[Cite as *Geygan v. Geygan*, 2012-Ohio-1965.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Vickie Geygan,	:	
Plaintiff-Appellant/ Cross-Appellee,	:	
	:	No. 11AP-626
v.		(C.P.C. No. 09DR-05-1989)
	:	
Mark Geygan,		(REGULAR CALENDAR)
	:	
Defendant-Appellee/ Cross-Appellant.	:	

D E C I S I O N

Rendered on May 3, 2012

Eugene F. Battisti, Jr., for appellant/cross-appellee.

Jason M. Donnell, for appellee/cross-appellant.

Ohio Legal Rights Service and *Kevin J. Truitt*, for John Geygan as amicus curiae.

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

DORRIAN, J.

{¶ 1} Plaintiff-appellant/cross-appellee, Vickie Geygan ("Vickie"), appeals from judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations ("domestic relations court"), granting her petition for divorce from defendant-appellee/cross-appellant, Mark Geygan ("Mark"), and issuing custody, child support, and visitation orders. For the reasons that follow, we reverse in part and affirm in part.

I. Facts and Procedural History

{¶ 2} Vickie and Mark were married on February 12, 1971. Vickie filed a complaint for divorce on May 18, 2009. Vickie and Mark have two children, both of

whom were over the age of 18 at the time the divorce complaint was filed. One of the children, John Geygan ("John"), born May 30, 1973, has had physical and developmental disabilities since birth. Along with other relief, in her complaint for divorce, Vickie sought legal custody and child support for John.

{¶ 3} On August 31, 2009, a magistrate of the domestic relations court issued a temporary order declining to enter custody, visitation, or child support orders. The magistrate concluded that the domestic relations court lacked jurisdiction to enter orders relating to John because he was over the age of 18. Vickie then moved to set aside the magistrate's temporary order with respect to custody and child support. On December 18, 2009, the trial court granted Vickie's motion to set aside portions of the magistrate's order. The court concluded that it possessed jurisdiction to enter custody, visitation, and support orders related to John. The court issued a temporary order providing that Vickie would be John's legal custodian, that Mark would have minimum visitation time with John of ten hours per week, and that Mark would pay child support of $796.79 per month. On June 22, 2011, the trial court entered a final judgment entry granting the parties a divorce and dividing the marital property. The final judgment order incorporated by reference the custody, visitation, and child support provisions of the December 2009 temporary order, with amendments to the support order. The court also ordered an in camera interview with John. After conducting the interview, on August 31, 2011, the trial court issued an order clarifying the visitation schedule ("visitation order"), providing that Mark would have visitation with John three weekend days per month for four hours and one additional weekend day per month for eight hours.

{¶ 4} Vickie appealed from the trial court's orders, assigning three errors for this court's review:

> I. The Trial Court erred when it used evidence from an *in camera* interview with the adult disabled child of the parties to award visitation to the Appellee.
>
> II. The Trial Court erred when it awarded visitation to Appellee when such visitation is against the interests of the Child.
>
> III. The Trial Court erred when it ruled Appellant's contempt motion and other motions filed before trial were moot.

{¶ 5} Mark filed a cross-appeal from the trial court's orders, also assigning three errors for this court's review:

> I. The trial court erred granting jurisdiction to hear custody and child support where the person in question was over the age of majority upon commencement of the proceeding
>
> II. The trial court erred by failing to do a Castle assessment to determine if child support should apply as codified under *R.C. 3119.86*
>
> III. The trial court erred establishing defendant's income at $137,000

{¶ 6} In addition to the briefs filed by Vickie and Mark, John has filed an amicus curiae brief in which he objects to the domestic relations court's exercise of jurisdiction in entering visitation and custody orders.

II. Jurisdiction Issues

{¶ 7} We begin by addressing Mark's first assignment of error, which raises the question of whether the domestic relations court had jurisdiction to enter custody and child support orders relating to John. Jurisdiction is a threshold matter; therefore, we address it first. *See In re M.E.V.*, 10th Dist. No. 08AP-1097, 2009-Ohio-2408, ¶ 5 (referring to jurisdiction as a threshold matter).

