

[Cite as *Jackson v. Jackson*, 2003-Ohio-7095.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

JONATHON R. JACKSON :

Plaintiff-Appellant : C.A. CASE NO. 2003CA36

vs. : T.C. CASE NO. 01DR136

TERESSA JACKSON: (Civil Appeal from
Common Pleas Court)
Defendant-Appellee :

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O P I N I O N

Rendered on the 24th day of December, 2003.

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GRADY, J.

{¶1} Plaintiff, Jonathon R. Jackson, appeals from a
decree of divorce terminating his marriage to Defendant,
Teresa Jackson.

{¶2} The parties were married in 1998. Both were
employed. Jonathon¹ owned a house he had acquired from a
prior divorce. He and Teresa agreed to live there until
the house could be sold, when they would move to a residence

¹For convenience and clarity, the parties will be
identified by their first names.

in the school district in which Teressa and her daughter had resided and where the child continued to attend a school that was able to meet her special needs.

{¶3} Teressa worked to clean and improve the house. However, and before it could be sold, she was advised by officials of her preferred school district that she would have to reestablish a residence there if her daughter was to continue to attend the same school. Teressa and her daughter then moved from Jonathon's house to an apartment in the desired school district.

{¶4} The parties continued their marital relations after Teressa established her separate residence. Jonathon eventually decided that he would not move. Tensions developed, and he filed for divorce. Teressa filed a counter-claim.

{¶5} The matter was heard by a magistrate. The parties agreed on all issues except: (1) the value of Teressa's interest, if any, in Jonathon's house; (2) the value of Teressa's interest in Jonathon's retirement savings account; (3) medical debts and costs for Teressa's child; and, (4) their mutual requests for attorney fees.

{¶6} The magistrate rendered a decision. Jonathon filed objections. The trial court overruled the objections and adopted the decision as its order. Teressa petitioned the magistrate to correct a clerical error in the decision. The magistrate did. Jonathon objected. The trial court overruled the objection on the same day the decree of divorce was entered.

{¶7} Jonathon filed a timely notice of appeal. He presents eleven assignments of error. They will be considered out of their order of presentation to facilitate our analysis of the issues involved.

NINTH ASSIGNMENT OF ERROR

{¶8} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY DETERMINING THAT THIS WAS A THIRTY MONTH MARRIAGE."

{¶9} The parties were married on July 4, 1998. The final hearing was on November 1, 2001, forty-one months later. The magistrate found that the marriage effectively terminated on December 15, 2000, and therefore had lasted thirty months.

{¶10} Jonathon objected that the marriage actually terminated only ten months after it began, when Teressa moved out of the marital residence. The trial court overruled the objection and adopted the magistrate's finding. The court found that Teressa left only in order to re-establish her residence in the preferred school district, for her daughter's educational and medical needs, and that the parties "continued to engage in sexual relations and attend functions as a family until December 15, 2000." (Decision and Order, p. 2.) The court also found that the parties continued their efforts to find another marital residence during that time, as well as obtaining marital counseling.

{¶11} Here, the matter of the duration of the parties' marriage relates to property division. The court acted pursuant to the authority conferred on it by R.C.

3105.171(A) (2) (b) when it found that, on principles of equity, the marriage terminated prior to the date of the final hearing.

{¶12}Jonathon argues that the court abused its discretion when it failed to find that, instead of thirty months, the marriage had lasted but one year. He points out that after she moved from the marital residence Teresa made no financial contributions to support it. We might agree with Jonathon had the parties not continued to maintain the other elements of their marital relationship until the date on which the trial court found their marriage terminated. Jonathon doesn't dispute the court's findings in that regard. We find no abuse of discretion.

{¶13}The ninth assignment of error is overruled.

FIRST ASSIGNMENT OF ERROR

{¶14}"THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY AWARDING THE APPELLEE THE SUM OF FIVE THOUSAND EIGHT HUNDRED DOLLARS FOR HER CLAIMED INTEREST IN THE REAL ESTATE OWNED BY THE APPELLANT."

SECOND ASSIGNMENT OF ERROR

{¶15}"THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY ADMITTING INTO EVIDENCE AND BASING ITS AWARD PERTAINING TO APPELLANT'S REAL ESTATE ON THE GREENE COUNTY AUDITOR'S TAX RECORDS."

THIRD ASSIGNMENT OF ERROR

{¶16}"THE TRIAL COURT'S CLASSIFICATION OF THE APPRECIATION OF THE RESIDENCE, BASED ON THE TAX RECORDS AS A MARITAL ASSET WAS AGAINST THE MANIFEST WEIGHT OF THE

EVIDENCE."

