

[Cite as *Annenberg v. Annenberg*, 2015-Ohio-2115.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ALAN J. ANNENBERG,	:	APPEAL NO. C-140505
	:	TRIAL NO. DR-1101065
Plaintiff-Appellee,	:	
vs.	:	<i>OPINION.</i>
JENNIFER K. ANNENBERG,	:	
Defendant-Appellant.	:	

Appeal From: Hamilton County Court of Common Pleas, Domestic Relations
Division

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: June 3, 2015

Bruce Hunter, LLC, and Bruce Hunter, for Plaintiff-Appellee,

*Statman, Harris & Eyrich, LLC, Thomas S. Sapinsley and Branson D. Dunlop, for
Defendant-Appellant.*

Please note: this case has been removed from the accelerated calendar.

FISCHER, Judge.

{¶1} Defendant-appellant Jennifer K. Annenberg (“Jennifer”) appeals the judgment of the domestic-relations court terminating the spousal-support obligation of plaintiff-appellee Alan J. Annenberg (“Alan”).

The Separation Agreement and Motion to Terminate Spousal Support

{¶2} The Annenbergs were married in 1996 and had two children. In 2011, they executed a “Marital Settlement and Separation Agreement,” which was incorporated into a decree of dissolution. The agreement provided that Alan was to make monthly spousal-support payments to Jennifer, but that the payments were to cease after March 2016, or in the event of her “cohabitation in a marriage-like relationship with an unrelated male.”

{¶3} On May 8, 2013, Alan filed a motion to terminate his spousal-support obligation, alleging that Jennifer had been cohabiting with an unrelated male since before September 1, 2012. In March 2014, an evidentiary hearing spanning four days was conducted before a magistrate.

{¶4} At the hearing, the evidence established that Jennifer and Michiel Schuitemaker (“Michiel”) had begun dating in June 2011. Alan presented evidence that, by the end of 2011, Jennifer and Michiel were spending time together at Michiel’s rental house located in the Mt. Lookout neighborhood of Cincinnati. There was evidence that the Mt. Lookout home had been furnished to accommodate Jennifer’s two children and Michiel’s three children. At the end of 2011, Jennifer and Michiel sent out family holiday cards with a group photograph of themselves and the five children.

{¶5} Jennifer also maintained a residence at the Blue Ash, Ohio, home that she had previously shared with Alan. After she had separated from Alan, Michiel provided Jennifer with substantial financial support. Through transfers to his accountant and other transactions, Michiel gave Jennifer tens, if not hundreds, of thousands of dollars; he spent more than \$10,000 for Jennifer to take flight lessons; and he took the couple on a number of lavish vacations. There was also evidence that Michiel had paid for a maid to clean the Blue Ash home for an extended period of time.

{¶6} In February 2012, Jennifer expressed the desire to alter her parenting schedule with Alan so that she, Michiel, and the five children could plan activities as a family. Alan agreed to a modification of the schedule to accommodate Jennifer's wishes. Also in 2012, there was email communication between Michiel and Alan concerning the Annenbergs' daughter. Specifically, Michiel informed Alan that the girl had been resistant to sharing the Blue Ash home with Michiel's children.

{¶7} In late 2012, Michiel fell on hard financial times. He lost his job that had paid approximately \$350,000 per year and was also found liable for a large sum of money in a civil lawsuit. In December 2012, he relinquished the Mt. Lookout home because he could no longer afford the rent.

{¶8} After he had terminated the lease on the Mt. Lookout home, Michiel began listing the Blue Ash home as his residence. He changed the address on his bank accounts and insurance, and he listed the Blue Ash home as one of his residences on his bankruptcy petition. Also, in making arrangements with his former spouse for child visitation, he identified the Blue Ash residence as his permanent address.

{¶9} The evidence also indicated that, after Michiel's financial hardships, Jennifer had provided him with substantial financial support. There was evidence that Michiel had lived in the Blue Ash home without paying rent and that Jennifer had paid debts in the amount of approximately \$120,000 on two luxury cars that Michiel had previously purchased.

{¶10} Jennifer testified that she and Michiel were engaged to be married in August 2012, and that they had spent a large amount of their time together after she and Alan had separated. But she asserted that Michiel would typically spend only one or two nights per week with her at the Blue Ash address and that they infrequently spent nights together at the Mt. Lookout house.

{¶11} Jennifer also presented the expert testimony of accountant Rebekah Smith. Smith testified that, throughout the relevant period of time, Jennifer had continued to pay her own expenses. Smith based this conclusion on Jennifer having made a series of payments from bank accounts opened in her name. But on cross-examination, Smith conceded that she could not identify the source of the funds that had been placed in Jennifer's accounts and ultimately disbursed for her expenses.

{¶12} Michiel testified that after he had left the Mt. Lookout residence, he had maintained a residence at his business location. He denied that he and Jennifer had combined their finances or that they had cohabited within the meaning of the separation agreement.

{¶13} The magistrate recommended that the court grant the motion to terminate spousal support effective March 13, 2014. After both parties filed objections, the trial court adopted the magistrate's recommendation in part, but held that the support obligation would terminate retroactively to December 2012.

Manifest Weight and the Definition of “Cohabitation”

{¶14} In three related assignments of error, Jennifer contends that the trial court erred in terminating the support obligation. We address the assignments of error together.

