

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

KELLEY CRONIN,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2011-L-134
STEPHEN J. CRONIN, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Domestic Relations Division, Case No. 10 DR 38.

Judgment: Affirmed.

Kelley Cronin, pro se, 36550 Chester Road, #5802, Avon, OH 44011 (Plaintiff-Appellee).

Murray D. Bilfield and Edward W. Rausch, Bilfield and Associates Co., L.P.A., 6300 Rockside Road, Suite 204, Independence, OH 44131 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Stephen J. Cronin, appeals from the Judgment Entry of Divorce of the Lake County Court of Common Pleas, Domestic Relations Division, granting plaintiff-appellee, Kelley Cronin, and Stephen a divorce, dividing their marital property, granting custody of the children to Kelley, and ordering Stephen to pay child support. The issues before this court are whether a court errs by failing to apply certain business expenses for the purposes of determining a parent's income for child support, whether a written request for spousal support can be waived at a trial by counsel,

whether a trial court is required to incorporate interim orders into a final judgment entry of divorce, and whether marital debts should be divided equally. For the following reasons, we affirm the decision of the court below.

{¶2} Stephen and Kelley were married on June 8, 1996, and had two children, S.C., born on December 7, 1997, and L.C., born on April 14, 2002. On January 26, 2010, Kelley filed a Complaint for Divorce, requesting a divorce from Stephen. Kelley requested custody of the children, child support, and certain marital assets. Also on January 26, Kelley filed a Motion for Temporary Residential Parenting, Temporary Child Support and/or Temporary Spousal Support.

{¶3} On February 19, 2010, Stephen filed an Answer and Counterclaim, in which he requested temporary and permanent spousal support.

{¶4} A Magistrate's Order was filed on May 11, 2010, ordering that Kelley be named temporary residential parent and legal custodian of the children and ordering Stephen to pay \$191.79 per month per child in temporary child support. A second Magistrate's Order was issued on May 13, 2010, noting that "upon agreement of the parties," Stephen shall have parenting time each Sunday for a period from 1:15 p.m. to 6:30 p.m., "until further order of this Court."

{¶5} On September 7, 2010, a trial was held in this matter. The following pertinent testimony was presented.

{¶6} Kelley testified that she believed her child support worksheet, submitted to the court, adequately reflected the parties' incomes. She noted that they had two homes, one located on Ericson Lane in Willoughby, and one located on Summit Drive in Mayfield Heights. She explained that the Summit Drive home belonged to Stephen and

that he owned the home prior to their marriage. She testified that her student loans were paid off from funds obtained through refinancing the Summit Drive home. After the student loans were paid, she made monthly payments to Stephen for the loan. When asked by defendant's counsel, she explained that she never had any Chase or Discover credit cards during the marriage. She testified that she was unaware Stephen had inherited funds from his deceased wife.

{¶7} Stephen testified that his previous wife, Rebecca, passed away in 1992 and he was the beneficiary of her various stocks, bonds, and retirement funds. He presented exhibits related to these funds, which he noted were placed in a Charles Schwab account in 1992 and later transferred into a Morgan Stanley account. He indicated that a National City Bank line of credit was taken out of the Summit Drive home and was used to pay Kelley's school loans, a Chase card, and a Discover card. He also explained that he had an Alliance Bernstein Growth Fund account, which he transferred into the Morgan Stanley account in 2006, and that the funds from the Alliance account were inherited "from Rebecca's funds." He stated that his income was approximately \$18,000 a year. Regarding his 2009 tax return, he explained that his business, Steve's Home Improvement, Inc., had \$13,133 in business expenses that year.