{¶17}These assignments of error each concern the trial court's award of \$5,810 to Teressa for her share of the amount by which Jonathon's house appreciated in value during their marriage. The court found that the marriage effectively terminated thirty months after it commenced.

{¶18}The house that Jonathon acquired through a prior divorce many years before the parties were married was his separate property. R.C. 3105.171(A)(6)(a)(ii). The court was required to distribute the property to him, and it did. R.C. 3105.171(D).

{¶19}The court is also required to divide the parties' marital property equally between them. R.C. 3105.171(C)(1). Marital property includes, inter alia, "all . . . appreciation on separate property , due to the labor, monetary, or in-kind contribution of either or both spouses that occurred during the marriage." R.C. 3105.171(A)(3)(a)(iii).

{¶20}The magistrate heard evidence that in furtherance of their plan to sell Jonathon's house Teressa applied her labor to improve its condition. The magistrate found that Teressa "did contribute her time, labor, and other efforts to the real estate while she resided there." (Decision, p.1). There was also evidence that a new roof was installed.

{¶21}The magistrate heard evidence that the appraised value of the house for purposes of real estate taxation increased from \$141,800 when the parties were married to

\$153,480 when the marriage terminated. The difference is \$11,680. One-half of that is \$5,840, which the magistrate awarded to Teresa as her share of the appreciation in the property's value. The trial court adopted the magistrate's decision and order, over Jonathon's objection.

{¶22}Jonathon argues that the court abused its discretion when it (1) relied on the appraised tax valuation of the house to find an increase in its value and (2) found that no part of the increase was a passive increase but instead was the product of the parties' efforts to improve the condition of the house.

{¶23}Jonathon did not object when Teresa offered evidence of the real estate tax appraisals in the hearing before the magistrate, except to complain that Teresa was not competent to identify copies of the county real estate tax records. (T. 45). Neither did Jonathon object to the admissibility of that evidence in his objection to the magistrate's decision. Instead, he objected, as he does here, to the magistrate's reliance on that evidence. He argues that such records are insufficient proof of the property's value. However, he doesn't explain why they are not, and we are unaware of any reasons why they are not.

{¶24}Real estate appraisals for tax purposes are competent, credible evidence of the value of real property. Judgments supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279.

{¶25}The court was required to determine the existence of marital property and to value that property for purposes of its division. Tax records are admissible for that purpose because they are relevant to prove an issue which the court must determine. Evid.R. 410,402. There was no other evidence of the property's value, though Teresa did state that a realtor had opined that it was possibly now worth \$190,000, even more than reflected in the tax records.

{¶26}An argument that a judgment is against the manifest weight of the evidence goes to all the evidence. There is no evidence of the property's value other than the evidence discussed above. Jonathon suggests that some of the increase was necessarily passive, or at least not the result of improvements the parties had made. However, there is no evidence to support those propositions.

{¶27}The first, second, and third assignments of error are overruled.

FOURTH ASSIGNMENT OF ERROR

{¶28}"THE TRIAL COURT COMMITTED PREJUDICIAL ERROR AND ABUSED ITS DISCRETION BY AWARDING APPELLEE \$12,500 FROM APPELLANT'S PSP ACCOUNT."

{¶29}Jonathon maintained a Personal Savings Plan ("PSP") with his employer, General Motors. The funds were invested by his employer in securities. The value of Jonathon's fund fluctuated with the market.

{¶30}Jonathon made contributions to his PSP over a period of forty-eight months, including the thirty-month period during which the court found the parties were

married. The magistrate found that the total of the contributions Jonathon made over that thirty month period was \$40,000 and awarded Teressa one-half of 30/48 of \$40,000, or \$12,500.

{¶31}Jonathon objected to the magistrate's award. He argued: (1) that the marriage had lasted only ten months, not thirty; (2) that the magistrate should have considered the value of the PSP at the time of the hearing; and (3) that the magistrate failed to consider a \$20,000 loan against the PSP that Jonathon had taken out. The trial court overruled his objections and adopted the magistrate's decision.

{¶32}On appeal, Jonathon raises again only the matters of the duration of the marriage and the loan, and both in relation to the \$12,500 award to Teressa.²

{¶33}Our prior determination of Jonathon's ninth assignment of error, *supra*, necessarily operates to reject his contentions here concerning the length of the marriage in relation to the division of his PSP. Any error in the court's failure to consider the \$20,000 loan is waived by statements that Jonathon's counsel made to the magistrate excluding that matter from the court's consideration, which is discussed more fully under the seventh assignment of error, *infra*.

