[Cite as *During v. Quoico*, 2012-Ohio-2990.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Matthew During,	:	
Plaintiff-Appellee/ Cross-Appellant,	:	No. 11AP-735
v.	:	(C.P.C. No. 10DR-09-3861)
Catherine Quoico,	:	(REGULAR CALENDAR)
Defendant-Appellant/ Cross-Appellee.	:	

D E C I S I O N

Rendered on June 29, 2012

Isaac, Brant, Ledman & Teetor, LLP, *Frederick M. Isaac* and *Joanne S. Peters*, for plaintiff-appellee.

Eugene R. Butler Co., L.P.A., and *Eugene R. Butler*, for defendant-appellant.

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

KLATT, J.

{¶ 1} Defendant-appellant, Catherine Quoico, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations. Plaintiff-appellee, Matthew During, cross-appeals from the same judgment. For the following reasons, we affirm the judgment in part, reverse in part, and remand with instructions.

{¶ 2} During and Quoico met through an internet matchmaking service in 2007. At that time, During resided in Columbus, Ohio, and Quoico resided in Hawaii. After a long-distance courtship, the parties married on March 30, 2009.

{¶ 3} Although the parties discussed the possibility of Quoico relocating to Columbus, Quoico remained in Hawaii throughout the parties' marriage. During, meanwhile, maintained his residence in Columbus. During visited Quoico in Hawaii frequently, while Quoico traveled to Columbus a handful of times.

{¶ 4} By early 2010, During had begun to suspect that Quoico had married him only for financial security and his assistance in obtaining a green card. In March 2010, During proposed a deal: he would support Quoico's application for a green card if she would sign a waiver of service for the divorce complaint he planned to file. According to During, Quoico agreed. She signed a document stating that she "waive[d] service of summons under Rule 4.2 and Rule 4(D) of the Ohio Rules of Civil Procedure."

{¶ 5} On September 14, 2010, During filed a complaint for divorce in the trial court. The next day, Quoico filed her own complaint for divorce in a Hawaii court.

{¶ 6} Although During had an executed waiver of service, he directed the Franklin County Clerk of Courts to serve Quoico via certified mail. When the clerk notified During that service had failed, he requested service by publication. Service was complete on November 24, 2010, the last date of publication.[1]

{¶ 7} Upon learning that During had initiated divorce proceedings in Ohio, Quoico telephoned the clerk's office to ask for copies of documents related to the case. At the clerk's suggestion, Quoico submitted a written request for the documentation, which the clerk received on November 29, 2010. In the letter, Quoico also stated that she resided in Hawaii, she had filed for divorce in Hawaii, she did not have representation in Ohio, and a hearing in the Ohio case was scheduled for December 20, 2010.

{¶ 8} Quoico did not appear at the December 20, 2010 hearing. During attended the hearing and offered testimony supporting his complaint. Immediately after the hearing, the trial court issued a judgment granting the parties a divorce on the ground that they had lived separate and apart without cohabitation for more than one year. The judgment also stated that the parties did not have any marital assets or debt, and that neither party was entitled to spousal support.

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[1] During did not file or otherwise introduce the waiver of service into the record until the Civ.R. 60(B) hearing.

{¶ 9} On January 19, 2011, Quoico filed a Civ.R. 60(B) motion seeking relief from the December 20, 2010 judgment. The trial court held an evidentiary hearing on the motion. Both During and Quoico testified at that hearing.

{¶ 10} In a July 28, 2011 judgment, the trial court granted in part and denied in part Quoico's motion. First, the trial court concluded that Civ.R. 4.3(A) did not allow the exercise of personal jurisdiction over Quoico, a nonresident of Ohio. The trial court then addressed During's argument that Quoico had voluntarily submitted herself to the trial court's jurisdiction when she sent the letter to the clerk requesting copies of case documents. After analyzing the substance of the letter, the trial court concluded that it did not amount to an appearance before the court, and thus, it did not constitute a waiver of the defense of lack of personal jurisdiction.