{¶8} On October 26, 2010, a Magistrate's Decision was issued, holding that the parties were entitled to be granted a divorce on the grounds of incompatibility. The findings of fact stated that, by stipulation, the Summit Drive residence was Stephen's separate property, that there was a National City Bank Mortgage on the property with a balance of \$100,000, and that Kelley cosigned for that loan with Stephen. The Ericson

Lane residence, stipulated to be jointly owned, was found to have a Wells Fargo Bank mortgage with a balance of \$171,453.66 and a line of credit with a balance of \$49,995.¹

{¶9} Regarding Stephen's Morgan Stanley account, the magistrate found that it had a value of \$126,065.34 and that this was separate property "inherited from his first wife." The magistrate recommended that Stephen should retain this property as separate property.

{¶10} The magistrate found that Kelley's student loan of approximately \$47,000 was paid off with a home equity loan or refinancing on the Summit Drive home. The magistrate found that Kelly had been paying Stephen payments toward the balance and that she owed him an amount of approximately \$35,000.

{¶11} The magistrate found that it was in the best interest of the children for Kelley to be named residential parent and legal custodian, with Stephen receiving standard visitation. It was also determined that the evidence supported adopting the child support worksheet submitted by Kelley and recommended that Stephen pay \$339.49 per month, per child, in support.

{¶12} Regarding Stephen's request that Kelley reimburse him for a Chase credit card balance in the amount of \$6,452 and a Discover card balance in the amount of \$2,671.50, the magistrate found that the request was "not supported by the evidence because both parties were earning money and contributing toward household expenses during the marriage." Regarding Stephen's request to be reimbursed for additional "marital debt" in the amount of \$11,833.20, the magistrate found that there was

1. In contrast, the written stipulations attached to the Magistrate's Decision state that the amount owed on the mortgage was \$174,000.

“insufficient evidence to support this claim,” and found that each party was responsible to pay debts in his or her own name.

{¶13} On December 27, 2010, Kelley filed Objections to Magistrate’s Decision, asserting that the finding that the Morgan Stanley account was separate property was contrary to law. Stephen also filed Objections to Magistrate’s Decision, asserting, inter alia, that the magistrate erred in absolving Kelley of the debt from certain credit cards and by improperly calculating his child support obligation.

{¶14} On March 31, 2011, the trial court issued a Judgment Entry, ruling on the objections. The court found that \$42,287.46 of the Morgan Stanley account was not separate property and ordered that half be deemed Kelley’s share of the marital asset.

{¶15} Stephen’s objections were not well-taken, with the exception of the trial court’s order for Kelley to pay one-half of the Chase credit card debt, in the amount of \$9,611.37. The matter related to the repayment of student loans was remanded to the magistrate for further evidence to be taken.

{¶16} Upon remand, the magistrate concluded, in a May 13, 2011 Decision, that Kelley should reimburse Stephen for her student loan payment in the amount of \$37,091.13, within two years of the date of judgment.

{¶17} On September 13, 2011, a Judgment Entry of Divorce was filed. The Judgment Entry incorporated the foregoing judgments, ordered the divorce be granted, ordered no spousal support, and designated Kelley as legal custodian of the children. It ordered that Stephen pay \$339.49 in child support per child, per month. It contained several provisions related to the Ericson Lane residence. If Stephen wished to remain in the residence, he was to refinance the Wells Fargo loan, the Cardinal Community line

of credit, and the National City Bank loan, to remove Kelley's responsibility on the loans. If he did not want to remain in the residence, the home was to be sold and the profits divided equally. The Summit Drive residence was found to be Stephen's separate property and he was ordered to refinance the National City Bank loan to remove Kelley's obligation on the loan. \$21,143.73 of the Morgan Stanley account was ordered to be Kelley's marital asset, minus half of the balance of the Chase credit card in the amount of \$9,611.37.

{¶18} Stephen timely appeals and raises the following assignments of error:

{¶19} "[1.] The trial court committed prejudicial error in the child support award in that the child support award is unreasonable, arbitrary, contrary to law and against the manifest weight of the evidence. Further the child support award of \$357.90 with health insurance, or \$390.65 without health insurance, is an abuse of discretion not supported by the evidence.