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

²Had the magistrate valued the PSP at the time of the final hearing or when the marriage terminated, Exhibits reflecting the value of the account suggest that on those dates its value was likely substantially more than \$40,000.

FIFTH ASSIGNMENT OF ERROR

{¶35} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY MODIFYING THE ORIGINAL AWARD PERTAINING TO THE PSP ACCOUNT."

{¶36} Jonathon presented this assignment of error together with the fourth assignment, and the same argument for both. He complains that the marriage lasted but one year, not thirty months. He also complains that the court unreasonably extended that time to thirty months in order to give Teresa a larger share of Jonathon's PSP account to compensate her for certain other expenditures. However, the court's decision doesn't reflect that it did that. All the court appears to have done was to modify its award of Teresa's share of the PSP to correct a calculation error, which is discussed under the eleventh assignment of error, *infra*. Further, the court acted within its discretion when it found that the marriage lasted thirty months instead of some lesser amount of time, as we previously found.

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

SIXTH ASSIGNMENT OF ERROR

{¶38} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY AWARDING ATTORNEY FEES TO APPELLEE."

{¶39} The magistrate's decision recommended that Jonathon "pay a lump sum spousal support award as and for attorney fees in the amount of \$500." Jonathon objected, arguing that Teresa's annual income was more than double his own income since his retirement. The trial court overruled the objection, finding that "[t]he magistrate took into account the disparity between each party's income and

awarded attorney fees accordingly. Further, (Teresa) needs the fees to protect her property rights." (Decision and Order, p.3).

{¶40}Jonathon renews his argument on appeal. Teresa contends that Jonathon was earning more before he voluntarily retired approximately one month after he filed for divorce than she now earns, and so he can't complain about the award.

{¶41}R.C. 3105.18 governs spousal support awards. Paragraph (H) of that section states: "In divorce or legal separation proceedings the court may award reasonable attorney's fee to either party at any stage of the proceedings." Further, when the court makes the award, "it shall determine whether either party will be prevented from fully litigating that party's rights and adequately protecting that party's interests if it does not award reasonable attorney's fees." *Id.*

{¶42}The reasonableness of attorneys fees cannot be determined until they are incurred, but because R.C. 3105.18(H) is prospective in nature "it requires that the trial court determine that a party will be prevented from fully litigating her rights if an award of fees is not made." *Seagraves v. Seagraves* (1997), 125 Ohio App.3d 98, 102. Teresa testified that she had paid her trial attorney \$600 and owed him another \$1,400 at the time of the hearing before the magistrate. (T. 54).

{¶43}Following the court's award, there were subsequent proceedings on Jonathon's objections, as well as this

appeal. As with any spousal support award, the reasonableness of any award of attorney's fees pursuant to R.C. 3105.18(H) depends on the ability of one party to pay and the other party's need for assistance.

{¶44}Notwithstanding the disparity in their actual incomes, which when the decree was entered ran in Teresa's favor, not Jonathon's, the record demonstrates that Teresa had a need for help in paying her fees and that Jonathon's assets allow him to provide help. The award was substantially less than the total of the fees Teresa owed, and was not in an amount much greater than a sum that would be considered nominal. See *Woloch v. Foster* (1994), 98 Ohio App.3d 806. We find no abuse of discretion.

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

SEVENTH ASSIGNMENT OF ERROR

{¶46}"THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY FAILING TO CONSIDER THE MARITAL DEBTS OF THE MARRIAGE."

{¶47}Jonathon testified that he borrowed \$20,000 against the balance in his PSP account on September 5, 2000, to pay off a loan on his truck and to pay other debts. (T. 20, Exhibit E). What those other debts were is unexplained. He argues on appeal that because some of those debts had accrued during the marriage, Teresa "should have been held accountable for half of those debts." (Brief, p. 13).

{¶48}Jonathon also complains that the court should have considered a loan of between \$8,000 to \$10,000 that he obtained from his mother in 1999 in order "to be able to keep his residence." *Id.*

{¶49}The parties and their counsel appeared before the magistrate on November 1, 2001 for a hearing on their complaint and counterclaim for divorce. The magistrate reviewed the issues to be determined and those on which the parties had agreed. When the magistrate asked, “. . . are there any debts that we need to hear testimony about?”, Jonathon’s attorney replied: “There is just one debt that I talked to (Teressa’s attorney about) in regard to some medical debt which (Jonathon) paid for the children.” (T. 9).