{¶ 8} Domestic relations courts have "jurisdiction appropriate to the determination of all domestic relations matters." R.C. 3105.011. R.C. 3109.04(A) provides that, in a divorce proceeding, the domestic relations court "shall allocate the parental rights and responsibilities for the care of the minor children of the marriage." *See also* R.C. 3105.21(A) ("Upon satisfactory proof of the causes in the complaint for divorce * * * the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with section 3109.04 of the Revised Code."). Under R.C. 3109.05(A)(1), "the court may order either or both parents to support or help support their children."

III. Jurisdiction to Order Child Support

{¶ 9} With respect to the domestic relations court's jurisdiction to order child support in this case, the Supreme Court of Ohio has held that "[t]he common-law duty imposed on parents to support their minor children may be found by a court of domestic

relations having jurisdiction of the matter, to continue beyond the age of majority if the children are unable to support themselves because of mental or physical disabilities which existed before attaining the age of majority." *Castle v. Castle*, 15 Ohio St.3d 279 (1984), paragraph one of the syllabus. The child in *Castle* was 13 at the time of her parents' divorce in 1977, and her father was ordered to pay child support. After the child turned 18, the father discontinued child support payments and filed a motion with the court to terminate the child support obligation. *Id.* at 280. The trial court found that the child had the mental age of a five-year-old and would never be able to support herself; however, the court granted the father's motion based on the fact that the child received Social Security income and was over the age of 18. *Id.* The court of appeals reversed the trial court ruling, based on its finding of a common-law duty for continued support of developmentally disabled children beyond the age of majority. *Id.* The Supreme Court affirmed the court of appeals, concluding that "a domestic relations court has jurisdiction to order a noncustodial parent to *continue* to provide support after the age of majority if the child is physically or mentally disabled to the extent of being incapable of maintaining himself or herself." (Emphasis added.) *Id.* at 283.[1]

{¶ 10} In 2000, the General Assembly adopted R.C. 3119.86, which provides in relevant part that "[n]otwithstanding section 3109.01 of the Revised Code * * * [t]he duty of support to a child imposed pursuant to a court child support order shall continue beyond the child's eighteenth birthday" only in certain circumstances, including where "[t]he child is mentally or physically disabled and is incapable of supporting or maintaining himself or herself." R.C. 3119.86(A)(1)(a). R.C. 3109.01 defines what is commonly referred to as the "age of majority," and states that "[a]ll persons of the age of eighteen years or more, who are under no legal disability, * * * are of full age for all

[1] The *Castle* decision also involved a consolidated appeal from the divorce case of Patrick and Gail Mullanney. *Castle v. Castle*, 15 Ohio St.3d 279, 280 (1984). The Mullanneys were divorced in 1968 and a child support order was issued. In 1982, Patrick Mullanney moved to terminate support payments for the couple's daughter who had disabilities. *Id.* The domestic relations court adopted a referee's report recommending that child support be terminated because Ohio law had not recognized a continuing duty to support children with disabilities beyond the age of majority. *Id.* at 281. The appellate court reversed the domestic court's ruling. The Supreme Court affirmed the appellate court's conclusion that the domestic relations court had jurisdiction to order the noncustodial parent to continue to provide support beyond the age of majority if a child is physically or mentally disabled to the extent of being incapable of maintaining himself or herself, but remanded the case to the trial court for a factual determination of whether the Mullanneys' daughter was so disabled. *Id.* at 283.

purposes." R.C. 3119.86(A)(1)(a) has been deemed to effectively codify the *Castle* decision. *Yost v. Yost*, 4th Dist. No. 02CA2852, 2003-Ohio-3754, ¶ 10.

{¶ 11} However, the precedent in *Castle* and statutory language in R.C. 3119.86(A)(1)(a) do not directly apply in this case because John was over the age of 18 at the time of the divorce. This is not a case where the domestic relations court is exercising *continuing* jurisdiction to modify or enforce custody or child support orders entered before John turned 18. Instead, the court exercised jurisdiction over an individual who was 38 years old at the time the final divorce decree was issued.

