

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

BRIGETTE A. KREIMER, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2014-04-090  
 :  
 - vs - : OPINION  
 : 3/23/2015  
 :  
 MICHAEL A. KREIMER, :  
 :  
 Defendant-Appellant. :

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
Case No. DR 2012-10-1168

O'Connor, Mikita & Davidson LLC, William H. Mikita, 8035 Hosbrook Road, Suite 200, Cincinnati, Ohio 45236, for plaintiff-appellee

J. Gregory Howard, 110 Main Street, Hamilton, Ohio 45013, for defendant-appellant

**PIPER, P.J.**

{¶ 1} Defendant-appellant, Michael Kreimer (Husband), appeals a decision of the Butler County Court of Common Pleas, Domestic Relations Division, awarding spousal support to plaintiff-appellee, Brigitte Kreimer (Wife).

{¶ 2} Husband and Wife were married in 1987, and had four children born issue of the marriage. The parties began divorce proceedings in 2012, at which time, two of the

couple's children were emancipated. Husband and Wife entered into several stipulations regarding division of marital debts and assets, as well as shared parenting of the two minor children. The only issue remaining for litigation was spousal support.

{¶ 3} The trial court held a hearing on the spousal support issue, during which both parties testified and presented evidence. The trial court ordered Husband to pay Wife \$1,450 for 112 months, and also ordered Husband to pay Wife six months of retroactive support of \$750 per month. Husband now appeals the trial court's order, raising the following assignment of error.

{¶ 4} THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING SPOUSAL SUPPORT TO THE WIFE AS TO AMOUNT AND DURATION.

{¶ 5} Husband argues in his assignment of error that the trial court abused its discretion in ordering him to pay spousal support as it did.

{¶ 6} Pursuant to R.C. 3105.18(B), a trial court may determine whether to award spousal support and the amount and duration of such an award. A trial court has broad discretion to determine the proper amount and duration of spousal support based on the facts and circumstances of each case, and a trial court's award of spousal support will not be disturbed absent an abuse of discretion. *Kedanis v. Kedanis*, 12th Dist. Butler No. CA2012-01-015, 2012-Ohio-3533, ¶ 10. An abuse of discretion constitutes more than an error of law or judgment; it requires a finding that the trial court acted unreasonably, arbitrarily, or unconscionably. *Miller v. Miller*, 12th Dist. Butler No. CA2001-06-138, 2002-Ohio-3870, ¶ 8.

{¶ 7} A trial court has a statutory duty to base a spousal support order on a careful and full balancing of the factors in R.C. 3105.18(C)(1). *Kedanis*, 2012-Ohio-3533. According to R.C. 3105.18(C)(1),

in determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable

either in gross or in installments, the court shall consider all of the following factors:

(a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;

(b) The relative earning abilities of the parties;

(c) The ages and the physical, mental, and emotional conditions of the parties;

(d) The retirement benefits of the parties;

(e) The duration of the marriage;

(f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;

(g) The standard of living of the parties established during the marriage;

(h) The relative extent of education of the parties;

(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

(j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;

(k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;

(l) The tax consequences, for each party, of an award of spousal support;

(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

(n) Any other factor that the court expressly finds to be relevant and equitable.

{¶ 8} After reviewing the record, we find that the trial court properly balanced the

statutory factors based upon the evidence presented, and did not abuse its discretion in ordering spousal support as it did.

{¶ 9} Regarding the income and relative earning abilities of the parties, the trial court determined that Wife earns a yearly income of \$40,185.60 while Husband earns a yearly income of \$89,019.81. The trial court found that both parties were earning to their ability, given their respective educations and circumstances.

{¶ 10} Wife was 52 years old at the time of the hearing and Husband was 59. Neither had any long term physical, mental, or emotional conditions that would preclude them from maintaining their employment. Wife had no retirement benefits or savings, while Husband had a 401(k) retirement plan. The parties stipulated that they were equally dividing the marital portion of Husband's retirement benefits.

{¶ 11} The court also considered that the marriage lasted for 26 years, and that two of the couple's four children had been emancipated. The two remaining children, twins who were 16 at the time of the hearing, were of such an age that the trial court determined that both parties could maintain employment outside of the home without needing to account for child care.

{¶ 12} The trial court determined that the parties had lived within their means during the marriage, and that there was not a mortgage on the home. However, Husband would need to mortgage the home in order to pay Wife her marital share of the equity in the home.

{¶ 13} The trial court heard evidence that Wife has a high school diploma, and on-the-job training, while Husband has an associate's degree in electrical technology. While neither party directly contributed to the education of the other, there was a time when Wife was a stay-at-home mother so that Husband could work long hours and travel as part of his job

responsibilities.<sup>1</sup> Neither party intended to seek additional training for their careers.

{¶ 14} Regarding the relative assets and liabilities of the parties, the court heard evidence that the parties had stipulated to the division of marital assets and debts. The court also heard evidence that Wife pays a student loan on behalf of her oldest son, who was born issue of a previous marriage. However, the court also heard testimony that Wife lived with that son upon her separation from Husband, and pays the student loan in lieu of paying rent. The court also noted that Wife agreed not to seek child support from Husband, and the parties agreed to share, equally, the expenses related to the two children who had not yet been emancipated. The trial court also considered the relevant tax consequences, for each party, of an award of spousal support.

{¶ 15} In regard to other factors for consideration, the trial court noted that a hearing originally scheduled for July had been continued because Husband had not kept in contact with his counsel. Once Husband resumed communications with his attorney, the trial court scheduled a hearing for November, which was also continued due to an illness of Husband's counsel. The hearing scheduled for July finally occurred in December.