{¶50}In its final decree of divorce the court ordered Jonathon to pay the bill to which his attorney had referred. The representation that Jonathon’s attorney made to the magistrate waived consideration of any other debts. Therefore, he has waived the error of which he complains. Civ.R. 53(E)(3)(d).

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

EIGHTH ASSIGNMENT OF ERROR

{¶52}“THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY ORDERING THE APPELLANT TO PAY TO THE APPELLEE THE SUM OF \$271 FOR HIS STEP-DAUGHTER’S PRESCRIPTION.”

{¶53}Teressa was required to pay \$271 for prescription medicine for her daughter out of her own funds because Jonathon had removed Teressa’s children from the prescription coverage that his health insurance provided. Teressa testified that Jonathon didn’t tell her that he canceled the coverage until after the bill was incurred, and that had he told her earlier she would have obtained

prescription drug coverage otherwise available to her that would have paid the \$271 bill. (T. 52.)

{¶54}Jonathan testified that he told Teresa six or eight months before the bill was incurred that he intended to remove her children from his health insurance coverage because the children did not reside with him. (T. 22).

{¶55}The magistrate found that Jonathon told Teresa that her daughter's bills would not be covered only after he had canceled the coverage. The only evidence showing when that occurred is Teresa's testimony that the prescription was "picked up in March" and that she "did not learn until March 23 that (Jonathon had) canceled the insurance." (T. 51). There is no reference to the year that occurred. But, because the court ordered Jonathon to compensate Teresa for the monies she paid, we necessarily assume that those events occurred prior to the effective termination of the marriage on December 15, 2000.

{¶56}The trial court rejected Jonathon's objection on this point, finding that Teresa had "incurred the costs due to (Jonathon's) actions and she is due reimbursement." (Decision and Order, p. 4.) The court's decision was grounded on equitable considerations. The domestic relations courts have "full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters." R.C. 3105.011. We find no abuse of discretion.

{¶57}The eighth assignment of error is overruled.

TENTH ASSIGNMENT OF ERROR

{¶58} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY OVERRULING PLAINTIFF'S EXCEPTIONS TO THE MAGISTRATE'S DECISION OF OCTOBER 23, 2002."

ELEVENTH ASSIGNMENT OF ERROR

{¶59} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY PERMITTING A MODIFICATION BASED ON THE PREMISE THAT THERE WAS A CLERICAL ERROR IN THE MAGISTRATE'S AND COURT'S DECISION AND ENTRY DATED FEBRUARY 3, 2002."

{¶60} The magistrate found that the marriage that commenced on July 4, 1998 effectively terminated on December 15, 2000, a period of thirty months. However, in calculating the share of Jonathon's PSP to which Teresa was entitled, based on the duration of the marriage, the magistrate instead employed a base figure of eighteen months, which yielded an interest for Teresa in the amount of \$7,500.

{¶61} Teresa filed no Civ.R. 53(E) objections to the magistrate's decision. Instead, after the court had adopted the decision as the court's order, Teresa asked the magistrate to correct the error concerning the number of months on which the extent of her interest in Jonathon's PSP is determined from eighteen months to thirty, arguing that use of the eighteen months basis to calculate her interest was a clerical error subject to correction per Civ.R. 60(A). The magistrate agreed, and on the thirty-month basis found that Teresa is entitled to a share of Jonathon's PSP in the amount of \$12,500.

{¶62} Jonathon objected to the magistrate's decision.

In his tenth assignment of error, Jonathon terms his objections as "exceptions." In his eleventh assignment, Jonathon argues that the magistrate's first pronouncement was not a mere clerical error, and in any event was not subject to change after the court had adopted the magistrate's decision as the court's own order. We do not agree.

{¶63}The relief which a magistrate's decision grants is not effective until the decision is adopted by the court pursuant to Civ.R. 53(E)(4). Even then, however, the court's order is interlocutory and subject to revision unless and until a final order is entered by the court that determines all the claims for relief in the action. Here, that occurred when the court entered its decree of divorce on April 10, 2003.

{¶64}The magistrate's error was a clerical error, but Civ.R. 60(A) had no application to it. Civ.R. 60(A) and (B) both apply to final orders. Both the magistrate's first decision and the court's order adopting it were entered prior to the decree of divorce and therefore were subject to change until the decree of divorce was journalized.

{¶65}The tenth and eleventh assignments of error are overruled.

Conclusion

{¶66}Having overruled Plaintiff-Appellant Jonathon Jackson's assignments of error, we will affirm the judgment of the trial court.

FAIN, P.J. and BROGAN, J., concur.

Copies mailed to:

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