{¶ 12} This court has previously stated that "a domestic relations court has no authority to order child support for an adult child over whom it has no jurisdiction." *O'Connor v. O'Connor*, 71 Ohio App.3d 541, 544 (10th Dist.1991). In *O'Connor*, the parties had multiple children, including a daughter who was 25 years old at the time of the divorce, and who was "incompetent and unable to provide for her own support and maintenance." *Id.* at 542. Ultimately, the parties reached an agreement on the terms of their divorce, and the agreement was journalized as the decree of the domestic relations court. *Id.* The agreement provided that the father would be responsible for his daughter's support over and above her income and other assets. *Id.* When the mother sought an order finding the father in contempt for failing to pay support and an order setting a specific amount of support, the trial court ordered the father to pay $940 per month in support. *Id.* at 543. On appeal, we noted that "the domestic relations court never had jurisdiction" over the adult child with disabilities. *Id.* at 544. However, we held that the domestic relations court could incorporate the parties' agreement into a decree and enforce it in a subsequent proceeding. *Id.* Because the parties' agreement provided for the father to pay child support, we affirmed the lower court's child support order. *Id.*

{¶ 13} In the present case, the magistrate relied on *O'Connor* in concluding that the domestic relations court lacked jurisdiction to enter custody and child support orders relating to John. The trial court, however, looked to the decisions in *Abbas v. Abbas*, 128 Ohio App.3d 513 (7th Dist.1998), and *Wiczynski v. Wiczynski*, 6th Dist. No. L-05-1128, 2006-Ohio-867, and concluded that it possessed jurisdiction to enter custody, visitation, and child support orders.

{¶ 14} In addition to the decisions of the Seventh District Court of Appeals in *Abbas* and the Sixth District Court of Appeals in *Wiczynski*, the Eleventh District Court of Appeals has also held that a domestic relations court had jurisdiction to enter a child support order related to a 21-year-old with developmental disabilities. See *In re Edgell*, 11th Dist. No. 2009-L-065, 2010-Ohio-6435. However, the reasoning of these decisions does not persuade us that the domestic relations court had jurisdiction in this case. The argument in favor of finding jurisdiction is best presented in *Wiczynski*. In that case, the parties had four children, one of whom had Down Syndrome. *Wiczynski* at ¶ 2. The child with Down Syndrome was 29 years old when the divorce was granted. The domestic relations court granted custody of the adult child with Down Syndrome to the mother and ordered the father to pay child support. *Id*. at ¶ 6. On appeal, the Sixth District concluded that the domestic relations court had jurisdiction to enter custody and child support orders because the adult child had not reached the "age of majority," despite being 29 years old. *Id*. at ¶ 23. As noted previously, R.C. 3109.01 provides that "[a]ll persons of the age of eighteen years or more, who are under no legal disability, * * * are of full age for all purposes." Relying on the definition of "legal disability" set forth in R.C. 2131.02(B) as including "persons of unsound mind," and the definition of "unsound mind" in R.C. 1.02(C) as "includ[ing] all forms of mental retardation," the appellate court concluded that "because of his mental condition (and despite his chronological age), [the child] was properly found by the trial court to be a minor." *Wiczynski* at ¶ 23. Based on its finding that the child with Down Syndrome was legally a minor, the appellate court concluded that the domestic relations court had jurisdiction over him pursuant to R.C. 3109.04. *Id*.

{¶ 15} As the courts in *Wiczynski* and *Edgell* noted, the term "legal disability" is not defined within R.C. Chapter 3109, and these courts looked to the definition contained in R.C. 2131.02 for guidance. However, the definition of "legal disability" set forth in R.C. 2131.02 by its own terms, applies specifically to Chapters 2101 through 2131 of the Revised Code, all of which relate to probate court matters. "There is nothing in the definitions set forth in * * * [R.C.] 2131.o2 to suggest that the legislature intended them to apply to any other matters, including domestic relations or divorce matters." *Kucharski v. Kucharski*, 8th Dist. No. 75049, 1999 WL 1000660. Given this internal limitation, we will not borrow a definition from probate law to expand the jurisdiction of the domestic relations court.

