[Cite as *Eddington v. Eddington*, 2015-Ohio-1233.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Donna R. Eddington,	:	
Plaintiff-Appellee,	:	No. 14AP-572 (C.P.C. No. 12DR-3876)
v.	:	(REGULAR CALENDAR)
Neil R. Eddington,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 31, 2015

Collins & Slagle Co., LPA, Philip M. Collins, Ehren W. Slagle and *Kathryn L. Traven*, for appellee.

Robert C. Hetterscheidt, for appellant.

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

BRUNNER, J.

{¶ 1} Defendant-appellant, Neil R. Eddington, appeals from a June 26, 2014 divorce decree from the Franklin County Court of Common Pleas, Division of Domestic Relations that, among other matters, ordered spousal support, determined arrearage, and valued Neil's interest in a company known as Lancaster Road, Ltd. ("LRL").[1] Neil argues that the trial court abused its discretion by "double dipping" when determining the amount of spousal support, by miscalculating arrearage on temporary support, and by failing to reduce the value of his interest in LRL to account for the fact that he lacked full control of the business. We affirm the trial court's decision.

[1] The parties refer to Lancaster Road, Ltd. sometimes as "LRL," sometimes "Lancaster Road, LLC," sometimes "Lancaster Road Trucking," sometimes "Lancaster Road Ltd. Partnership," and in other ways. We assume these are all intended to refer to the same entity and shall refer to it as Lancaster Road, Ltd. (LRL) within this decision.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Donna and Neil Eddington were married on October 20, 2000. No children were born into the marriage. Eventually, their differences led Donna to file for divorce on October 3, 2012. Donna obtained an order three months later, on January 3, 2013, that ordered Neil to pay her $1,500 per month in temporary support.

{¶ 3} As the litigation proceeded, the parties agreed on a number of issues and executed stipulations and also an agreement entitled "Partial Separation Agreement." The Partial Separation Agreement did not resolve all outstanding matters, but it did include terms that the court should appoint (at the joint expense of the parties) W. Dana Lavelle as an independent forensic accounting expert to review the parties' finances. Ultimately, the parties were unable to completely resolve their differences by agreement and went to trial on a limited number of issues. As relevant to this appeal, the trial court was asked to determine the amount of arrearage payments Neil owed on the temporary support order, the amount of spousal support to be paid by Neil going forward, and whether any adjustment to the $115,000.00 agreed valuation for Neil's 50 percent interest in LRL was appropriate. The trial court decided each of the three issues, including ordering Neil to pay Donna $1,800.00 per month in spousal support. The court declined to adjust the valuation of LRL, finding the valuation of $115,000.00 (as set forth in the Partial Separation Agreement) should not be adjusted. Finally, the trial court found Neil to be in arrears on temporary support in the amount of $18,962.42.

{¶ 4} Neil now appeals these findings.

II. ASSIGNMENTS OF ERROR

{¶ 5} Neil asserts three assignments of error for our review:

> [I] THE TRIAL COURT ABUSED ITS DISCRETION, IGNORED THE EVIDENCE AND RULED CONTRARY TO THIS COURT'S PREVIOUS RULINGS WHEN IT ESTABLISHED SPOUSAL SUPPORT AT $1800.00 PER MONTH TO BE PAID BY THE APPELLANT TO THE APPELLEE.
>
> [II] THE TRIAL COURT ABUSED ITS DISCRETION AND IGNORED THE EVIDENCE WHEN IT DETERMINED THAT THE APPELLANT'S ARREARAGE ON THE TEMPORARY ORDERS WAS $18,962.42.

> [III] THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO REDUCE THE VALUE OF LANCASTER ROAD, LLC BY 25% AS RECOMMENDED BY THE APPELLANT'S EXPERT.

