[Cite as *Scinto v. Scinto,* 2010-Ohio-1377.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Silvia Scinto,	:	
Plaintiff-Appellee,	:	No. 09AP-5 (C.P.C. No. 07DR07-2730)
v.	:	(REGULAR CALENDAR)
Mario Scinto,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 31, 2010

Robert G. Kennedy, for appellee.

Vincent DePascale, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations

CONNOR, J.

{¶1} Plaintiff-appellee, Silvia Scinto,[1] filed a complaint in the Franklin County Court of Common Pleas, Division of Domestic Relations, on January 10, 2007, for a divorce from her husband, defendant-appellant, Mario Scinto. The parties were married in the state of New York in 1970. Mr. Scinto filed an answer and a counterclaim and a complaint against third-party defendants, Scinto Family LLC, and Ms. Scinto's brother and two sisters individually, Anthony Scinto, Leonardina Scinto Ricci and Maria Scinto.

[1] Ms. Scinto's maiden name is Scinto also.

{¶2} Ms. Scinto filed a motion for temporary orders. The trial court issued a decision on March 21, 2008 ordering the parties to split equally the rents received from the parties' rental properties and Mr. Scinto was to provide accountings of the rents received and expenses to Ms. Scinto. Ms. Scinto filed a motion to hold Mr. Scinto in contempt for failing to comply with the court's order. Mr. Scinto dismissed third-party defendants, Anthony Scinto, Leonardina Scinto Ricci and Maria Scinto, but the Scinto Family LLC remained a party.

{¶3} A trial was held in August 2008 and the trial court issued a judgment entry decree of divorce on December 5, 2008. Mr. Scinto filed a notice of appeal and raised the following assignments of error:

> I. THE TRIAL COURT ERRED IN FAILING TO SEPARATE MARITAL PROPERTY FROM INDIVIDUAL PROPERTY.
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> II. THE TRIAL COURT ERRED WHEN IT CREDITED DEFENDANT WITH A POST SEPARATION CONDOMINIUM PURCHASED WITH BORROWED MONEY AS AGAINST A SHARE OF PROPERTY THE COURT FOUND TO BE MARITAL PROPERTY.
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> III. THE TRIAL COURT ERRED IN FAILING TO FIND THAT THE STRIP CENTER ON NORTH HIGH STREET AND THE RESIDENCE ON DINSMORE CASTLE ROAD WERE PURCHASED WITH DEFENDANT'S SEPARATE FUNDS FROM HIS ASSETS AND FAMILY IN ITALY.
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> IV. THE TRIAL COURT ERRED IN ORDERING DEFENDANT TO PAY $10,000.00 IN PLAINTIFF'S ATTORNEYS FEES AFTER GIVING PLAINTIFF ALL OF THE LIQUID ASSETS AND WITHOUT A SHOWING THAT SHE HAD ANY NEED WHATEVER FOR THE AWARD.
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> V. THE TRIAL COURT ERRED IN FAILING TO REQUIRE THE PLAINTIFF TO ACCOUNT FOR THE MORE THAN $500,000.00 THAT DISAPPEARED FROM THE ACCOUNTS OF SCHOOL DAYS UNIFORMS AND THE FUNDS FROM THE SALE OF THE BUSINESS.

> VI. THE COURT ERRED IN FINDING THAT THE ASSETS OF [THE] SCINTO FAMILY LLC WERE SEPARATE PROPERTY OF THE PLAINTIFF AND THAT SCINTO FAMILY LLC WAS NOT FUNDED BY EITHER DEFENDANT'S MONEY BROUGHT FROM ITALY OR MARITAL ASSETS TAKEN BY PLAINTIFF AND GIVEN TO HER FAMILY TO FUND [THE] SCINTO FAMILY LLC.
>
> VII. THE JUDGMENT IS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶4} The standard of review in domestic relations cases is whether the trial court abused its discretion. *Booth v. Booth* (1989), 44 Ohio St.3d 142. In order to find that the trial court abused its discretion, we must find more than an error of law or judgment, an abuse of discretion implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Most instances of an abuse of discretion result in decisions that are unreasonable as opposed to arbitrary and capricious. *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157. A decision that is unreasonable is one that has no sound reasoning process to support it.

{¶5} The trial court found that the duration of the marriage was from the wedding date, February 2, 1970, to the date of the final hearing, August 14, 2008. The parties had been residents of Franklin County for more than 90 days preceding the filing of the complaint and the court had jurisdiction. Both parties testified that they had been residing apart since 2006 and that they are incompatible. Those issues are not contested on appeal.