{¶ 11} Without personal jurisdiction over Quoico, the trial court could not resolve issues of property division or spousal support. However, the trial court recognized that During's Ohio residency imbued the court with the jurisdiction necessary to grant During a divorce. The trial court thus held that, to the extent that the December 20, 2010 judgment terminated the parties' marriage, it remained a valid judgment. The trial court only vacated the portion of the judgment that addressed marital assets and debt.

{¶ 12} As a final matter, the trial court addressed Quoico's argument that During had committed fraud when he testified at the December 20, 2010 hearing that he and Quoico had lived separately and apart without cohabitation for more than one year. Relying on this alleged fraud, Quoico contended that the trial court should grant her relief from the December 20, 2010 judgment on the basis of Civ.R. 60(B)(3). The trial court rejected this argument for two reasons. First, the trial court held that, legally, During was correct when he represented that the parties had not cohabitated. Second, the trial court held that, even if the parties had cohabitated, Quoico failed to show that During knowingly misrepresented their living arrangements to the court.

{¶ 13} Both Quoico and During appealed the July 28, 2011 judgment. Quoico assigns the following errors:

> [1.] The trial court erred as a matter of law in failing to void the entire decree for lack of proper service.
>
> [2.] The trial court abused its discretion in finding that Appellant failed to set forth facts constituting a ground for

> relief or that Appellant failed to allege a valid defense to the ground of "living separate and apart."

{¶ 14} In his cross-appeal, During assigns the following error:

> The trial court erred in finding that it did not have personal jurisdiction over Appellant Catherine Quoico.

{¶ 15} We will begin our analysis with During's cross-assignment of error, whereby he challenges the trial court's conclusion that it could not exercise personal jurisdiction over Quoico.

{¶ 16} Ordinarily, a judgment rendered by a court that has not acquired personal jurisdiction over the defendant is void. *Malone v. Berry*, 174 Ohio App.3d 122, 2007-Ohio-6501, ¶ 10 (10th Dist.). The authority to vacate a void judgment arises from the inherent power possessed by Ohio courts, not Civ.R. 60(B). *Patton v. Diemer*, 35 Ohio St.3d 68 (1988), paragraph four of the syllabus. When a defendant attempts to vacate a void judgment through a Civ.R. 60(B) motion, courts treat the motion as a common-law motion to vacate the judgment. *Bendure v. Xpert Auto, Inc.*, 10th Dist. No. 11AP-144, 2011-Ohio-6058, ¶ 16. Appellate courts review the grant or denial of a common-law motion to vacate under the abuse-of-discretion standard. *Freedom Mtge. Corp. v. Mullins*, 10th Dist. No. 08AP-761, 2009-Ohio-4482, ¶ 19.

{¶ 17} In the case at bar, Quoico sought relief solely under Civ.R. 60(B). Nevertheless, we construe her motion as a common-law motion to vacate to the extent that Quoico argued that the trial court lacked personal jurisdiction.

{¶ 18} The Due Process Clause of the Fourteenth Amendment limits the jurisdiction of state courts to enter judgments affecting the rights and interests of nonresident defendants. *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano Cty.*, 480 U.S. 102, 108 (1987); *Kulko v. Superior Court of California In and For City & Cty. of San Francisco*, 436 U.S. 84, 91 (1978). For a state court to exercise personal jurisdiction over a nonresident defendant, two due process requirements must be met: (1) there is reasonable notice to the nonresident defendant that an action has commenced, and (2) there is a sufficient connection between the nonresident defendant and the forum state so as to make it fair and reasonable to require defense of the action in

the forum. *Kulko* at 91; *Wainscott v. St. Louis-San Francisco Ry. Co.*, 47 Ohio St.2d 133, 137 (1976).

{¶ 19} Here, During strives to convince this court that Quoico received adequate notice of the commencement of the Ohio divorce action. The trial court's ruling, however, turned not upon the first due process requirement, but on the second, i.e., whether Quoico had "certain minimum contacts with [Ohio] such that the maintenance of the suit d[id] not offend 'traditional notions of fair play and substantial justice.' " *Internatl. Shoe Co. v. State of Washington, Office of Unemp. Comp. & Placement*, 326 U.S. 310, 316 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940). Therefore, we will also focus our analysis on that requirement.