III. DISCUSSION

> A domestic relations court enjoys broad discretion in fashioning a division of marital property, and its decision will not be reversed absent an abuse of that discretion. *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 95. The term "abuse of discretion" connotes more than an error of law or judgment; rather, it implies that the court's attitude was unreasonable, arbitrary or capricious. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. A reviewing court may not substitute its judgment for that of the trial court unless, considering the totality of the circumstances, the trial court abused its discretion. *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 131. A court should not review discrete aspects of a property division out of the context of the entire award. *Baker v. Baker* (1992), 83 Ohio App.3d 700, 702. Rather, a court should consider whether the trial court's disposition of marital property as a whole resulted in a property division which was an abuse of discretion. *Id.*

Hamad v. Hamad, 10th Dist. No. 06AP-516, 2007-Ohio-2239, ¶ 54. The trial court has similarly broad discretion in awarding spousal support. *Griffith v. Purcell*, 4th Dist. No. 97 CA 2512 (Jan. 26, 1998), citing *Kunkle v. Kunkle*, 51 Ohio St.3d 64, 67 (1990); *Wolfe v. Wolfe*, 46 Ohio St.2d 399, 414 (1976).

A. First Assignment of Error – Whether the Trial Court "Double Dipped" and, Thereby, Abused its Discretion in Awarding $1,800 Per Month in Spousal Support

{¶ 6} Neil notes that the trial court's finding concerning his income from LRL was consistent with the reports of the court-appointed forensic accounting expert. The expert projected Neil's base salary to be approximately $56,000, factoring into that benefits and his share in company profits, for total projected annual earnings of $99,000 per year. Neil argues that the expert and, therefore, the trial court included profits from LRL in their calculation of his projected annual income and characterized it as "double dipping," presumably because the trial court also counted the value of LRL as an asset for the purpose of making a division of property.

{¶ 7} We have previously held that "[t]rial courts may treat a spouse's future business profits either as a marital asset subject to division, or as a stream of income for spousal support purposes, but not both." *Heller v. Heller*, 10th Dist. No. 07AP-871, 2008-Ohio-3296, ¶ 23. That is to say, when one spouse can expect to earn money from a business in the future, a trial court may either project an average income from that source and use it when computing the spouse's average total income, or the trial court may discount the sum of all projected future earnings to present value and use that present discounted "asset" in calculating the fair division of assets. *Id.* at ¶ 21, 23. However, if a trial court uses the discounted value of future payments in computing a division of assets, it cannot use the expected future payments when calculating income and vice-versa; to do otherwise is to impermissibly "double dip." *Id.*

{¶ 8} There is no question here that the trial court used Neil's expected future payments from companies in which he has an interest (for instance, TNG Trucking, LLC) to calculate his income for purposes of determining the appropriate amount of spousal support. However, in making a division of assets, the trial court did not use the discounted present value of all those future earnings, nor does Neil allege that it did. Neil's counsel at oral argument admitted that *Heller* is inapposite to this case. We find no "double dipping," and therefore, the trial court did not abuse its discretion in this regard.

{¶ 9} Under his first assignment of error, Neil also argues that various significant debts his companies owe should be used to reach the conclusion that he owes no spousal support at all to Donna. However, the court-appointed forensic accountant found that there was next to no real chance that Neil would ever be personally liable for the debts of the companies. While these debts could fairly be used to reduce the value of Neil's share in the companies that were subjects of the expert's calculation, it would not be legitimate to use the debts to alleviate or entirely excuse Neil's obligation to pay support. The trial court apparently accepted this conclusion (as did Neil in a memorandum supporting a motion to strike on May 27, 2014). While Neil may have adjusted that position and there is room for reasonable minds to disagree on it, we do not find that the trial court acted unreasonably, arbitrarily or capriciously in adopting the conclusions of the court's expert as its own. We find no abuse of discretion.