{¶6} Ms. Scinto testified regarding the parties finances over the years. Mr. Scinto does not read English and Ms. Scinto took care of the finances while they were

married, except for investments. When Mr. Scinto emigrated from Italy, he brought $34,000 in cash and they used that money to purchase a house. In 1979, they sold that house and used the proceeds to purchase another house, along with Ms. Scinto's parents. Her parents sold their house and used the proceeds for the down payment and the parties borrowed the money for their portion and her parents cosigned the loan. (Tr. 54-55.) Ms. Scinto's parents' interest in the house passed to her sister, Maria, when they died. The Scintos have since transferred their interest in the house to their emancipated daughter, Anna Maria, and each now retains a one-fourth life estate in the house.

{¶7} In 1979, the parties also purchased commercial property on North High Street. Ms. Scinto testified that, because of the recession, they could not qualify for a commercial loan so they borrowed money from friends, her sister, and sold a house to purchase the property. (Tr. 59.) The property, at that time, was a Sunoco gas station and a car repair shop, where Mr. Scinto repaired cars and resold them at a profit. Ms. Scinto testified they did not use money from Mr. Scinto's family to purchase the North High Street property. In 1995, they transformed the property into a strip mall containing several storefronts and started a business in one of them, School Days Uniforms, a retail school uniform store. They used money from savings, a loan from a friend, Dale Vaughn, sale of a house, and money from her sister. (Tr. 67-68.) No money was used from Mr. Scinto's family to finance the renovation or to repay the loans. (Tr. 71-73.)

{¶8} Currently, according to the county auditor, the two lots on North High Street are worth approximately $450,000 and $140,000. One contains five storefronts and the other contains a foreign car repair shop. (Tr. 65.) In 1999, the parties sold the

School Days Uniforms business for $390,000, but not the property. They used part of the money from the sale to purchase a condominium in West Palm Beach, Florida. At the time of the trial, it was still jointly owned by the parties. Ms. Scinto testified that no money from either family was used to purchase the condominium. (Tr. 75-76.)

{¶9} Plaintiff's exhibit No. 6 were receipts of four wire transfers from Mr. Scinto's brother in Italy, in October 1991, March 1992, and two in May 1991, totaling $175,672.73. Plaintiff's exhibit No. 20 was a letter (and a translation into English) from Mr. Scinto to his brother in Italy that detailed that he had not received any money since his marriage in 1970. There was no other documentary evidence of wire transfers to the parties. However, Mr. Scinto testified that he believed that he received money every month for approximately three years from his family which totaled approximately $4,000 each month. (Tr. 180.) Defendant's exhibit No. N contained a hand written list of transfers, some listed in dollars, some listed in lira, but the total was $682,000 that Mr. Scinto alleged had been sent from Italy. Mr. Scinto alleged that the money was spent on vacations and the properties and that Ms. Scinto spent some of the money without his knowledge because she was in charge of the accounts. Ms. Scinto denied taking any money or giving it to her family. (Tr. 101.)

{¶10} Mr. Scinto also named the Scinto Family LLC and Ms. Scinto's brother and two sisters as third-party defendants in this action, alleging that the money for the LLC had come from his family in Italy. The individual defendants were voluntarily dismissed before trial. Ms. Scinto's brother, Anthony Scinto, and one of her sisters, Leonardina Scinto Ricci, both testified that the purpose of the LLC was to provide funds for their sister Maria for her retirement and that upon her death, any remaining funds were to be

divided among any surviving siblings. Part of the money originated from their father, who had approximately $100,000 upon his death, but none of the money came from the parties. (Tr. 9, 11, 24.)

{¶11} After the School Days Uniforms business was sold, Ms. Scinto began working at Marshall Fields, Kauffmann's, and is now employed by Macy's. Ms. Scinto has an account at Edward Jones that includes money from her employment and IRAs that she transferred into it. She also has a 401(K) account from her employment at Macys. (Tr. 88-89.)

