

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Jennifer L. Young, :
Plaintiff-Appellee, :
v. : No. 12AP-854
Stephen A. Young, : (C.P.C. No. 10DR-02-441)
Defendant-Appellant. : (REGULAR CALENDAR)

*NUNC PRO TUNC*¹

D E C I S I O N

Rendered on June 20, 2013

Tamms Law Office, LLC, and Christopher J. Tamms, for appellee.

Mularski, Bonham, Dittmer & Phillips, LLC, and Raymond J. Mularski, for appellant.

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

TYACK, J.

{¶1} Stephen A. Young is appealing from certain aspects of his final decree of divorce. He assigns nine errors for our consideration:

1. The trial court erred and abused its discretion in its order that the Defendant-Appellant retroactively pay child support.
2. The trial court erred and abused its discretion in failing to grant Defendant-Appellant a derivative award for a share of the diamond which was "misplaced" or "lost" due to the Plaintiff-Appellee's financial misconduct.

¹ This Nunc Pro Tunc decision was issued to correct a clerical error contained in the original decision released on June 18, 2013 and is effective as of that date.

3. The trial court erred and abused its discretion in failing to include on the marital balance sheet the value of the survivorship interest in Defendant-Appellant's OPERS pension awarded to Plaintiff-Appellee.

4. The trial court erred and abused its discretion in ordering the Defendant-Appellant to pay pet expenses.

5. The trial court erred and abused its discretion in summarily awarding Plaintiff-Appellee \$1,200 as compensation for landscaping the marital residence, particularly \$915.34 of that amount for unsubstantiated labor time.

6. The trial court erred and abused its discretion in failing to characterize the Defendant-Appellant's payments of the mortgage debt, Home Equity Line of Credit (HELIC), homeowner's association dues, home owners' insurance, home improvements, and joint credit card debt as marital expenses to be divided.

7. The trial court erred and abused its discretion by characterizing Appellant's employee leave times for vacation and personal as marital assets subject to immediate distribution and by its valuation and immediate distribution of Appellant's employee sick leave time and failing to retain jurisdiction regarding future changes thereto.

8. The trial court erred and abused its discretion in awarding to Plaintiff-Appellee certain furnishings as separate property because Plaintiff-Appellee failed to trace the furnishings as non-marital gifts exclusively to her from her parents.

9. The trial court erred and abused its discretion in finding that certain furnishings were personal assets even though the uncontroverted evidence showed that the furnishings were purchased with marital funds.

{¶2} The decree of divorce clearly indicates that the relationship between the parties had become extremely contentious. The parties seemed to disagree vehemently on everything, including which realtor should list the marital residence for sale and who should be able to use one or both of the lawn mowers. At the last minute, the allocation of

parental rights and responsibilities regarding the children was settled, although a guardian ad litem had been necessary earlier.

{¶3} Both parties are employed full-time. Jennifer as a hairdresser and Stephen as an attorney for the Ohio Department of Rehabilitation and Correction ("ODRC"). Jennifer comes from a prosperous family and has benefited from her father's trust assets. The trust bought the house where she lived at the time of the divorce trial. Jennifer allegedly has agreed to pay the trust back the cost of that purchase, which works to her family's benefit for tax purposes. The future will tell if any of the funds are actually repaid or are turned into a series of gifts.

{¶4} The Ohio Revised Code requires that the marital property be divided equally, unless an equal division would be inequitable, in which case the marital property shall be divided equitably. R.C. 3105.171(C)(1). It is well established that the trial court has broad discretion to determine the division of assets and liabilities and courts have repeatedly stressed the importance of leaving discretion to the trial courts. *Cherry v. Cherry*, 66 Ohio St.2d 348, 353 (1981). Nor is the trial court obligated to allocate the debt on an equal basis. *Id.* An abuse of discretion connotes more than an error of judgment; it implies a decision that is arbitrary or capricious, one that is without a reasonable basis or clearly wrong. *Pembaur v. Leis*, 1 Ohio St.3d 89 (1982); *In re Ghali*, 83 Ohio App.3d 460 (10th Dist.1992).

{¶5} The marital residence, until Jennifer moved without advance warning, was large—over 5,000 square feet. The house finally sold for \$530,000. The trial court allocated one half of the net proceeds to each party, after allowing Jennifer to receive \$1,200 to reimburse her for supplies and her personal labor to maintain the house through landscaping. We cannot find this allocation of \$1,200 to Jennifer to be an abuse of discretion. Both parties benefited from her labor and by the labor of one or more of the children of the parties to maintain the house and its environs. Certainly, the cost would have been far greater if the parties had hired a landscaping company to do the work.

{¶6} The fifth assignment of error is overruled.

{¶7} After Jennifer moved out of the marital residence, she used marital assets to buy herself a ring at the cost of \$2,000. At trial, she claimed that she had lost the ring. Whether that claim is true or not is not really the issue. She spent marital money on an

item which benefited only her. Stephen was entitled to one-half of the net marital assets. She reduced the marital assets by \$2,000 through the purchase. Stephen is therefore entitled to one-half of the cost of the ring in the division of property. As noted earlier, marital property is to be divided equally unless an equal division would be inequitable. *See* R.C. 3105.171(C)(1). If the ring miraculously is found, Jennifer gets it. Whether it is found or not, Stephen's award of the net marital assets needs to be increased by \$1,000.