{¶20} "[2.] The trial court committed prejudicial error when it did not award spousal support to Mr. Cronin, which is contrary to law and an abuse of discretion.

{¶21} "[3.] The trial court committed prejudicial error and abused its discretion when it awarded in its final Judgment Entry of Divorce a portion of the Morgan Stanley account, \$21,143.73, to the wife, which was contrary to and against the manifest weight of the evidence presented at the trial of this matter, which was so found by the Magistrate in his Findings of Fact and Conclusions of Law.

{¶22} "[4.] It was an abuse of discretion contrary to law and against the manifest weight of the evidence that the Wells Fargo loan, the Cardinal Community Credit Union loan, and the National City Bank/PNC joint loan as a mortgage on 1105 Summit Drive,

Mayfield Hts., Ohio, were not determined to be a marital debt and that these debts should have been allocated by each party's respective income or divided equally, 50% each party.

{¶23} “[5.] The trial court committed prejudicial error when it failed to incorporate its interim orders in this case into the final Judgment Decree of Divorce.”

{¶24} In his first assignment of error, Stephen argues that the trial court erred in adopting the magistrate's calculation of his income for the purposes of child support, since a review of his tax returns and deductions shows that he actually earned \$21,228 in 2009, instead of \$35,982.45, as the court found.

{¶25} A trial court's adoption of a magistrate's decision is generally reviewed under an abuse of discretion standard. *Allen v. Allen*, 11th Dist. No. 2009-T-0070, 2010-Ohio- 475, ¶ 24. Further, “a trial court's decision regarding child support obligations falls within the discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion.” (Citation omitted.) *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 686 N.E.2d 1108 (1997).

{¶26} In determining Stephen's income for the purposes of child support, the trial court took the 2009 gross receipts from his business, Steve's Home Improvement, Inc., of \$51,250, subtracted \$13,133 of “ordinary business expenses,” and subtracted \$2,134.55 on line 2c of the worksheet for 5.6% of the adjusted gross income. Stephen argues that two additional sums should have been deducted from the income for Steve's Home Improvement, which would have decreased the earnings of his business, and therefore, his income. These amounts are \$15,196 for the business' purchases and expenses, and \$1,693 for “taxes and licenses,” which, if subtracted from the

\$35,982.45, would equal an income of \$21,228.² Essentially, Stephen is arguing that the trial court failed to deduct all of the ordinary and necessary business expenses.

{¶27} “[I]n determining the gross income of a self-employed parent, the trial court must deduct the ordinary and necessary expenses incurred in the generation of gross receipts.” *Janecek v. Marshall*, 11th Dist. No. 2010-L-059, 2011-Ohio-2994, ¶ 13. “‘Ordinary and necessary expenses incurred in generating gross receipts’ means actual cash items expended by the parent or the parent’s business and includes depreciation expenses of business equipment as shown on the books of a business entity.” R.C. 3119.01(C)(9)(a).

{¶28} In the present matter, the trial court did deduct business expenses from the gross receipts of Stephen’s business, in the amount of \$13,133. While Stephen asserts that he should have been credited for the additional expenses discussed above, he provided limited evidence of such expenses. He produced a copy of his 2009 tax return with an attached document including “other deductions,” which contained simply a list of items, including, inter alia, “auto, dues, uniforms,” with dollar values listed. He did not provide receipts or bills for any of these expenses. He also failed to give any testimony explaining these expenses or how they were incurred. The same applies to the deductions related to taxes and licenses. This court has found that where the appellant asserted that certain expenses were claimed in his tax returns but failed to produce any “independent evidence of these expenses,” the lower court did not err in failing to deduct these items as ordinary and necessary expenses. *Janecek* at ¶ 21. “It is not the duty of the trial court to ferret out those expenses that qualify as ordinary and

2. The figure of \$21,228 asserted by Stephen appears to have been arrived at by subtracting the two additional amounts from the \$35,982.45, but adding the \$2,134.55 that was subtracted by the court for

necessary. Rather, it is the duty of the obligor to assert that certain items are exempt from inclusion as gross income” due to being an ordinary and necessary business expense. *In re Sullivan*, 167 Ohio App.3d 458, 465, 2006-Ohio-3206, 855 N.E.2d 554, ¶ 25 (11th Dist.). Stephen failed to meet this duty.