{¶ 16} After balancing these factors, the trial court ordered Husband to pay \$1,450 per month for 112 months. Based on the delay in holding the hearing, the trial court also ordered Husband to pay Wife retroactive support between July and December of \$750 per month. We find no abuse of discretion in the trial court's order, as the orders were based upon a balancing of the factors and consideration of all evidence.

{¶ 17} Husband raises three specific challenges to the trial court's order. First, Husband argues that the trial court abused its discretion by ordering retroactive spousal

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1. The record indicates that during the time Wife stayed home with the children, there were six children to care for. Both Wife and Husband had a child from a previous marriage that lived in the home, and Husband and Wife had four children together.

support. However, the record indicates that the trial court was unable to reach a decision as to spousal support because of Husband's actions that caused the hearing to be continued for nearly six months. Husband was not communicating with his attorney, which caused the first continuance from July to November. Husband's attorney then became ill, thus causing the second continuance until December.

{¶ 18} Husband now argues that the trial court should not have ordered retroactive spousal support absent a specific motion from Wife to do so. However, had the two continuances requested by Husband not occurred, the trial court would have been able to order Husband to pay spousal support starting in July based on the parties' request for the trial court to set spousal support. The fact that the hearing was continued until December was not in any way connected with Wife's actions, but was the sole result of continuances requested by Husband. As such, the trial court did not abuse its discretion in ordering retroactive spousal support for the months while the hearing was continued at Husband's request.

{¶ 19} Next, Husband argues that the court erroneously considered a debt paid by Wife when calculating spousal support. The record indicates that Wife had a son from a previous marriage, and that she took out a parent loan for the son's education costs during her marriage to Husband. The court noted that Wife paid the student loan, and at one point erroneously stated that the debt was being paid on behalf of the couple's emancipated son.

{¶ 20} While it is true that the son was a child from a previous marriage and not Husband's child, the record indicates that the loan was obtained during the duration of the marriage and with Husband's support. Husband originally applied for the loan himself, on behalf of his stepson. When Husband was unable to procure the loan, Wife put the loan in her name. The parties' stipulations make reference to the loan, and indicate that Wife agreed to be responsible for the full amount and hold Husband harmless on the \$57,000

debt. The inclusion of the student loan debt in the joint stipulations indicates that the amount was considered when dividing the parties' respective assets and debts. There is no indication in the record that Husband ever objected to Wife paying the debt, and there is no evidence on record that Wife does not currently pay it.

{¶ 21} Despite Husband's argument that the trial court should not have considered the debt as one that Wife was required to pay, R.C. 3105.18(C)(1)(i) specifically directs the court to consider "the relative assets and liabilities of the parties." As such, the trial court did not abuse its discretion in considering the student loan Wife was obligated to repay. The trial court was not asked to divide marital assets and debts, it was only asked to determine what spousal support order was appropriate and reasonable given the circumstances.<sup>2</sup>

{¶ 22} Moreover, the record indicates that the trial court took other issues into consideration when determining Wife's expenses. While Husband intimates that the trial court improperly considered extra expenses not claimed on Wife's expense report, the record indicates that the trial court heard testimony that Wife incurs extra expenses on a monthly basis above and beyond what she reported to the court. Wife did not include the loan payment on her list of monthly expenses, nor did she include any expenses related to the couple's minor children.

{¶ 23} According to the parties' agreement, Husband did not have to pay child support, despite him and Wife splitting the children's expenses equally and despite him having a much higher salary than Wife. Wife did not include any child-related expenses on her list of monthly expenses, so that the trial court added those expenses into Wife's overall monthly

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2. For example, the trial court considered that since the time of the separation and divorce proceedings, Husband had borrowed \$26,000 from his sister to buy a car, and that Husband was re-paying his sister \$500 per month. Husband claimed this debt in his monthly expenses. Because Husband and Wife divided all assets and liabilities, the court was never asked to determine which party would be liable on which debt. Instead, the focus of consideration of the spousal support factors is not to divide the debt, only to consider what liabilities each party has for a given month once they are living on their own.

expenses, and did not increase Wife's expenses solely due to paying the student loan.

{¶ 24} The record indicates that Wife asked for \$1,500 per month in spousal support, and that such request was made before the court was aware of the extra expenses Wife incurred. Only after a complete balancing of all factors, including a review of Wife's expenses, did the court order Husband to pay Wife \$1,450 per month. As such, the trial court did not abuse its discretion in considering all of Wife's expenses and what she would be responsible for paying on her own.

{¶ 25} Husband also argues that the trial court's support order was an abuse of discretion because the two minor children were 16 at the time of the hearing and would be emancipated sooner than the 112-month duration of the court's order. Husband essentially argues that once the children are emancipated, Wife no longer has a need for spousal support because her yearly income covers her individual expenses.

{¶ 26} While "need" is a factor that the trial court may consider when determining the proper spousal support award, it is not the determinative or most significant factor for consideration. *Kedanis*, 2012-Ohio-3533. As previously stated, the trial court properly balanced the factors when determining the proper support award, and did not abuse its discretion in addressing those factors.

{¶ 27} The trial court also retained jurisdiction over the amount and duration of the spousal support order, and specifically stated that either party could request modification based on a change in circumstances, such as a reduction of expenses. As such, Husband may move the court to reduce his spousal support obligation at a future date once the two minor children become emancipated, should such emancipation result in a change of circumstances.

{¶ 28} After reviewing the record and considering Husband's arguments, we overrule his assignment of error.



{¶ 29} Judgment affirmed.

RINGLAND and M. POWELL, JJ., concur.