{¶8} The second assignment of error is sustained.

{¶9} The trial court judge noted in the decree of divorce that the parties have spent an inordinate amount of time arguing about the personal property. The parties spent more time arguing than in hiring appraisers to give the trial court accurate values about the worth of the personal property. Stephen assigned no values to his wish list for household goods and furnishings. Jennifer assigned values which the trial court found incredible, particularly \$2,000 for a 16-year-old couch which was purchased for \$1,546 originally. Under the circumstances, we cannot find that the trial court abused its discretion in its award of household goods and furnishings.

{¶10} The eighth and ninth assignments of error are overruled.

{¶11} The trial judge made child support effective as of the first day of the trial of the divorce case, May 3, 2012. The trial judge carefully computed Jennifer's income for purposes of the child support guidelines. The trial judge considered the desires of the two minor daughters of the parties to spend more time with their mother than with their father. The trial judge did not accept Stephen's request that child support be deviated downward or Jennifer's request that support be deviated upward. This order was appropriate.

{¶12} In addition, the trial judge ordered retroactive child support of \$500 per month effective March 23, 2011—14 months prior to the trial. This order was without a solid legal foundation. A court without an oral hearing may grant child support during the pendency of the action for divorce when requested, but the opposing party must have an opportunity to contest the award. Civ.R. 75(N)(1). Neither party pursued a motion for temporary orders through to completion before the final hearing. There was no hearing held and no opportunity for Stephen to present any evidence. An arrearage from the date the divorce trial started to the date the divorce decree was journalized has legal support

because the child support order is not literally a temporary order. However, a ruling that a "temporary order" or order pendente lite should be entered in the decree of divorce and judgment granted for an arrearage based upon that "temporary order" is inconsistent with the applicable rules of civil procedure. This part of the decree was in error.

{¶13} The first assignment of error is sustained in part.

{¶14} The trial court clearly viewed Stephen's threats to turn the family pets over to an animal shelter as unreasonable and almost cruel to the daughters of the parties. The trial court did not choose to reward Stephen for the threat and ordered Stephen to pay one-half of the costs incurred as a result. The trial court's order on this issue was well within its discretion.

{¶15} The fourth assignment of error is overruled.

{¶16} The parties had regularly treated Stephen's accrued leave time as a marital asset and cashed the leave time in on a yearly basis. The trial court made an order which reflected that history, considering the leave accruals as current assets as opposed to future assets. Accrued sick or vacation leave benefits are accumulated over time in exchange for past services rendered with a contractual right to receive those benefits, similar to deferred bonus payments, and qualify as interest in property subject to division as a marital asset under R.C. 3105.171(A)(3)(a)(ii). *Pearson v. Pearson*, 10th Dist. No. 96APF08-1100 (May 20, 1997), citing *Holcomb v. Holcomb*, 44 Ohio St.3d 128, 132 (1989). The trial court noted the practical problems of leaving assets which benefited the opposing party in the possession of an ex-spouse. In light of how contentious this particular divorce had been, and the history of how the parties had treated the accrued leave time, the trial judge acted reasonably.

{¶17} The seventh assignment of error is overruled.

{¶18} The sixth assignment of error contends that certain expenses paid by Stephen should have been considered joint marital debt and assigned one-half to Jennifer. We can find no proof of the "credit card debt" based on the record before us. The payments for the household expenses to maintain ownership of the house while Stephen alone lived there could reasonably be assigned to him. He had the benefit from the expenses being paid and took the income tax deduction which flowed from the

payments on his individual tax return, especially the home equity line of credit interest. We find no error in the trial court's handling of this issue.

{¶19} The sixth assignment of error is overruled.

{¶20} The trial court had no information upon which to base a value for the survivorship interest Jennifer received as a result of the trial court dividing up the value of Stephen's retirement account with the Ohio Public Employees Retirement System as of the date the marriage was deemed to have ended. As a result, we cannot fault the trial court for failing to assign a value. Further, a serious question existed as to when, if ever, Jennifer would receive such a value. The trial court acted within its discretion in its handling of this issue.

{¶21} The third assignment of error is overruled.

{¶22} All nine assignments of error have now been addressed. In summary, we overruled the third, fourth, fifth, sixth, seventh, eighth and ninth assignments of error. We sustain the first assignment of error in part and the second assignment of error in total. We vacate the decree of divorce only with respect to the retroactive child support of \$500 per month and the failure to award \$1,000 for one-half the cost of the ring allegedly lost by Jennifer. We remand the case to the Franklin County Court of Common Pleas, Division of Domestic Relations, to enter judgment on those two issues consistent with our decision set forth above.

Judgment affirmed in part and overruled in part; case remanded with instructions.

KLATT, P.J., and SADLER, J., concur.
