

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

J.M.F.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
D.E.B.,	:	
	:	
Appellant	:	No. 2107 MDA 2014

Appeal from the Order Entered November 13, 2014
 In the Court of Common Pleas of York County
 Domestic Relations Division No(s): 01660 SA 2014 PACSES No. 654114853

BEFORE: BOWES, WECHT, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED JULY 31, 2015

Pro se Appellant, D.E.B. (“Father”), appeals from the order entered in the York County Court of Common Pleas, which determined the amount of child support he is to pay Appellee, J.M.F. (“Mother”), for their child, A.V.F. (“Child”). Father contends the trial court erred by (1) miscalculating his income, leaving him below the self-support reserve line; (2) not considering all of the evidence when calculating Mother’s income; (3) not considering both parties’ actual financial resources and living expenses; and (4) not confirming the validity or integrity of proof of childcare. We affirm.

The trial court summarized the facts and procedural posture as follows. Father and Mother were in a relationship and parted ways in 2013. On July

* Former Justice specially assigned to the Superior Court.

26, 2014, they had Child. Mother filed a complaint for child support on August 29, 2014.

Both parties appeared at a court-ordered conference on October 2, 2013. At this conference, the court ordered Father to pay \$1,113.46 per month in child support. Father timely filed for *de novo* review on October 20, 2014.

At the *de novo* hearing, at which both parties were represented by counsel, Mother presented receipts indicating childcare cost \$192 per week, and Father agreed to the stated amount. ***Id.*** at 2-3. Father also agreed that he was on pace to make around \$37,000 that year, and Mother was on pace to make \$26,489 that year. ***Id.*** at 4. Additionally, Father stated that he was above the self-support reserve line. ***Id.*** at 5. The court denied Father relief after determining the order was correctly calculated, and that he was not below the self-support reserve. N.T. De Novo Hr'g, 11/13/14 at 6-7.

Father timely appealed and timely filed a court-ordered Pa.R.A.P. 1925(b) statement. On December 22, 2015, the trial court filed a responsive Rule 1925(a) opinion, affirming its previous holding that there was no abuse of discretion, and that child support was properly calculated. The court stated that it used the present earnings of both Mother and Father over the course of the year, and based upon this calculation, determined

that Father was above the self-support reserve. **See** Trial Ct. Op., 12/22/14, at 2; Pa.R.C.P. 1910.16-1, *Explanatory Comment* 2013.

Father raises the following issues for our review:

Is [Mother] entitled to the amount awarded by [Y]ork [C]ounty domestic relations office, in applying the Pennsylvania state law, the trial court abused its discretion and/or misapplied the law by:

A. Not considering all of the evidence, namely to [Mother's] income.

B. Miscalculating [Father's] income and leaving [Father] below the self-support reserve.

C. Not considering the parties' actual financial resources and living expenses, leaving [Father] on the verge of homelessness.

D. Not confirming the integrity or validity of the proof of childcare.

Appellant's Brief at 7.

We summarize Father's arguments for all of his issues. As for the first issue, Father argues that the trial court miscalculated Mother's year to date income by failing to adjust for the reduction in pay from maternity leave, and for leave taken under the Family Medical Leave Act¹ ("FMLA"). **Id.** at 12. Specifically, Father purports that because Mother will not be taking such leave, her year to date income needs to be recalculated to her full income potential. **Id.** Father also argues that quarterly bonuses were included in

¹ 29 U.S.C. §§ 2601-2654.

his income calculation, but were not included in Mother's calculation. **Id.** Father avers that Mother did not have the child tax credit added to her income totals after the trial court failed to grant him a dependency credit. **Id.** at 13.

In relation to his second issue, Father argues that the trial court miscalculated his income, leaving him below the self-support reserve line. **Id.** Father claims that taxes were not excluded from his year to date income and that he has been below the self-support reserve line four times following the trial court's order. **Id.**

In support of his third issue, Father claims that the trial court erred by falling to consider the parties' actual financial resources and living expenses, leaving Father on the verge of homelessness. **Id.** at 14. Specifically, Father argues that he is unable to meet his basic needs because the trial court failed to recognize that he has student loans and must pay rent. **Id.**

Lastly, Father avers that the trial court did not confirm the validity of proof of childcare. Father states that Child was not enrolled in daycare until September 8, 2014, even though he paid for childcare starting on August 28, 2014. **Id.** at 14. Father also claims that no receipts were provided for August, and that he is held solely responsible for childcare in violation of Pa.R.C.P. 1910.16-6(a).² **Id.** at 14-15.

² Rule 1910.16-6 states as follows:

Our standard of review for an order of child support is well-established.