{¶ 20} Ohio has adopted rules governing the circumstances under which Ohio courts may exercise personal jurisdiction over nonresident defendants. As these rules are not coextensive with the limits of federal due process, a court must consider the parameters of both the state rules and federal due process to determine if personal jurisdiction exists. *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 238 (1994), fn. 1. Thus, in Ohio, the existence of personal jurisdiction over a nonresident defendant depends on: (1) whether R.C. 2307.382, Ohio's "long-arm" statute, and Civ.R. 4.3 confer personal jurisdiction, and if so, (2) whether the defendant has sufficient minimum contacts with Ohio to justify the extension of personal jurisdiction. *Id.* at 235; *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St.3d 81, 2010-Ohio-2551, ¶ 28.

{¶ 21} Pursuant to Civ.R. 4.3(A):

> Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state * * *. "Person" includes an individual * * * who * * * has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person's:
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> * * *
>
> (8) Living in the marital relationship within this state not withstanding subsequent departure from this state, as to all obligations arising for spousal support, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state[.]

{¶ 22} The dispositive issue in determining the propriety of personal jurisdiction based on Civ.R. 4.3(A)(8) "is whether the nonresident defendant lived in a marital relationship within the state to an extent sufficient to satisfy the minimum-contacts requirement of constitutional due process." *Fraiberg v. Cuyahoga Cty. Court of Common Pleas, Domestic Relations Div.*, 76 Ohio St.3d 374, 377-78 (1996). In the context of Civ.R. 4.3(A)(8), a nonresident defendant's visits to Ohio, without more, are not enough to establish minimum contacts with Ohio. *Kvinta v. Kvinta*, 10th Dist. No. 02AP-836, 2003-Ohio-2884, ¶ 76-77; *Depaulitte v. Depaulitte*, 138 Ohio App.3d 780, 783 (2d Dist.2000); *Cornelius v. Cornelius*, 2d Dist. No. 99CA1494 (Nov. 5, 1999).

{¶ 23} In the case at bar, Quoico testified that she visited During in Ohio approximately three to five times over the course of the parties' courtship and marriage. During disagreed slightly with Quoico; he testified that she visited him five to seven times during the same time period. The trial court found that these visits did not establish the minimum contacts necessary to satisfy Civ.R. 4.3(A)(8). We agree. We therefore conclude that the trial court could not acquire personal jurisdiction over Quoico.[2]

{¶ 24} Although Civ.R. 4.3(A)(8) did not empower the trial court to exercise personal jurisdiction, our jurisdictional analysis is not complete. A nonresident defendant may waive its right to require a court to possess personal jurisdiction over it. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982); *Preferred Capital, Inc. v. Power Eng. Group, Inc.*, 112 Ohio St.3d 429, 2007-Ohio-257, ¶ 6. During argues that Quoico did so when she signed the waiver of service of summons. We disagree.

{¶ 25} Proper service of process is a prerequisite for personal jurisdiction. *Goering v. Lacher*, 1st Dist. No. C-110106, 2011-Ohio-5464, ¶ 9; *State ex rel. Benjamin v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 06AP-158, 2007-Ohio-2471, ¶ 4. Service of the summons and complaint " 'is the procedure by which a court having venue and jurisdiction of the subject matter of the suit asserts jurisdiction over the person of the party served.' " *Omni Capital Internatl., Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987), quoting *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 444-45 (1946).

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[2] Because Civ.R. 4.3(A)(8) has no counterpart in R.C. 2307.382(A), we need not consider the long-arm statute as part of our analysis.

In the absence of service of process or the waiver of service by the defendant, a court ordinarily may not exercise power over a party the complaint names as a defendant. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999).