{¶ 16} Moreover, the General Assembly recognized that the domestic court's jurisdiction is normally limited to children under the age of 18 through the language used in R.C. 3119.86. That statute provides in part that the duty to support a child imposed under a child support order extends "beyond the child's *eighteenth birthday*" if the child is disabled and incapable of supporting himself or herself. (Emphasis added.) R.C. 3119.86(A)(1)(a). By referring to an obligation to support a child with disabilities beyond his or her 18th birthday, rather than beyond reaching the age of majority, the General Assembly implicitly recognized that the domestic relations court's jurisdiction would otherwise expire when the child turned 18 years old. Likewise, by including the clause "[n]otwithstanding section R.C. 3109.01 of the Revised Code" in the statute, the General Assembly also appears to have recognized that for purposes of child support a child is normally considered to be "of full age" when he turns 18 and, therefore, beyond the domestic relations court's jurisdiction.

{¶ 17} Finally, in enacting R.C. 3119.86, the General Assembly considered the question of child support for adult children with disabilities. In so doing, legislators chose to incorporate the words "continue" and "beyond." The General Assembly, at the time of enactment or in a subsequent amendment, very easily could have deleted these words and stated simply that child support may be imposed for a child who is over the age of 18 and is mentally or physically disabled and incapable of supporting or maintaining himself or herself. It did not.

{¶ 18} For these reasons, we conclude that the domestic relations court lacked jurisdiction to enter a child support order relating to John because he was 38 years old at the time of the final judgment entry.

IV. Jurisdiction to Order Custody and Visitation

{¶ 19} With respect to the domestic relations court's jurisdiction to enter custody and visitation orders relating to John, we note that child support is an independent matter from custody and visitation. *See Davis v. Davis*, 55 Ohio App.3d 196, 199 (8th Dist.1988) ("Ordinarily, child support and visitation are independent matters."). The Supreme Court's analysis in *Castle* only addressed the issue of parental duty to support a child with disabilities, not a parent's right to custody or visitation with such a child. Thus, even if we believed that the precedent in *Castle* permitted the domestic relations court to

exercise jurisdiction in a divorce case over a child with disabilities who was over 18 years old at the time of the divorce, it would not extend the court's jurisdiction in custody and visitation matters. Likewise, when the General Assembly codified the holding of *Castle* in R.C. 3119.86, it only referred to child support orders. It did not adopt any provisions expanding or extending domestic court jurisdiction with relation to custody or visitation.

{¶ 20} The law expressly provides that, in divorce actions and other proceedings pertaining to the allocation of parental rights and responsibilities for care of a child, the domestic relations court "shall allocate the parental rights and responsibilities for the care of the *minor children* of the marriage." (Emphasis added.) R.C. 3109.04. *See also* R.C. 3105.21(A) ("Upon satisfactory proof of the causes in the complaint for divorce * * * the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with section 3109.04 of the Revised Code."). Similarly, R.C. 3109.04(D)(2) states that, "with respect to any child under eighteen years of age," if the domestic relations court finds that it is in the best interest of the child for neither parent to be designated as custodian, the court may commit the child to a relative or certify its findings to the juvenile court. By logical extension, the domestic relations court lacks jurisdiction to make a similar order for a child over the age of 18.

{¶ 21} Further, we note that the General Assembly has specifically provided for a structure of care and management for individuals with developmental disabilities, including guardianship and a system of protective service under the authority of the Department of Developmental Disabilities. *See* R.C. Chapter 2111 and R.C. 5123.55 to 5123.59. If found necessary, R.C. 2111.02 requires the probate court to appoint a guardian "of the person * * * of a[n] * * * incompetent."[2] Incompetent means any person who is "so mentally impaired as a result of a mental or physical illness or disability, or mental retardation * * * that the person is incapable of taking proper care of the person's self or