{¶29} While Stephen may have claimed these deductions for tax purposes, the court is not required to accept that they were ordinary and necessary expenses for the purpose of determining his gross income. “A trial court is not required to blindly accept all of the expenses an appellant claims to have deducted in his tax returns as ordinary and necessary expenses incurred in generating gross receipts.” (Citation omitted.) *Huelskamp v. Huelskamp*, 185 Ohio App.3d 611, 2009-Ohio-6864, 925 N.E.2d 167, ¶ 43 (3rd Dist.); *Foster v. Foster*, 150 Ohio App.3d 298, 2002-Ohio-6390, 780 N.E.2d 1041, ¶ 11 (12th Dist.) (tax documents “are not the sole factor for the trial court to consider”). Here, as noted above, based on the lack of receipts for a large amount of deductions, the trial court could properly determine that certain expenses need not be included for the purposes of determining his income. See *James v. James*, 5th Dist. No. 99CA00003, 1999 Ohio App. LEXIS 3189, *6-7 (June 6, 1999) (where the appellant listed a large amount of “other deductions” on his tax return and did not account for these deductions, the magistrate did not err by failing to consider these deductions for the purpose of determining his income).

{¶30} The first assignment of error is without merit.

{¶31} In his second assignment of error, Stephen argues that the trial court erred by not ordering Kelley to pay him spousal support, since he requested it in his Answer and Counterclaim.

{¶32} As an initial matter, we note that, although Stephen did file Objections to the Magistrate’s Decision, he did not object to the magistrate’s finding regarding spousal support. With respect to matters referred to a magistrate, Civ.R. 53(D)(3)(b)(iv) states that “[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).” “If no timely objections are filed, the court may adopt a magistrate’s decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate’s decision.” Civ.R. 53(D)(4)(c). “An objection to a magistrate’s decision shall be specific and state with particularity all grounds for objection.” Civ.R. 53(D)(3)(b)(ii). Since Stephen failed to object to the magistrate’s decision on spousal support, we will consider only whether plain error occurred.

{¶33} In his Answer and Counterclaim, Stephen requested “temporary and permanent spousal support.” A review of the trial transcript shows that the magistrate asked the following: “[T]hen neither party was asking for spousal support, right?” Stephen’s counsel responded “No.” The Magistrate’s Decision stated that “[n]either party has requested spousal support” and recommended that neither party pay such support.

{¶34} In the present matter, the actions of counsel during the trial, stating that Stephen was not requesting spousal support, led the magistrate to believe that spousal support was not at issue. To the extent that the court’s finding regarding spousal support could be considered an error, such an error was invited. “The invited error doctrine precludes a litigant from taking advantage of an error that he himself invited or

induced.” *Perko v. Perko*, 11th Dist. Nos. 2001-G-2403, 2002-G-2435 and 2002-G-2436, 2003-Ohio-1877, ¶ 23, citing *Sloe v. Russell Twp. Bd. of Zoning Appeals*, 11th Dist. No. 2001-G-2369, 2002-Ohio-5150, ¶ 28. This court has held that when appellant’s counsel, in appellant’s presence at a hearing, made representations regarding appellant’s case to the magistrate, “[a]ppellant cannot raise as error actions which his attorney agreed to or broached to the magistrate.” *Perko* at ¶ 23.

{¶35} Further, while Stephen asserts that a request for spousal support must be made prior to a court making a determination regarding such support, he cites to no law in support of the proposition that a request for support cannot be withdrawn or altered during the course of the proceedings, as occurred in the present matter.

