

[Cite as *Payne v. Payne*, 2017-Ohio-8912.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

CRYSTAL L. PAYNE

Plaintiff-Appellee

V.

JAMES E. PAYNE, III

Defendant-Appellant

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Appellate Case No. 27584

Trial Court Case No. 17-DR-149

(Civil Appeal from
Domestic Relations Court)

OPINION

Rendered on the 8th day of December, 2017.

CRYSTAL L. PAYNE, 104 Lexington Farm Road, Englewood, Ohio 45322
Plaintiff-Appellee, Pro Se

JAMES E. PAYNE III, 360 South Limestone Street, Apt. 306, Springfield, Ohio 45505
Defendant-Appellant, Pro Se

FROELICH, J.

{¶ 1} James E. Payne appeals, pro se, from a final judgment and decree of divorce of the Montgomery County Court of Common Pleas, Domestic Relations Division. The decree of divorce named Mr. Payne's wife, Crystal L. Payne, the residential parent and legal custodian of the parties' two minor children and ordered Mr. Payne to pay child support and the balance of the parties' debt on a Wal-Mart credit card. For the following reasons, the judgment of the trial court will be affirmed.

Background and Procedural History

{¶ 2} The parties were married in September 2011. They have two minor children.

{¶ 3} Mrs. Payne filed a complaint for divorce on February 23, 2017. Mr. Payne did not file an answer, but he did file other documents during the course of these proceedings. A non-contested divorce hearing was held on April 26, 2017.

{¶ 4} The trial court issued its Final Decree of Divorce on April 28, 2017. The court named Mrs. Payne the residential and custodial parent. Mr. Payne was ordered to pay child support in the amount of \$204 per month per child if health insurance is provided by a party; if health insurance is not available, Mr. Payne must pay \$260 per month per child plus \$101 per month of cash medical support. No spousal support was awarded, and the court did not retain jurisdiction over spousal support. With respect to debts, pensions, bank accounts, and vehicles, the court ordered that the parties retain what was in their possession or titled in their names, with the exception that Mr. Payne was ordered to pay a Wal-Mart credit card with a balance of \$1,831.72. The parties owned no real property.

{¶ 5} On appeal, Mr. Payne argues that the trial court erred in failing to consider his mental and physical illnesses when determining child support and ordering him to pay the credit card debt. He “seeks modification to obtain joint custody” of the children, lower monthly child support payments, and an equal distribution of the credit card debt.

{¶ 6} We review custody determinations, child support calculations, and property distributions in divorce proceedings for an abuse of discretion. See, e.g., *Hutchinson v. Hutchinson*, 2d Dist. Montgomery No. 26221, 2014-Ohio-4604, ¶ 31 (custody); *Abrams v. Abrams*, 2d Dist. Montgomery No. 27345, 2017-Ohio-4319, ¶ 39 (child support); *Loughman v. Loughman*, 2d Dist. Montgomery No. 25835, 2014-Ohio-2449, ¶ 22 (property division). An abuse of discretion occurs when the trial court’s decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 7} As a preliminary matter, we note that no transcript of the hearing in the trial court has been provided to this court, notwithstanding that a court reporter was present. Under App.R. 9(B), the appellant has the duty to provide relevant transcripts for appellate review. Because no transcript of that hearing has been provided,¹ we do not know what evidence either party presented. Absent a written transcript, we cannot speculate about what evidence was presented at a hearing, and therefore we have no basis from which we can review any alleged legal error by the trial court. Rather, we are constrained to presume the regularity of the trial court’s proceedings and that the evidence before the trial court supported the trial court’s judgment. *Potter v. Johnson*, 2d Dist. Clark No. 2015-CA-101, 2016-Ohio-5652, ¶ 8-9, citing *Smith v. Duran*, 2d Dist. Montgomery No.

¹ There is also no statement of the evidence prepared in accordance with App.R. 9(C).

20827, 2005-Ohio-4729, ¶ 14.

{¶ 8} In his brief, Mr. Payne identifies several “mental health illnesses” he has had for several years or dating back to high school. He asserts that, as a result of these conditions, he has been unable to keep steady employment and receives “SS benefits.” He states that Mrs. Payne knew of these conditions when she married him, that the parties agreed to his “terminating employment, due to his illness,” that he took care of the children while Mrs. Payne worked, and that both parents played significant roles in the children’s lives.

{¶ 9} Further, Mr. Payne states in his brief that he receives monthly Social Security benefits of \$903.63 (\$10,843.56 per year) and that the children also receive monthly Social Security income of “\$228.00 monthly.” (It is not clear whether this amount is per child or in total.) His brief implies that Social Security is his only income.

{¶ 10} Because we do not have any official transcript or other record of the evidence presented at the hearing, we cannot speculate as to whether Mr. Payne’s brief accurately and completely reflects the information before the trial court. Mr. Payne does not attempt to describe any additional or contradictory evidence offered by Mrs. Payne. We also note that Mr. Payne’s Affidavit of Financial Disclosure, filed in March 2017 (one month before the divorce was granted), states that his total income is \$20,991 per year, including employment at “ADECCO USA INC.” and that the trial court found that he had income of \$15,600 per year in addition to his Social Security benefits. These factors suggest that Mr. Payne’s brief does not fully discuss the amount or sources of his income. Moreover, the child support worksheet states that Mrs. Payne agreed to a downward deviation in Mr. Payne’s child support payments. Under these circumstances, again, we

must presume the regularity of the trial court's proceedings and that the evidence before the trial court supported the trial court's judgment.

{¶ 11} Mr. Payne's brief also suggests that he wants a "modification" of the custody arrangement. However, without a transcript of the proceedings, we have no basis to conclude that the trial court abused its discretion in awarding custody to Mrs. Payne, with visitation by Mr. Payne. Although the parties are both involved in the children's lives, they do not have "shared parenting" as Mr. Payne contends and as that term is defined in R.C. 3109.04(K).

{¶ 12} Finally, Mr. Payne contends that the trial court erred in ordering him to pay the Wal-Mart credit card debt. He asserts that both parties were responsible for this debt and that Mrs. Payne had "sole control" of the credit card; he states that he testified at the hearing that the outstanding balance on the account was attributable to holiday purchases in December 2015 and 2016, which were presented to the children from both parties. Again, because we cannot review all of the evidence presented with respect to this obligation and/or other financial obligations of the parties, we presume that the trial court did not abuse its discretion.

{¶ 13} The assignment of error is overruled.

{¶ 14} The judgment of the trial court will be affirmed.

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HALL, P.J. and DONOVAN, J., concur.

Copies mailed to:

Crystal L. Payne

James E. Payne III
Hon. Denise L. Cross