{¶ 26} Here, by signing a waiver of service, Quoico excused During from accomplishing the service of process normally necessary before a court may assert personal jurisdiction over a defendant. In other words, Quoico waived the defense of insufficiency of service of process. *See* Civ.R. 12(B)(5). Quoico, however, did not also waive the defense of lack of personal jurisdiction. *See* Civ.R. 12(B)(2). Because Quoico is a nonresident, proper service of process alone does not vest a court with personal jurisdiction over her. Personal jurisdiction exists only if it is conferred by the Ohio long-arm provisions and if it is consistent with federal due process. Thus, the waiver of the defense of insufficiency of service of process did not concomitantly waive a personal jurisdiction defense based on lack of minimum contacts.

{¶ 27} During next argues that Quoico waived her personal jurisdiction defense by appearing before the trial court and not asserting that defense. During claims that Quoico voluntarily appeared when she sent a letter to the clerk that requested copies of the case documents. We reject this second waiver argument.

{¶ 28} A defendant must raise the lack of personal jurisdiction in its first pleading, motion, or appearance. *Evans v. Evans*, 10th Dist. No. 08AP-398, 2008-Ohio-5695, ¶ 11. If a defendant appears and participates in the case without objection, it waives any defense based on lack of personal jurisdiction. *Id.*; *Harris v. Mapp*, 10th Dist. No. 05AP-1347, 2006-Ohio-5515, ¶ 11; *see also* Civ.R. 12(H)(1)(b) ("A defense of lack of jurisdiction over the person * * * is waived * * * if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(A) to be made as a matter of course."); *State ex rel. Skyway Invest. Corp. v. Ashtabula Cty. Court of Common Pleas*, 130 Ohio St.3d 220, 2011-Ohio-5452, ¶ 16, quoting *McBride v. Coble Express, Inc.*, 92 Ohio App.3d 505, 510 (3d Dist.1993) (" '[A]ny objection to assumption of personal jurisdiction is waived by a party's failure to assert a challenge at its first appearance in the case, and such defendant is considered to have consented to the court's jurisdiction.' "); *Beachler v. Beachler*, 12th Dist. No. CA2006-03-007, 2007-Ohio-1220, ¶ 17 ("If the defendant makes an appearance in the action, either in person or through his

or her attorney, without raising the defense of lack of personal jurisdiction, then the defendant is considered to have waived that defense."); *NetJets, Inc. v. Binning*, 10th Dist. No. 04AP-1257, 2005-Ohio-3934, ¶ 6 ("Participation in the case can also waive any defect in personal jurisdiction.").

{¶ 29} Certain preliminary actions before a court do not qualify as the type of appearance during which a defendant must challenge the lack of personal jurisdiction to avoid submission to the court's jurisdiction. *Maryhew v. Yova*, 11 Ohio St.3d 154 (1984), syllabus (holding that requesting and obtaining an order for leave to move or otherwise plead does not submit the defendant to the jurisdiction of the court). Only those appearances and filings that give the plaintiff " 'a reasonable expectation that [the defendant] will defend the suit on the merits or must cause the court to go to some effort that would be wasted if personal jurisdiction is later found lacking' " result in a waiver of a personal jurisdiction defense. *Gerber v. Riordan*, 649 F.3d 514, 519 (6th Cir.2011), quoting *Mobile Anesthesiologists Chicago, LLC v. Anesthesia Assoc. of Houston Metroplex, P.A.*, 623 F.3d 440, 443 (7th Cir.2010).

{¶ 30} In the case at bar, Quoico sent the clerk a letter that merely asked the clerk to mail her copies of case documents. Quoico did not offer any defense to During's complaint or otherwise comment on the merits of During's suit. Thus, the letter could not create a reasonable expectation that Quoico intended to defend the suit on the merits. Moreover, Quoico did not move the trial court to take any action. Thus, the trial court had no cause to exert any effort on Quoico's behalf. Given the limited nature of Quoico's request, we conclude that it did not amount to an appearance that, because it did not contain an objection to personal jurisdiction, waived that defense.

{¶ 31} In sum, we conclude that the trial court did not obtain personal jurisdiction over Quoico. Accordingly, we overrule During's cross-assignment of error.