{¶12} Both parties admitted that they had spent approximately $100,000 on their daughter's wedding in October 2006. (Tr. 94, 273.) They also purchased a condominium for their daughter and paid cash for the down payment and used money from a certificate of deposit for the balance. (Tr. 93, 273-74.) Mr. Scinto purchased a condominium for himself in November 2006, which he jointly titled in his name and the daughter's name. He testified that he paid for the condominium with money from his brothers and money from his daughter. However, he testified he purchased Loveland School Bonds on April 13, 2005 and sold them for $100,936.11 on November 9, 2006. (Tr. 272.) He received a check from the bank for $102,900 on November 13, 2006 that he says was the money from his brothers. (Tr. 272.) He purchased the condominium on November 28, 2006 for $152,900. (Plaintiff's exhibit No. 13.) Ms. Scinto testified that her daughter did not own any Loveland School Bonds independently of Mr. Scinto.

{¶13} Both parties testified that Mr. Scinto did the investing for the parties and they had lost money. (Tr. 82-84, 200.) Mr. Scinto thought he was missing money from his investments at Baird & Company and closed the account and transferred the money

to Fifth Third Investments. He also thought money was missing from those investments. (Tr. 82-85.)

{¶14} By the first assignment of error, Mr. Scinto contends that the trial court erred in failing to separate marital property from separate property. R.C. 3105.171(B) provides that a trial court must determine what property constitutes marital property and what constitutes separate property. Mr. Scinto argues that the North High Street property, including the strip center and the foreign car repair shop, and the Dinsmore Castle house were purchased with money from Italy, and his current condominium was purchased with money from his daughter and his brother, thus, those items should have been designated by the trial court as separate property. Mr. Scinto does not dispute that the condominium in Florida and the School Days Uniforms business were marital property.

{¶15} Generally, "marital property" includes all real and personal property or an interest in such property owned by either or both spouses, including retirement benefits, that were "acquired by either or both of the spouses during the marriage." R.C. 3105.171(A)(3)(a)(i) and (ii). Marital property also includes all income and appreciation on separate property that occurred during the marriage due to labor, monetary, or in-kind contribution by either or both spouses. R.C. 3105.171(A)(3)(a)(iii).

{¶16} "Separate property" is excluded from the definition of marital property. R.C. 3105.171(A)(3)(b). Separate property is defined as "all real and personal property and any interest in real or personal property that is found by the court to be" an inheritance, acquired prior to the marriage or passive income or appreciation acquired from separate property during the marriage. R.C. 3105.171(A)(3)(b)(6)(a). A

presumption exists that any property acquired during the marriage is marital unless there is evidence offered to rebut that presumption. *O'Grady v. O'Grady*, 11th Dist. No. 2003-T-0001, 2004-Ohio-3504. The party seeking to have a particular asset or assets classified as separate property has the burden of proof, by a preponderance of the evidence, to trace the asset or assets to separate property. *Peck v. Peck* (1994), 96 Ohio App.3d 731.

{¶17} Mr. Scinto's argument relies upon the fact that the parties could not have acquired the properties they did over the years without the money he claimed was sent by his family. However, he provided no evidence that the parties received more than the $175,672.73 as evidenced by plaintiff's exhibit No. 6, which was the receipts of the four wire transfers totaling $175,672.73, and further bolstered by the letter from Mr. Scinto to his brother in plaintiff's exhibit No. 20 that detailed he had received no money from his family since his wedding. Mr. Scinto did not provide any bank statements or records or any affidavits from family members, only his testimony that the amount was more than the documentary evidence demonstrated. Given that the burden of proof is on Mr. Scinto to demonstrate that the property is separate and the documentary evidence provided matched Ms. Scinto's testimony, we find the trial court did not abuse its discretion in its determination of marital and separate property. Mr. Scinto's first assignment of error is overruled.

{¶18} By his second assignment of error, Mr. Scinto contends that the trial court erred when it credited Mr. Scinto with a post-separation condominium purchased with borrowed money as against a share of the property the court found to be marital property. Mr. Scinto purchased his current condominium in November 2006, which he

jointly titled in his name and the daughter's name. He testified that he paid for the condominium with money from his brothers and money from his daughter from the Loveland School Bonds.

{¶19} Mr. Scinto argues that the evidence demonstrates that the bonds were titled in his daughter's name. (Defendant's exhibit No. O, page R.) However, he testified he purchased Loveland School Bonds on April 13, 2005 and sold them for $100,936.11 on November 9, 2006. (Tr. 272.) He received a check from the bank for $102,900 on November 13, 2006 that he says was the money from his brothers. (Tr. 272.) He purchased the condominium on November 28, 2006 for $152,900. (Plaintiff's exhibit No. 13.) Both parties testified and the evidence demonstrates that the parties titled most of their property in their daughter's name for estate planning purposes. Ms. Scinto testified that her daughter did not own any Loveland School Bonds independently of Mr. Scinto.