[2] Generally, the duties of a guardian of the person include, among others, the duties to: (1) protect and control the person of the ward, and (2) provide suitable maintenance for the ward when necessary. R.C. 2111.13(A)(1) and (2). A guardian may, in some instances, also authorize or approve the provision to the ward of medical, health, or other professional care, counsel, treatment, or services. R.C. 2111.13(C). Furthermore, powers of a guardian shall be exercised in the best interest of the ward who has been found to be incompetent, dependants of the ward, if any, and the members of the household of the ward. R.C. 2111.50(C). The probate court may also appoint a limited guardian with specific limited powers and shall

property." R.C. 2111.01(D).[3] In addition, the General Assembly has charged the Department of Developmental Disabilities with developing a statewide system of protective service. R.C. 5123.56. Protective service "means performance of the duties of a guardian, trustee, or conservator, or acting as a protector, with respect to a person with mental retardation or a developmental disability." R.C. 5123.55.[4]

{¶ 22} We do not find that, in enacting the domestic relation statutes relating to custody, the General Assembly intended to create a parallel structure or system for the care and management of adults with disabilities as it seems to have created in R.C. Chapter 2111 and R.C. 5123.55 to 5123.59.

{¶ 23} For these reasons, we conclude that the domestic relations court lacked jurisdiction to enter custody and visitation orders relating to John because he was 38 years old at the time of the final judgment entry.[5]

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also consider less restrictive alternatives to full guardianship if evidence of the same is introduced at the hearing. R.C. 2111.02(C)(5).

[3] John has not been adjudicated as incompetent by the probate court in a guardianship proceeding. *See* R.C. 2111.02. Under a guardianship proceeding, the court is required to determine incompetency by clear and convincing evidence. R.C. 2111.02(C)(3). A guardianship proceeding also affords the alleged incompetent certain procedural rights that John did not receive in this case, such as the right to counsel and the right to have an independent expert evaluation. R.C. 2111.02(C)(7).

[4] R.C. 5123.55 provides the following definitions for purposes of the protective service system:

> (A) "Guardian" means a guardian of the person, limited guardian, interim guardian, or emergency guardian pursuant to appointment by the probate court under Chapter 2111. of the Revised Code.
>
> (B) "Trustee" means a trustee appointed by and accountable to the probate court, in lieu of a guardian and without a judicial determination of incompetency, with respect to an estate of ten thousand dollars or less.
>
> (C) "Protector" means an agency under contract with the department of developmental disabilities acting with or without court appointment to provide guidance, service, and encouragement in the development of maximum self-reliance to a person with mental retardation or a developmental disability, independent of any determination of incompetency.
>
> (D) "Protective service" means performance of the duties of a guardian, trustee, or conservator, or acting as a protector, with respect to a person with mental retardation or a developmental disability.
>
> (E) "Conservator" means a conservator of the person pursuant to an appointment by a probate court under Chapter 2111. of the Revised Code.

[5] In his amicus brief, John asserts that the custody and visitation orders violate his constitutional rights. However, because we find that the domestic relations court lacked jurisdiction to enter those orders, we

{¶ 24} Based on our conclusion that the domestic relations court lacked jurisdiction to enter child support, custody, and visitation orders relating to John, we sustain Mark's first assignment of error.

{¶ 25} Although we find that the domestic relations court lacked jurisdiction to enter orders relating to John, we do not disturb the portions of the court's judgment granting the parties a divorce, determining the date of termination of the marriage, or addressing spousal support and the division of property.

{¶ 26} To conclude our analysis of this assignment of error, we note that the facts before us present a difficult case.[6] Our role here was to determine whether a *legal* obligation of child support or option for child custody and visitation orders exists when the child with disabilities is over the age of 18 at the time of the divorce. In our view, the current statutes limit the domestic relations court's authority to order child support, custody, or visitation when the child is over age 18 at the time of the divorce. We recognize that, at least with regard to the issue of child support, our decision conflicts with the decisions of our sister courts in *Wiczynski*, *Abbas*, and *Edgell*. Such differing results appear appropriate for consideration by the Supreme Court of Ohio.

{¶ 27} Mark's second and third assignments of error relate to the child support order. Similarly, Vickie's first and second assignments of error relate to the visitation order. Based on our holding that the domestic relations court lacked jurisdiction to issue custody, visitation, and child support orders in this case, these assignments of error are moot.