{¶ 32} By Quoico's first assignment of error, she argues that the trial court erred in not voiding the entire December 20, 2010 judgment once it found that it lacked personal jurisdiction over her. We disagree.

{¶ 33} A state court may grant a divorce to a spouse domiciled in the state even if the other spouse is a nonresident who lacks minimum contacts with the state. As the Supreme Court of Ohio held in *Pasqualone v. Pasqualone*, 63 Ohio St.2d 96, 103 (1980):

> In a divorce action, the desire of one party to break the marital bonds constitutes a sufficient basis for the divorce regardless of the other spouse's desires. It is fair and reasonable to allow a divorce on the basis of one spouse's unilateral acts and[,] as a consequence[,] the presence of one spouse in a state gives that state's courts jurisdiction over the other spouse for the purposes of ordering a divorce.

See also Kvinta, at ¶ 48 ("Only one of the spouses must be domiciled in the state to give a court jurisdiction to terminate the parties' marriage."); *Stanek v. Stanek*, 12th Dist. No. CA94-03-080 (Sept. 26, 1994) ("[W]here one spouse is domiciled in a state, that state's courts have jurisdiction over the other spouse for the purpose of terminating the marriage.").

{¶ 34} In divorce actions where only one spouse is domiciled in the state, substituted service on the nonresident spouse must meet the due process requirement that notice of the action be reasonably calculated to reach the defendant. *Williams v. North Carolina*, 317 U.S. 287, 299 (1942); *Armstrong v. Armstrong*, 162 Ohio St. 406, 410 (1954), *aff'd*, 350 U.S. 568 (1956). Here, During initially served Quoico by certified mail and, when that failed, by publication. Service by publication satisfies the due process requirement of reasonable notice. *Estin v. Estin*, 334 U.S. 541, 544 (1948).

{¶ 35} Quoico erroneously asserts that the trial court found that "no service was ever effected upon [her]." Appellant brief, at 9. Quoico makes this assertion because she misinterprets the trial court's holding that "service upon Ms. Quoico based on Civ.R. 4.3(A)(8) was not proper." Decision and Entry, at 11. Essentially, the trial court held that, because Civ.R. 4.3(A)(8) did not permit service, the service that During accomplished could not vest the court with personal jurisdiction. The trial court did not find anything amiss in the steps that During took to effect service. Rather, the trial court found that "[s]ervice of the Ohio complaint * * * was ultimately completed by publication." Decision and Entry, at 5. That service sufficed as reasonable notice of the divorce action.

{¶ 36} Quoico also argues that During deprived her of due process by not strictly complying with Civ.R. 4.4, the rule setting forth the procedures necessary to accomplish service by publication. Quoico did not assert this argument before the trial court. Generally, a party waives the right to appeal an issue that it could have raised, but did not, in earlier proceedings. *Niskanen v. Giant Eagle, Inc.*, 122 Ohio St.3d 486, 2009-Ohio-

3626, ¶ 34; *Trish's Café & Catering, Inc. v. Ohio Dept. of Health*, 195 Ohio App.3d 612, 2011-Ohio-3304, ¶ 19 (10th Dist.). We conclude that Quoico waived her argument by not raising it in the trial court, and thus, we decline to consider it.

{¶ 37} Under her first assignment of error, Quoico also argues that the trial court erred in only voiding the property settlement portion of the December 20, 2010 judgment, and allowing its ruling on spousal support to stand. Initially, we note that this argument does not correspond with the assignment of error Quoico articulated. Quoico's first assignment of error contends that the trial court erred in not voiding the *entire* December 20, 2010 judgment. In this argument, Quoico alleges error in the trial court's failure to void only a *portion* of the judgment.

{¶ 38} Pursuant to App.R. 12(A)(1)(b), appellate courts must "[d]etermine [an] appeal on its merits on the assignments of error set forth in the briefs under App.R. 16." Thus, generally, appellate courts will rule only on assignments of error, not mere arguments. *Thompson v. Thompson*, 196 Ohio App.3d 764, 2011-Ohio-6286, ¶ 65 (10th Dist.). In the interest of justice, however, we will address Quoico's argument.