{¶20} It was not an abuse of discretion for the trial court to find that the money for the condominium did not come from Mr. Scinto's brother but from the sale of the Loveland School Bonds, which were purchased with marital funds and were a marital asset. Mr. Scinto admitted he purchased the bonds with marital funds. Mr. Scinto's second assignment of error is overruled.

{¶21} By the third assignment of error, Mr. Scinto contends that the trial court erred in failing to find that the strip center on North High Street and the residence on Dinsmore Castle Road were purchased with his separate funds from his assets and family in Italy. Mr. Scinto makes the same argument here, as in the first assignment of error that the parties could not have purchased the properties with the profit from a gas

station and a car lot and therefore, the money must have come from Italy. However, as addressed in the first assignment of error, Mr. Scinto has the burden of proof to demonstrate that the separate property exists and remained separate and he failed to do so. His third assignment of error is overruled.

{¶22} By his fourth assignment of error, Mr. Scinto contends that the trial court erred in ordering him to pay $10,000 in Ms. Scinto's attorney fees after giving plaintiff all of the liquid assets and without a showing that she had any need whatever for the award. R.C. 3105.73(A) governs the award of attorney fees and litigation expenses in domestic relation cases and provides that:

> [A] court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate.

A trial court's award of attorney fees in a divorce action is within the sound discretion of the trial court. *Howell v. Howell*, 167 Ohio App.3d 431, 2006-Ohio-3038. The court may decide on a case-by-case basis whether an award of attorney fees would be equitable. *Ockunzzi v. Ockunzzi*, 8th Dist. No. 86785, 2006-Ohio-5741, ¶70.

{¶23} Ms. Scinto has investment and retirement accounts at Edward Jones and the May Company including $57,252.95 and $38,609.20, respectively. (Plaintiff's exhibit Nos. 11-12; Defendant's exhibit No. L.) That these accounts are marital assets, no one disputes. Mr. Scinto argues that since Ms. Scinto gained control of over $600,000 by shredding documents that would demonstrate how the money from Italy disappeared, she should not have been awarded attorney fees. However, Mr. Scinto misstates the

evidence in this case. There was no evidence presented that Ms. Scinto shredded documents or in any way prevented Mr. Scinto from providing evidence that more money was sent from Italy. It was his burden to do so. He now expects the trial court and this court to determine that "common sense" prevails, that it is impossible for the Scintos to have purchased these properties without that money from Italy. Regardless of that argument, it was his burden to provide evidence that the money was sent from Italy to him and he failed to do so. He cannot expect the trial court or this court to rule against the evidence that does exist because he says it does not make sense.

{¶24} Furthermore, the trial court in this case, determined that Mr. Scinto was entitled to $27,850 of the Edward Jones account. However, he failed to comply with the trial court's temporary order and pay Ms. Scinto one-half of the rental proceeds from the North High Street properties in 2006. Thus, the trial court awarded the Edward Jones account to Ms. Scinto to offset the amount Mr. Scinto had failed to pay in rental proceeds in direct violation of the court order. The court also awarded Ms. Scinto her interest in the May Company as her portion of marital property. The trial court also awarded Mr. Scinto 65 percent of the net rental income so his argument that Ms. Scinto received all of the liquid assets is without merit.

{¶25} The trial court considered the relative value of the other assets awarded to the parties, the failure of Mr. Scinto to pay rents due from the North High Street properties in accordance with the prior court order, and the fact that Mr. Scinto provided no information regarding his current value of his bank accounts, although he testified he had recently opened a new account with his daughter and found that the division was equitable, although not equal.

{¶26} As permitted, the trial court considered the assets awarded and the conduct of the parties in this case and found that an award of attorney fees was appropriate. Ms. Scinto had incurred costs of $35,954.85 before the trial and the trial court awarded $10,000. Given the award of assets and the parties conduct, we find no abuse of discretion in this case. Mr. Scinto's fourth assignment of error is overruled.

{¶27} By his fifth assignment of error, Mr. Scinto contends that the trial court erred in failing to require Ms. Scinto to account for the more than $500,000 that disappeared from the accounts of School Days Uniforms and the funds from the sale of the business. Mr. Scinto argues in his brief to this court that Ms. Scinto withdrew $526,907.21 from the School Days Uniforms account and never explained what happened to the money, other than it was transferred to a joint account and no longer existed. However, when Ms. Scinto's testimony is examined more closely, that conclusion is not quite accurate. Ms. Scinto did give explanations for the withdrawals.