{¶15} The essence of Jennifer’s appeal is that the judgment of the trial court was contrary to the manifest weight of the evidence. In reviewing a claim that a judgment is against the manifest weight of the evidence, we weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 19-20; *Madeira Crossing, Ltd. v. Milgo Madeira Prop., Ltd.*, 1st Dist. Hamilton No. C-130524, 2014-Ohio-4179, ¶ 31.

{¶16} Jennifer first argues that the trial court erred by applying an incorrect definition of “cohabitation.” In finding that Jennifer and Michiel had been cohabiting, the trial court relied primarily on the definition of cohabitation formulated by the Supreme Court of Ohio in a criminal domestic-violence case, *State v. Williams*, 79 Ohio St.3d 459, 683 N.E.2d 1126 (1997). In *Williams*, the court held that the essential elements for cohabitation in a prosecution under R.C. 2919.25 were (1) the sharing of familial or financial responsibilities and (2) consortium. *Id.* at 465.

{¶17} Several appellate districts have applied the *Williams* standard for cohabitation to domestic-relations cases. *See, e.g., Thurston v. Thurston*, 10th Dist. Franklin No. 99-AP-741, 2000 Ohio App. LEXIS 1711 (Apr. 20, 2000); *Tomes v. Tomes*, 12th Dist. Butler No. CA2003-10-264, 2005-Ohio-1619, ¶ 7; *Austin v. Austin*, 170 Ohio App.3d 132, 2007-Ohio-676, 866 N.E.2d 74, ¶ 8 (9th Dist.).

{¶18} But Jennifer argues that the criminal-law definition of cohabitation is inapplicable to cases involving spousal support because that definition requires an insufficient inquiry into the financial relationship among the parties. She contends that the purpose of terminating spousal support on the basis of cohabitation is that the obligee's finances have become intertwined with those of a new spouse or partner, thus rendering continued support by the obligor unnecessary or inequitable.

{¶19} Jennifer maintains that the inquiry in a domestic-relations case should be whether the ex-spouse and paramour have “assume[d] obligations, including support, equivalent to those arising from a ceremonial marriage.” See *Geitz v. Geitz*, 4th Dist. Jackson No. 98 CA 833, 1999 Ohio App. LEXIS 2351 (May 20, 1999). Under this test, “some sort of monetary support exists between the former spouse and the paramour so as to constitute the ‘functional equivalent of marriage.’ ” *Id.*, quoting *Barrett v. Barrett*, 12th Dist. Butler No. CA95-06-110, 1996 Ohio App. LEXIS 2381 (June 10, 1996).

{¶20} Although this court has not explicitly adopted either of these approaches in defining cohabitation, we have addressed the issue. See *Herzog v. Herzog*, 1st Dist. Hamilton Nos. C-960037 and C-960039, 1996 Ohio App. LEXIS 5899 (Dec. 31, 1996). In *Herzog*, we stated that the essential inquiry is “who is supporting whom, and from what sources of income.” *Id.* at *6, citing *Taylor v. Taylor*, 11 Ohio App.3d 279, 465 N.E.2d 476 (1st Dist.1983).

{¶21} We hold that, under any of these definitions of cohabitation, the trial court's judgment in the case at bar was consistent with the evidence. Alan presented ample evidence that by the end of 2012, Jennifer and Michiel had established one household, even if their arrangement had previously involved multiple residences. There was evidence that the couple eventually resided in the Blue Ash house with

their respective children from prior marriages and that they presented themselves to others as a discrete and coherent family. The evidence further established that Jennifer had come to rely on Michiel for basic living expenses as well as numerous luxury items such as flight lessons and travel, and that she, in turn, had provided support to him in the wake of his financial misfortunes.

{¶22} Jennifer cites evidence in the record that she and Michiel had maintained separate finances and that she had continued to be responsible for her own expenses. Her argument rests largely on the testimony of accountant Smith. But, as we have already noted, Smith's opinion did not address the issue of where Jennifer had obtained the funds to pay the expenses.

{¶23} Jennifer also points to Michiel's testimony that he had moved to his business address after he had lost his job. But that testimony was contradicted by other overwhelming evidence that Michiel had begun to reside full-time with Jennifer in Blue Ash by the end of 2012.

{¶24} In any event, we cannot say that the trial court lost its way in finding that Jennifer and Michiel were cohabiting within the meaning of the separation agreement or that the court created a manifest miscarriage of justice in its holding.

Retroactive Termination of Support

{¶25} Finally, Jennifer argues that, even if the finding of cohabitation was correct, the trial court erred in ordering the termination of spousal support to be retroactive to December 2012. Once again, she argues that the trial court's determination was contrary to the manifest weight of the evidence.

{¶26} This argument is not persuasive. Alan presented evidence that, as early as August 2012, Jennifer and Michiel had begun to combine their finances and to identify their relationship as being the functional equivalent of marriage. Michiel

finally relinquished his individual residence and moved into the Blue Ash home in December 2012, although he still maintained a separate business address. Thus, contrary to Jennifer's assertion, the December 2012 termination date was based on competent evidence, and the trial court did not err in terminating the support order retroactively to that date.

Conclusion

{¶27} We overrule the assignments of error and affirm the judgment of the trial court.

Judgment affirmed.

HENDON, P.J., and STAUTBERG, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.