{¶36} Based on the foregoing, we cannot find that the court erred by failing to order Kelley to pay spousal support to Stephen.

{¶37} The second assignment of error is without merit.

{¶38} In his third assignment of error, Stephen argues that the trial court erred in awarding a portion of the Morgan Stanley account to Kelley, since it was a “premarital asset” he received from his deceased wife prior to his marriage to Kelley.

{¶39} Trial courts have “broad discretion to determine what property division is equitable in a divorce proceeding” and such division of property will be reversed only upon an abuse of discretion. *Brady v. Brady*, 11th Dist. No. 2007-P-0059, 2008-Ohio-1657, ¶ 16, citing *Cherry v. Cherry*, 66 Ohio St.2d 348, 421 N.E.2d 1293 (1981), paragraph two of the syllabus.

{¶40} “A trial court’s characterization of property as either marital or separate that involves factual questions is reviewed under a manifest weight of the evidence

standard. * * * A trial court's factual findings are entitled to a presumption of correctness and will not be reversed as being against the manifest weight of the evidence if they are supported by competent, credible evidence." (Citation omitted.) *Moser v. Moser*, 11th Dist. No. 2006-P-0047, 2007-Ohio-4109, ¶ 20.

{¶41} "Marital property" includes "[a]ll real and personal property that currently is owned by either or both of the spouses * * * and that was acquired by either or both of the spouses during the marriage," and "all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage." R.C. 3105.171(A)(3)(a)(i) and (iii).

{¶42} "Separate property" includes: "[a]ny real or personal property or interest in real or personal property that was acquired by one spouse prior to the date of the marriage." R.C. 3105.171(A)(6)(a)(ii). "A party claiming separate property is burdened to prove the independent nature of the property by a preponderance of the evidence." *Gosser v. Gosser*, 11th Dist. No. 2006-T-0029, 2007-Ohio-3201, ¶ 12.

{¶43} "[T]he law of Ohio is that traceability of an asset is the major means for determining whether an asset is separate or marital property." *Price v. Price*, 11th Dist. No. 2000-G-2320, 2002-Ohio-299, ¶ 10. "[T]he classification of property as marital or nonmarital must be determined by the source of contributions." *Iacampo v. Oliver-Iacampo*, 11th Dist. No. 2011-G-3026, 2012-Ohio-1790, ¶ 53. "Separate property is presumed to retain its separate nature as long as it is traceable, regardless of whether it has been commingled with other property." (Citation omitted). *Long v. Long*, 176 Ohio App.3d 621, 2008-Ohio-3006, 893 N.E.2d 217, ¶ 39 (2nd Dist.).

{¶44} In the present matter, the magistrate initially found that the funds in the Morgan Stanley account were traceable to premarital property and, therefore, were Stephen's separate property. The trial court, however, found that some funds, in the amount of \$42,287.46, had not been successfully traced by Stephen and that the only evidence provided as to the source of the funds was his testimony. It has been held that "[o]ral testimony as evidence of the separate nature of the property, without documentary proof, may or may not be sufficient to carry the burden [of traceability]." (Citation omitted.) *Harkey v. Harkey*, 11th Dist. No. 2006-L-273, 2008-Ohio-1027, ¶ 64.

{¶45} A review of the testimony and exhibits shows that the \$42,287.46 came from two separate checks, written from the Alliance Fund and transferred to Stephen's Morgan Stanley account in 2006. Stephen testified that this amount "was an inheritance" from his deceased wife, Rebecca. The exhibits related to the Alliance Fund show only that the sums were transferred from that account to the Morgan Stanley account in 2006. There are no documents showing the original source of the funds or any other account where they may have been previously held.