{¶28} While Ms. Scinto could not remember what the cash was used for regarding the withdrawal shown in defendant's exhibit No. E, letter K[2], on November 3, 1995, the handwriting was not her handwriting. (Tr. 134-35.) The parties had a bookkeeper at that time, but he was deceased at the time of trial. (Tr. 130, 134.) Ms. Scinto explained that Mr. Scinto would have a teller at the bank write his withdrawal slip but she could not explain this withdrawal because it was not her handwriting and it was so long ago. (Tr. 134-35.)

[2] In his brief, Mr. Scinto has all the exhibits incorrectly identified. This court has attempted to decipher his argument using the correct trial court exhibits.

{¶29} Mr. Scinto asked about exhibit No. G, which is two pages, M and N, two checks for $12,521 each and a third check for $1,565. Ms. Scinto explained that the two $12,521 checks were written by the bookkeeper to show income to the parties or payroll checks, one to each of the parties. (Tr. 141-42.) They were deposited into the parties' joint bank account. (Tr. 141.) The third check was also deposited into that account. (Tr. 141.)

{¶30} Mr. Scinto asked about exhibit No. H, letter O, an AIG Annuity Insurance Company statement provides that $66,871.02 was distributed. Ms. Scinto testified that Mr. Scinto redeemed the annuity to pay for the parties' daughter's wedding in 2006. (Tr. 143.) Both parties testified the wedding cost more than $100,000.

{¶31} The next exhibit at question was defendant's exhibit No. I, letter P, which was a copy of the School Days Uniforms checking account register. Mr. Scinto asked about withdrawals of $50,000 and $100,000. Ms. Scinto did not deny the withdrawals were made, in fact, the $50,000 withdrawal notation indicates that it was deposited into the parties' savings account. (Tr. 144.) The $100,000 withdrawal was not her handwriting. (Tr. 144.) Ms. Scinto testified that when excess money accumulated in the business account, the parties would transfer it to a personal account and then Mr. Scinto would invest it. (Tr. 138.)

{¶32} In his brief to this court, Mr. Scinto references exhibit No. S, which is supposed to be a bank statement reflecting a July 17, 1998 debit of $250,000. Defendant's exhibit No. J, letter S is the School Days Uniforms checking account statement. However, Ms. Scinto testified it was duplicative of exhibit No. D, letter J, a $250,000 check. (Tr. 153-56.) The testimony regarding this transaction was confused

by all the parties and they believed it was a deposit related to the sale of the School Days Uniforms business. (Tr. 132-34.)

{¶33} Mr. Scinto admitted that much of the parties' investments were lost in the stock market and the money was no longer in existence. (Tr. 199.) Plaintiff's exhibit Nos. 9 and 10 were letters from Baird & Company and Fifth Third Investments, in response to Mr. Scinto's allegations that losses in the accounts were due to funds being misappropriated by the investment companies. The parties also used marital funds to purchase the condominium in Florida with money from the sale of the School Days Uniforms business and paid more than $100,000 for their daughter's wedding and purchased her a residence both in 2006. It was not an abuse of discretion for the trial court to believe that Ms. Scinto did not misappropriate marital funds. Such determinations of credibility and the weight to be given to the evidence are for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. "The choice between credible witnesses and their conflicting testimony rests solely with the finder of fact and an appellate court may not substitute its own judgment for that of the finder of fact." *State v. Awan* (1986), 22 Ohio St.3d 120, 123. Mr. Scinto's fifth assignment of error is overruled.

{¶34} By his sixth assignment of error, Mr. Scinto contends that the trial court erred in finding that the assets of the Scinto Family LLC were separate property of Ms. Scinto and that the Scinto Family LLC was not funded by either Mr. Scinto's money brought from Italy or marital assets taken by Ms. Scinto and given to her family to fund the Scinto Family, LLC. The initial deposit to fund the Scinto Family LLC was $290,378, of which $160,931 was in two joint accounts of Maria and her father. The rest was

various amounts from Maria's investments. (Plaintiff's exhibit No. 1.) Ms. Scinto's sister, Leonardina Scinto Ricci, testified that each of the four siblings has a one-fourth interest in that LLC and it was created for the care and benefit of Maria, for healthcare or living expenses. If she dies, the money will be divided among the living siblings. (Tr. 10.) Ms. Ricci estimated that her father had saved approximately $100,000 before he died that was transferred into the LLC. (Tr. 11.) She stated that she and none of her family members has ever taken or accepted money from Ms. Scinto. (Tr. 9.)