V. Request for Ruling on Previously Filed Motions

{¶ 28} In Vickie's third assignment of error, she asserts that the trial court erred in dismissing her request for rulings on certain previously filed motions. On August 31, 2011, Vickie filed a request with the trial court to rule on four previously filed motions. The motions at issue were: (1) Vickie's March 30, 2010 motion to show cause for Mark's alleged failure to comply with the trial court order requiring him to pay the mortgage due

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decline to address John's constitutional arguments based on the "well-established rule that courts will not decide constitutional questions unless absolutely necessary to dispose of the cases before them." *Alexander Rand Alzheimer's Ctr. v. Ohio Certificate of Need Review Bd.*, 72 Ohio App.3d 161, 165 (10th Dist.1991).

[6] We also note that we did not have the benefit of considering arguments in opposition to Mark's assertion that the domestic relations court lacked jurisdiction because Vickie did not file a responsive brief to Mark's assignments of error in his cross-appeal.

on the marital residence; (2) Vickie's November 15, 2010 motion to show cause for Mark's alleged failure to comply with the trial court order prohibiting him from withdrawing or liquidating funds from certain financial institutions or selling marital assets and ordering him to pay child support; (3) Vickie's November 15, 2010 motion to compel discovery; and (4) Vickie's June 9, 2011 motion to deem certain requests for admissions as admitted. In the visitation order, the trial court indicated that it would accept Vickie's "request" as a motion to rule on those earlier motions. The trial court noted that a final decision in the case had been filed, subject to the in camera interview with John. The trial court concluded that both of the motions to show cause were moot because the final hearing on the divorce had been "heard and submitted." (Aug. 31, 2011 Entry, 2.) Similarly, the trial court stated that the two motions related to discovery issues "were ruled upon at trial, or waived." (Aug. 31, 2011 Entry, 2.) Based on its conclusion that each of the previously filed motions was moot or had been ruled upon or waived, the trial court dismissed Vickie's request for a ruling on the previously filed motions.

{¶ 29} Motions to compel discovery and motions for contempt are subject to abuse-of-discretion review. *See Coryell v. Bank One Trust Co., N.A.*, 10th Dist. No. 07AP-766, 2008-Ohio-2698, ¶ 47 ("A trial court enjoys broad discretion in the regulation of discovery, and an appellate court will not reverse a trial court's decision to sustain or overrule a motion to compel discovery absent an abuse of discretion."); *Colley v. Colley*, 10th Dist. No. 09AP-333, 2009-Ohio-6776, ¶ 67 ("We may not reverse a trial court's grant or denial of a motion for contempt absent an abuse of discretion."). Accordingly, we review the trial court's ruling on Vickie's request for rulings on her discovery and contempt motions for abuse of discretion. An abuse of discretion occurs when a court's decision is "unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 30} The trial court issued the final judgment order in the case on June 22, 2011. That judgment addressed the division of marital property, custody, and child support, and ordered the termination of the marriage. "Ordinarily, any pending motions the trial court does not expressly rule on when it renders final judgment in a case will be deemed to have been implicitly overruled." *Am. Business Mtge. Servs., Inc. v. Barclay*, 10th Dist. No. 04AP-68, 2004-Ohio-6725, ¶ 8. Each of the four motions upon which Vickie sought a

ruling had been filed prior to the court's entry of final judgment. Thus, to the extent that the final judgment did not expressly address the pending motions, they were implicitly overruled by the entry of final judgment. The trial court effectively recognized this when it dismissed Vickie's request for rulings by noting that the final judgment had been filed. To the extent that the trial court erred by referring to the contempt motions as moot, rather than explaining that they were implicitly overruled by the final judgment order, such error was harmless.

{¶ 31} Accordingly, Vickie's third assignment of error is without merit and is overruled.

VI. Conclusion

{¶ 32} For the foregoing reasons, Mark's first assignment of error is sustained, and his second and third assignments of error are moot. Vickie's first and second assignments of error are moot, and her third assignment of error is overruled. We reverse the portions of the judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, imposing child support, custody, and visitation orders relating to John Geygan, and remand this cause to that court for further proceedings in accordance with law and consistent with this decision.

Judgments affirmed in part, reversed in part, and cause remanded.

SADLER and TYACK, JJ., concur.