In reviewing an order entered in a support proceeding, an appellate court has a limited scope of review. The trial court possesses wide discretion as to the proper amount of child support and a reviewing court will not interfere with the determination of the court below unless there has been a clear abuse of discretion. ***Commonwealth v. ex rel. Berry v. Berry***, 384 A.2d 1337, 1339 (Pa. Super. 1978). The function of the appellate court is to determine whether there is sufficient evidence to sustain the order of the hearing judge. ***Commonwealth ex rel. O'Hey v. McCurdy***, 184 A.2d 291, 294 (Pa. Super. 1962).

An abuse of discretion is not merely an error of judgment; rather, it occurs when the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable or the result of partiality, bias, or ill will. ***In the Interest of M.S.K.***, 936 A.2d 103, 104 (Pa. Super. 2007).

Kotzbauer v. Kotzbauer, 937 A.2d 487, 489 (Pa. Super. 2007) (some citations omitted). Pennsylvania Rules of Appellate Procedure require that

Additional expenses permitted pursuant to this Rule 1910.16-6 may be allocated between the parties even if the parties' incomes do not justify an order of basic support.

(a) Child care expenses. Reasonable child care expenses paid by either parent, if necessary to maintain employment or appropriate education in pursuit of income, shall be allocated between the parties in proportion to their net incomes and added to his or her basic support obligation. When a parent is receiving a child care subsidy through the Department of Public Welfare, the expenses to be allocated between the parties shall be the amount actually paid by the parent receiving the subsidy.

Pa.R.C.P. 1910.16-6(a) (footnote omitted).

“issues not raised in the lower court are waived and cannot be raised for the first time on appeal.” Pa.R.A.P. 302(a).

As to the merits of Father’s brief, we note he is *pro se*.

Although this Court is willing to liberally construe materials filed by a *pro se* litigant, *pro se* status confers no special benefit upon the appellant. To the contrary, any person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing. ***Commonwealth v. Rivera***, 685 A.2d 1011, 1013 (Pa. Super. 1996).

In re M. Ullman, 995 A.2d 1207, 1211-12 (Pa. Super. 2010) (citation omitted).

In Pennsylvania, child support awards comply with 23 Pa.C.S. § 4322(a)-(b).

(a) **Statewide guideline.**—Child and spousal support shall be awarded pursuant to a Statewide guideline as established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly. The guideline shall be based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support. In determining the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support, the guideline shall place primary emphasis on the net incomes and earning capacities of the parties, with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties’ assets, as warrant special attention. The guideline so developed shall be reviewed at least once every four years.

(b) **Rebuttable presumption.**—There shall be a rebuttable presumption, in any judicial or expedited process, that the amount of the award which would result from the application of such guideline is the correct amount of support to be awarded. A written finding or specific finding on the record that the application of the

guideline would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, provided that the finding is based upon criteria established by the Supreme Court by general rule within one year of the effective date of this act.

23 Pa.C.S. § 4322(a)-(b).

Instantly, we address all four issues together. With respect to Father's first two claims that his and Mother's incomes were miscalculated, Father agreed with the trial court's calculations at the *de novo* hearing. Specifically, Father agreed that Mother was on pace to make \$26,489 this year and that he was on pace to make \$37,000 this year, with a monthly net income of \$2,643. N.T. at 3-5. Father also agreed that he was above the self-support reserve line. N.T. at 5. The trial court used these numbers to determine the amount of child support he was to provide. Ex. 2 to Mother's Brief.³

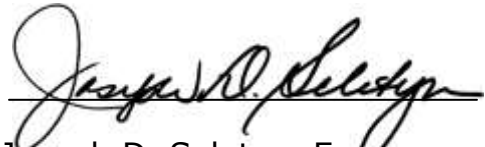
In regards to Father's third issue that the trial court erred by not considering the parties' actual financial resources and living expenses, he failed to present any evidence of this claim to the trial court. **See** Pa.R.A.P. 302(a). Finally, Father's claim that the trial court did not confirm the validity of proof of childcare is inaccurate because Mother presented receipts for childcare at the *de novo* hearing. Appellant's Brief at 14; N.T. at 2. At this

³ We note a "Support Guideline Calculation" was included in Mother's brief. Father did not object to the accuracy or inclusion of Exhibit Two. **See** Pa.R.A.P. 1921 (explaining appellate courts may consider evidence in the reproduced record if its inclusion is not disputed).

hearing, Father agreed to the weekly amount of \$192 presented by Mother.⁴ N.T. at 3. Accordingly, after giving all due deference to Father's brief pursuant to **Ullman**, we discern no abuse of discretion in the trial court's calculation of child support. **See Ullman**, 995 A.2d at 1211-12; **Kotzbauer**, 937 A.2d at 489.

Order affirmed.

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: 7/31/2015

⁴ With respect to Father's claim that childcare costs must be split between both parties, the court is given discretion to allocate expenses. **See** Pa.R.C.P. 1910-6.6. Specifically, the court has discretion to "enter a support order allocating between the parties any or all of the additional expenses addresses in this rule." **See** Pa.R.C.P 1910-6.6, *Explanatory Comment* 2006.