{¶35} Similarly, Ms. Scinto's brother, Anthony Scinto, testified that none of the money for the initial deposit was from Mr. or Ms. Scinto. (Tr. 20.) He also stated the LLC was formed to protect Maria. He testified that Maria had lived all her life with her parents and their father had paid her expenses. (Tr. 23.) His parents were frugal and saved money. (Tr. 22.)

{¶36} The trial court found the testimony and evidence concerning the LLC to be credible. Mr. Scinto added the LLC as a third-party beneficiary because he believed Ms. Scinto had taken marital funds and deposited them into the LLC account. However, he offered no evidence in support of this allegation, other than the belief that Michele Scinto, their father, could not have saved this much money during his lifetime and Maria could not have accumulated that much money either. Thus, without any credible evidence to support his theory, the trial court found the funds were not marital property.

{¶37} As stated above, separate property is defined as "all real and personal property and any interest in real or personal property that is found by the court to be" an inheritance, acquired prior to the marriage or passive income or appreciation acquired from separate property during the marriage. R.C. 3105.171(A)(3)(b)(6)(a). A

presumption exists that any property acquired during the marriage is marital unless there is evidence offered to rebut that presumption, and the party seeking to have a particular asset or assets classified as separate property has the burden of proof, by a preponderance of the evidence, to trace the asset or assets to separate property.

{¶38} Ms. Scinto established by plaintiff's exhibit No. 1, and the testimony of her brother and sister that the source of the funds was separate property and remained separate property throughout the marriage. The origin of the property was separate property and it was not commingled with marital property. Ms. Scinto met her burden of proof that the property was separate and the trial court did not abuse its discretion in finding that the property was separate. Mr. Scinto's sixth assignment of error is overruled.

{¶39} By his seventh assignment of error, Mr. Scinto contends that the judgment is contrary to the manifest weight of the evidence. Judgments which are supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, syllabus. Mr. Scinto argues that there is no reasonable basis for the disproportionate distribution of property and no mathematical basis for finding that the North High Street property and the marital home could have been purchased with marital funds since such funds did not exist, but, rather, the properties must have been purchased with funds from his family in Italy. By Mr. Scinto's math, he argues that there was $609,000 for which there was no accounting and Ms. Scinto converted those funds for her use and her family.

{¶40} Mr. Scinto has continually made this argument, yet has failed to present any evidence supporting the argument. He did not subpoena bank records from the joint accounts or business entities and the trial court found that there was no credible evidence to support his theory. He cannot point to a lack of evidence and conclude that the lack of evidence supports his theory.

{¶41} Mr. Scinto makes some allegations in passing, which he did not make at trial, for example, that Ms. Scinto destroyed records or that Ms. Scinto's brother works for a bank and has access to banking information. However, there is no evidence that Ms. Scinto destroyed evidence. The parties did not have any accounts at the brother's bank so there is no evidence of wrongdoing. (Tr. 49.)

{¶42} Mr. Scinto also alleges that he "has nothing. No stocks, no accounts, no retirement, and minimal social security." Brief, at 29. However, this statement is not accurate. At trial, it was clear that Mr. Scinto had accounts and stocks that he had refused to disclose. He admitted he opened a joint account with his daughter after the filing of the divorce, yet did not reveal the balance in the account. (Tr. 255-67.) His checking account revealed substantially higher monthly deposits than his claimed $400 in social security income, but he claimed he did not know where each deposit originated, even though he personally made the deposits. (Tr. 257, 259-60, 263). The trial court awarded Mr. Scinto a half-interest in the life estate of the North High Street property, which the parties always intended to be retirement income. He receives 65 percent of that net rental income. He has more than "nothing."

{¶43} Mr. Scinto failed to support his argument and theory with any evidence. He argues that the lack of evidence supports his argument and the trial court should

have believed him and found in his favor. However, given that the trial court heard the testimony of Ms. Scinto, her brother, and her sister and had documents supporting her arguments, the judgment was not against the manifest weight of the evidence. Mr. Scinto's seventh assignment of error is overruled.

{¶44} For the foregoing reasons, all seven of Mr. Scinto's assignments of error are overruled and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.