{¶ 39} Although a court may grant an ex parte divorce to a spouse domiciled in the state, it must have personal jurisdiction over the nonresident spouse in order to determine issues of spousal support and property division. *Armstrong* at 410; *Collins v. Collins*, 165 Ohio App.3d 71, 2006-Ohio-181, ¶ 11; *Kvinta* at ¶ 48; *Stanek*. Here, the trial court lacked the jurisdiction to distribute marital assets and debts, as well as the jurisdiction to decide whether to award spousal support. We therefore conclude that the trial court erred in not vacating its resolution of both issues. Accordingly, we sustain Quoico's first assignment of error, but only to the extent that Quoico alleges error in the trial court's failure to vacate the portion of the judgment addressing spousal support. In all other respects, we overrule the first assignment of error.

{¶ 40} By Quoico's second assignment of error, she argues that the trial court erred in denying her relief from judgment under either Civ.R. 60(B)(1) or (B)(5). Quoico contends that such relief is appropriate because During inaccurately testified at the divorce hearing that he and Quoico had lived separate and apart without cohabitation for more than one year.

{¶ 41} To prevail on a Civ.R. 60(B) motion, a party must demonstrate that: (1) it has a meritorious claim or defense to present if the court grants it relief; (2) it is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) it filed the motion within a reasonable time and, when relying on a ground for relief set forth in Civ.R. 60(B)(1), (2), or (3), it filed the motion not more than one year after the judgment, order, or proceeding was entered or taken. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus. If the moving party fails to demonstrate any of these three requirements, the trial court should overrule the motion. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20 (1988). A trial court exercises its discretion when ruling on a Civ.R. 60(B) motion, and thus, an appellate court will not disturb such a ruling on appeal absent an abuse of discretion. *Griffey v. Rajan*, 33 Ohio St.3d 75, 77 (1987).

{¶ 42} When presenting her argument to the court below, Quoico maintained that she was entitled to Civ.R. 60(B)(3) relief because During committed fraud when he testified regarding the parties' living arrangements. On appeal, Quoico alters her argument, claiming During offered only mistaken, and not fraudulent, testimony. Based on this alteration, Quoico presents this court with a different basis for granting her relief from judgment than she presented the trial court.

{¶ 43} An appellant cannot change the theory of her case and present new arguments for the first time on appeal. *State ex rel. Gutierrez v. Trumbull Cty. Bd. of Elections*, 65 Ohio St.3d 175, 177 (1992); *see also State ex rel. Quarto Mining Co. v. Foreman*, 79 Ohio St.3d 78, 81 (1997) (stating that a party cannot "sit idly by until he or she loses on one ground only to avail himself or herself of another on appeal"). Here, Quoico argued, and the trial court addressed, whether she established the Civ.R. 60(B)(3) ground for relief based on During's allegedly fraudulent testimony. Quoico now argues a different theory, one which she forfeited by not arguing it in the trial court. We therefore decline to consider the merits of that theory.

{¶ 44} Quoico contends that, if relief is not appropriate under a specific Civ.R. 60(B) ground, she deserves relief under Civ.R. 60(B)(5). However, Civ.R. 60(B)(5) is not a substitute for any of the other provisions of Civ.R. 60(B). *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64 (1983), paragraph one of the syllabus. We therefore find no

abuse of discretion in the trial court's decision to deny Quoico relief under Civ.R. 60(B)(5). Accordingly, we overrule Quoico's second assignment of error.

{¶ 45} For the foregoing reasons, we sustain in part and overrule in part Quoico's first assignment of error, and we overrule Quoico's second assignment of error. As to During's cross-appeal, we overrule his sole assignment of error. We affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, and remand to the trial court with instructions to vacate the portion of its judgment addressing spousal support.

Judgment affirmed in part; reversed in part; cause remanded with instructions.

BRYANT and CONNOR, JJ., concur.