{¶ 10} Also in support of this assignment of error, Neil argued at oral argument that the court inappropriately assigned approximately $25,000 per year in projected future income for the purpose of calculating his spousal support. Neil argues that this was inappropriate because the forensic accountant had concluded that one of his companies, Baltimore Truck & Trailer ("BTT"), had debts significant enough to prevent Neil from drawing any additional income from that business for nine years. Neil argues generally it was error for the trial court to have assumed future additional income to him from his businesses. Neil held ownership interests in three companies, all of which were considered by the forensic accountant in a single projection of his future income. That one of the companies may be unlikely to produce income does not negate all projected future business income. Moreover, the forensic accountant adjusted expected income from BTT to $0 for the purpose of projecting average expected future income. As we review the record, the forensic accountant's estimate appears to have included the concern Neil raised at oral argument. It was not an abuse of discretion for the trial court to have accepted the forensic accountant's estimate of Neil's future expected income in deciding the amount of spousal support in the divorce decree.

{¶ 11} The trial court did not abuse its discretion in ordering Neil to pay $1,800 per month in spousal support. Neil's first assignment of error is overruled.

B. Second Assignment of Error – Whether the Trial Court Abused its Discretion in Calculating the Arrearage Owed by Neil on the Temporary Spousal Support Order

{¶ 12} The trial court computed Neil's unpaid balance of temporary spousal support at $18,962.42. Though it did not detail its calculations explicitly in the decree, we recognize that the trial court found that Neil did not pay 20 months of support at $1,500.00 per month ($30,000.00), did not pay Donna's cell phone bill for 18 months ($4,181.22), for a total unpaid amount of $34,181.22. He did pay (by stipulation) 20 months of Donna's automobile payments and health insurance payments and he was entitled to a credit against that total of $15,218.80, for a resulting temporary support arrearage of $18,962.42.

{¶ 13} Neil contends that he owes an arrearage of $6,307.66. He claims in his brief that there were 19, not 20, unpaid months for a total arrearage of $28,500.00. Neil

further argues he was under no obligation to pay Donna's cell phone bill or health insurance, thereby claiming that the total for temporary support should not be increased by the unpaid cell phone charges[2] ($4,181.22). He argues that there should be a decrease in the calculated arrearage by what he paid for Donna's medical insurance without obligation to do so ($7,823.20). Neil agrees with the trial court that he was not obligated to pay (and thus should get credit for paying) Donna's automobile and automobile insurance payments for a total of $14,369.14 (for 19 rather than 20 months). Neil admits an arrearage of $28,500.00 which, he says, should be reduced by a credit of $22,192.34 for a remaining liability of $6,307.66.

{¶ 14} At oral argument Neil agreed that the arrearage at issue covered 20 and not 19 months. The temporary support order was issued January 3, 2013, but effective October 3, 2012. The decree from which he appeals was issued June 26, 2014. This period of time is actually slightly more than 20 full months and contains 20 billing dates for payments due on the 5th of each month.

{¶ 15} The second central theme of Neil's arguments on arrearages is that the temporary support order commanded Donna to pay and hold Neil harmless from "her individual living expenses as listed on her budget including her student loan and the costs and expenses associated with the use of her motor vehicle." (Emphasis deleted.) Because Donna included cell phone and health insurance in her budget, Neil argues that he was not obligated to pay for either of those bills (and thus, he should get credit for paying for her health insurance and should not be penalized for failing to pay her cell phone bill). In addition to the general instruction that Donna should pay the "individual living expenses as listed on her budget," the temporary support order contained a number of specific instructions that are read as exceptions to the general instructions. (Emphasis deleted.) *See also Spurling v. Spurling*, 2d Dist. No. 17921 (May 5, 2000) (interpreting a separation agreement and noting, "specific language regarding the truck loan trumped the more general language regarding household bills"). Among the specific provisions were:

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[2] Neil suggests that Donna did not really have a cell phone bill, arguing that no actual bills or receipts were presented at the trial level. However, Donna repeatedly listed the phone expense in her budget and the trial court counted it in its computation. There is nothing in the record to indicate that the trial court erred in this respect.