{¶46} Pursuant to the testimony and exhibits presented, various other funds in the Morgan Stanley account, which were also claimed to be inherited from Rebecca, were placed into a Charles Schwab account opened in 1992, soon after her death. The exhibits presented show the original investments, in Rebecca's name, in a Rose and Company Fund. Further documents show these funds being transferred to a Charles Schwab account, prior to the final transfer into the Morgan Stanley account. The Alliance Funds account, rolled into the Morgan Stanley account in 2006, however, was not opened until 1999, three years after Stephen married Kelley. There is no evidence

showing where these funds may have been during the years following Rebecca's death or tracing them to Stephen prior to his marriage to Kelley. Although the magistrate initially found the entire Morgan Stanley account to be separate property, we cannot find that the trial court abused its discretion in determining that a portion of the account was not traceable or that its holding was not supported by competent, credible evidence. See *Fisher v. Fisher*, 2nd Dist. No. 20398, 2004-Ohio-7255, ¶ 17 (where appellant failed to show money he inherited was invested by him in a traceable form to the current accounts, the trial court did not err by finding such money to be marital property).

{¶47} The third assignment of error is without merit.

{¶48} In his fourth assignment of error, Stephen asserts that the Wells Fargo loan, the Cardinal Community Credit Union loan, and the National City Bank/PNC joint loan as a mortgage on the Summit Drive property, should have been determined to be marital debt and the debt divided either equally or proportionally to the income of the parties.

{¶49} “[A] trial court has the discretion to equitably divide marital property, including marital debt.” (Citations omitted.) *Brady v. Brady*, 11th Dist. No. 2007-P-0059, 2008-Ohio-1657, ¶ 37; *Meyers v. Hendrich*, 11th Dist. No. 2009-P-0032, 2010-Ohio-4433, ¶ 52 (“[t]his court will not reverse a trial court’s determination regarding the allocation of marital debt unless it is shown that the trial court abused its discretion”). While “[t]here is no presumption * * * that marital property [or debt] be divided equally upon divorce * * * a potentially equal division should be the starting point of the trial court’s analysis.” (Citation omitted.) *Brady* at ¶ 37.

{¶50} As an initial matter, we note that Stephen failed to file an objection to the Magistrate's Decision regarding the disposition of the homes and the mortgages on those properties, in which the magistrate adopted the proposed Judgment Entry of Divorce submitted by Kelley as to these issues. Stephen instead filed an objection only as it related to credit card debt not at issue under the assignment of error. Therefore, as noted above, this error can only be evaluated under a plain error standard.

{¶51} The Wells Fargo mortgage and the Cardinal Community line of credit were debt related to the Ericson Lane home. It was determined that the Ericson Lane home was the marital residence and that the parties were to split the profits equally from the sale, if one occurred. However, pursuant to the Judgment Entry of Divorce, Stephen was permitted to retain the house if he chose to do so. The value of the home was stipulated by the parties to be \$225,000, the Wells Fargo mortgage was found to have a balance of \$171,453.66, and the Cardinal Community line of credit to have a balance of \$49,995. When totaling these balances, the amount owed on the home is \$221,448.66, less than its stipulated value. Any debts related to the home could be off-set by the equity in the home, which Stephen fails to address in his brief. See *Vujovic v. Vujovic*, 9th Dist. No 04CA0083-M, 2005-Ohio-3942, ¶ 26 (noting the net equity to be divided between the parties is determined by deducting the amount of mortgage obligations on the home and subtracting from the value of the home); *Harrison v. Harrison*, 11th Dist. No. 2004-A-0003, 2005-Ohio-6293, ¶ 19 (rejecting appellant's argument that he was "burdened with marital debt" for the purposes of paying spousal support when he "was given the responsibility of paying the debt associated with the mortgage and home equity loan [but] was also given the house").

{¶52} Based on the foregoing, we cannot find that the trial court erred in its determination of the debt as to the Ericson Lane home. In the present matter, there would be essentially no net equity to divide after deducting the mortgage and loan from the value of the home and thus, an equal distribution. Additionally, although Stephen's brief provides an explanation of what obligations these specific mortgage and loan funds were used to pay during the course of the marriage, this does not alter the fact that Stephen is not being required to pay such debts since they are off-set by the equity in the property that he may retain.

