOT NECESSARY TO FIND A CHANGE OF CIRCUMSTANCES IN ORDER TO MODIFY A SHARED PARENTING PLAN WHEN BOTH PARENTS HAVE NOT AGREED TO A CHANGE IN THE DESIGNATION OF RESIDENTIAL PARENT.

{¶11} “II. THE TRIAL COURT ABUSED ITS’ (SIC) DISCRETION AND ERRED AS A MATTER OF LAW IN RULING THAT THE WORKSHEET USED BY THE MAGISTRATE SUPPORTED HIS DECISION.”

I.

{¶12} In appellant's First Assignment of Error, she contends the trial court erred and abused its discretion in concluding it was not necessary to find a change in circumstances concerning the parties’ shared parenting order. We disagree.

{¶13} In the case sub judice, the magistrate found, with subsequent approval by the trial court, that appellant had “acceded” to R.S. primarily living with appellee. Magistrate’s Decision at 1. The trial court thus concluded that a demonstration of “change of circumstances” under R.C. 3109.04(E)(1)(a) would not be necessary to modify the shared parenting arrangement. Appellant presently insists that “the record does not contain any statement of agreement to change custody.” Appellant’s Brief at 10.

{¶14} Under the invited error doctrine, a party will not be permitted to take advantage of an error which she herself invited or induced. *He v. Zeng*, Licking App.No. 2003CA00056, 2004-Ohio-2434, ¶13, citing *State v. Bey* (1999), 85 Ohio St.3d 487, 493, 709 N.E.2d 484. In addition, the trier of fact is in a far better position to observe the witnesses’ demeanor and weigh their credibility. *Kraft v. Regan*, Stark App.No. 2006CA00362, 2007-Ohio-6113, ¶ 20, citing *State v. DeHass* (1967), 10 Ohio St .2d 230, 227 N.E.2d 212.

{¶15} As noted in our recitation of facts, the magistrate, following his in camera interview with R.S., conducted an informal hearing with appellant and appellee, both of whom were proceeding pro se. Our review of the transcript persuades us that appellant voiced no clear opposition at that time to appellee’s motion to modify shared parenting, nor did she request an opportunity to present formal evidence. Indeed, at one point, the magistrate stated: “So, anyway, what I’m suggesting then is that I do an order that would place [R.S.] with Mr. Sahr, that then, yeah, you give me your information – your financial information about what you’re making. Get me a W-2, if you’ve got one, from ’07 here.” Tr. at 15. Appellant at that point merely responded: “Yeah.” Id.

{¶16} Therefore, upon review, we find no error by the trial court in concluding it was not necessary to find a change in circumstances in this matter.

{¶17} Appellant's First Assignment of Error is overruled.

II.

{¶18} In her Second Assignment of Error, appellant argues the trial court erred and abused its discretion in relying on the child support guideline worksheet utilized by the magistrate. We agree.

{¶19} This Court has recognized that at the time a trial court orders child support, a child support guideline computation worksheet must be completed and made a part of the trial court's record. See *Cutlip v. Cutlip*, Richland App.No. 02CA32, 2002-Ohio-5872, ¶ 7, citing *Marker v. Grimm* (1992), 65 Ohio St.3d 139, 139, 601 N.E.2d 496, at paragraph one of the syllabus; R.C. 3119.022. The guideline amount is rebuttably presumed to be the correct amount of child support due, although deviation from the guidelines is addressed in the worksheet. See, e.g., R.C. 3119.03. The split custody worksheet, which the trial court utilized in the case sub judice, is outlined in R.C. 3119.023.²

{¶20} Appellant's present argument is straightforward. She contends the trial court ordered her to pay child support even though the final result on the split custody guideline worksheet clearly makes appellee the obligor. We further note appellee has not filed a brief opposing this appeal. Appellate Rule 18(C) states in pertinent part: "If an

² The use of the split custody worksheet per se is not in dispute herein and will not be addressed sua sponte by this Court, although we note the initial character of the parties' arrangement as "shared parenting" does not appear to have changed. See, e.g., *Ullom v. Ullom*, Columbiana App.No. 2002-CO-46, 2003-Ohio-6728, ¶10 - ¶16 (comparing the two different worksheets).

appellee fails to file his brief within the time provided by this rule, or within the time as extended, the appellee will not be heard at oral argument * * * and in determining the appeal, the court may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action."

{¶21} Accordingly, we find the proper remedy in this matter is to reverse and remand the issue of child support for the trial court to review the contradictory worksheet and judgment entry for clarification or for the issuance of findings of fact to support a deviation.

{¶22} Appellant's Second Assignment of Error is therefore sustained.

{¶23} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, Fairfield County, Ohio, is hereby affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

By: Wise, J.

Hoffman, P. J., and

Edwards, J., concur.

JUDGES