> 5. [Neil] shall maintain all current levels of medical and hospitalization insurance for the benefit of * * * [Donna] and [Neil].
>
> * * *
>
> 9. The debts and other obligations of the parties shall be as follows:
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> * * *
>
> b. [Neil] shall pay and save [Donna] harmless on the following debts and obligations:
>
> * * *
>
> Both parties' AT&T cell phone bills

(Emphasis deleted.)

{¶ 16} The temporary order did order Neil to pay Donna's cell phone bill and medical insurance. He admittedly did not pay her cell phone bill. It was not an abuse of discretion to add this to the total arrearage. He did pay her medical and hospitalization insurance, but this does not set off to reduce his arrearage, since it was specifically itemized as a separate payment.

{¶ 17} The trial court did not abuse its discretion in determining that Neil owed an arrearage of $18,962.42. Neil's second assignment of error is overruled.

C. Third Assignment of Error – Whether the Trial Court Abused its Discretion in Refusing to Discount Neil's Interest in LRL

{¶ 18} At the time of the parties' divorce, Neil owned 50 percent of LRL which, in turn, owned certain real property that accounted for much, if not all, of the company's value. The parties agreed in their Partial Separation Agreement that the value of Neil's interest in LRL was $115,000 and that Donna would receive a cash payment for 50 percent of this from Neil.[3] The parties agreed and stipulated, however, that Neil would be free to argue at trial that this amount should be further discounted. To this end, Neil

[3] The Partial Settlement Agreement reads as if the agreed value is of the entirety of LRL. However, documents prepared by the forensic accountant make clear that the $115,000 figure is actually the equity of the real property owned by LRL multiplied by Neil's ownership percentage.

presented an affidavit from another accountant whom he hired, Jeff Covert. Covert opined that, since Neil would require approval from the other member of LRL in order to sell his interest, a further discount of 20 to 25 percent was appropriate. The court-appointed forensic accountant, Lavelle, issued an additional opinion that such a discount would not be appropriate based on the fact that, as a 50 percent owner, Neil does have control over the company. The trial court did not further discount Neil's ownership interest and ordered payments according to the terms of the Partial Separation Agreement.

> The valuation of property in a domestic relations case is a question of fact. *Covert v. Covert*, 4th Dist. No. 03CA778, 2004-Ohio-3534, ¶ 6. Such issue is subject to review under a manifest weight of the evidence standard. Id. Consequently, the trial court's judgment is not subject to reversal as long as it is supported by some competent, credible evidence. This standard is highly deferential; even "some" evidence is sufficient to sustain the judgment and to prevent a reversal. *Id*.

Kuper v. Halbach, 10th Dist. No. 09AP-899, 2010-Ohio-3020, ¶ 14.

{¶ 19} Neil argues that the trial court abused its discretion in failing to agree with his expert's opinion that, when more than one person owns an item, any valuation of either party's interest therein, considered singly, must be discounted to take into account the unwillingness of a buyer to take on a partner. Donna points out that the trial court's decision is consistent with Lavelle's finding because LRL's operating agreement[4] prohibits any member from selling less than all of the business, in which case Neil would be entitled to his full share. The court-appointed forensic accountant expressly considered whether a discount was appropriate and concluded that it was not. That the court adopted this conclusion is based on "some competent, credible evidence." *Id*. at ¶ 14. Further, the Partial Separation Agreement between the parties set forth an agreed-upon value of the business asset for the purpose of making a division of property, becoming additional "competent, credible evidence" of the value of Neil's interest. *Id*.

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[4] The operating agreement is not in the record. However, both parties refer to it and there does not seem to be any dispute that it contained the provision forbidding sale of just a portion of the business.

{¶ 20} The trial court had before it more than "some competent, credible evidence" on which to rely in drawing its conclusions. It was not an abuse of discretion for the trial court to have used the court-appointed forensic accountant's calculation rather than Neil's expert's calculation when declining to discount the already agreed-upon value of Neil's business assets. Neil's third assignment of error is overruled.

IV. CONCLUSION

{¶ 21} We overrule Neil's three assignments of error and affirm the decision of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

BROWN, P.J., and LUPER SCHUSTER, J., concur.