{¶53} As to the Summit Drive property owned by Stephen prior to the marriage, the parties had a National City Bank/PNC mortgage on the property that was found to be in the amount of \$100,869.63 at the time of the trial. As was found by the magistrate and addressed by both parties at the trial, a portion of this loan was used to pay for Kelley's student loans, which totaled \$48,465.48. The trial court found that Kelley had paid some of these loans back to Stephen but ordered her to pay an additional balance of \$37,091.13. This amount compensates Stephen for a little less than half of the debt obligation. As has been noted previously, the debt division is not required to be exactly equal. The additional credit card debt that was claimed by Stephen to have been paid by this mortgage and to be marital debt was found by the magistrate to be debt Kelley was not required to repay, since "both parties were earning money and contributing toward household expenses during the marriage." In other words, it appears the magistrate believed that these were not debts owed by Kelley since she had contributed funds toward their repayment during the marriage and that any additional credit card responsibility should be Stephen's, especially given that Kelley testified she did not

have a Chase or a Discover credit card. Pursuant to R.C. 3105.171(F), the trial court shall consider, among other things, “[t]he assets and liabilities of the spouses” as well as “[a]ny other factor that the court expressly finds to be relevant and equitable.” R.C. 3105.171(F)(2) and (10). To the extent that it appears that the magistrate and the trial court considered such factors in determining the debt payment and the debts owed by Stephen do not appear to be much greater than those owed by Kelley, we cannot find that plain error occurred in the distribution of the debts of the parties.

{¶54} The fourth assignment of error is without merit.

{¶55} In his fifth assignment of error, Stephen argues that the trial court failed to incorporate the interim visitation order agreed to by the parties into the final Judgment Entry of Divorce.

{¶56} “[T]he enforcement of local rules is a matter within the discretion of the court promulgating the rules.” *Iacampo*, 2012-Ohio-1790, ¶ 39.

{¶57} Stephen cites as support for this argument Lake County Court of Common Pleas, Domestic Relations Division, Local Rule 18.04(A), which relates to “Agreed Judgment Entries” and states the following: “Written settlements signed by all parties shall be presented to the Court at the commencement of the hearing. Oral settlements shall be read into the record at the hearing and the parties’ consent given under oath.” He fails to explain, however, how this rule requires the court to incorporate into its final judgment all agreed entries that occurred while the divorce proceedings were pending.

{¶58} The May 13, 2010 Judgment Entry cited by Stephen, in which the parties agreed Stephen would have visitation on every Sunday, appears to have been a temporary agreement, applicable while the divorce and custody matter was pending. It

stated “until further order of this Court” and noted that it would be reviewed on July 12, 2010. Further, a review of the record shows that Stephen did not pursue incorporation of this Entry into the final judgment. On August 6, 2010, he filed a Motion for Shared Parenting, requesting that he be the residential parent of the children for school purposes. At the trial, he did not state that he wanted to maintain the Sunday visitation, but instead explained that he wanted more than standard visitation. The magistrate reached a ruling regarding visitation as it related to the testimony and requests made by the parties. Stephen fails to show how the trial court erred by failing to incorporate into the final judgment the May 13, 2010 Entry to which the parties had agreed. See *George v. George*, 10th Dist. No. 88AP-349, 1988 Ohio App. LEXIS 4932, *3 (Dec. 8, 1988) (the trial court did not abuse its discretion in not adopting a preexisting visitation schedule agreed to by the parties).

{¶59} The fifth assignment of error is without merit.

{¶60} For the foregoing reasons, the Judgment Entry of Divorce of the Lake County Court of Common Pleas, Domestic Relations Division, granting Kelley and Stephen a divorce, dividing their marital estate, granting legal custody of the children to Kelley, and ordering Stephen to pay child support, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.