[Cite as *Manley v. Manley,* 2005-Ohio-129.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

CHARLENE MANLEY	:	
Plaintiff-Appellee	:	C.A. Case No. 20426
vs.	:	T.C. Case No. 02-DR-1274
ROBERT MANLEY, SR.	:	(Civil Appeal from Common Pleas Court, Domestic Relations)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 14th day of January, 2005.

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BROGAN, J.

{¶ 1} Robert Manley appeals from the judgment of the Montgomery County Common Pleas Court granting him a divorce from Charlene Manley. The Manleys were married in September 1969, divorced in 1975 and remarried the following year. Charlene filed for divorce in August 2002, and at that time the Manleys' children were all emancipated.

{¶ 2} At the time of the divorce, Charlene was 49 years of age and working 20 hours a week at Miami Valley Hospital at $12.61 per hour. The court found that Charlene would earn $14,425.04 in 2003. The court found she was in good health and incurs $2633.41 in monthly expenses and would need spousal support. Robert was 51 years of age and earned $42,328 in a 40 hour week at Precision Metal Fabricators. The trial court found Robert had coronary heart disease and could only work 40 hours a week. The trial court ordered Robert to pay Charlene $879 per month in spousal support for 104 months or 8.7 years. The court did not explain how it arrived at the 8.7 years, but a simple mathematical calculation indicates it represents one-third of the period of the parties' marriage.

{¶ 3} The Manleys agreed that Charlene would keep the marital home valued at $115,000 less a mortgage indebtedness of $56,000. The parties agreed that Robert would be paid his one-half equity in the property, but disputed whether Charlene should be credited with $25,000 for the down payment on the home she alleged she received as a gift from her parents. The trial court gave Charlene credit for $25,000. The trial court also found that a $8600 debt on an AT&T credit card less attorneys fees charged therein was a "marital debt" to be shared equally by the parties. The court also ordered a $900 indebtedness on a Lazarus charge card divided equally as a "marital debt."

{¶ 4} In his first assignment, Robert contends the trial court abused its discretion in awarding spousal support to Charlene in the amount of $870 monthly for 8.7 years. Robert contends that the amount and duration of support ordered by the trial court was based on a "mathematical formula." He notes that the court

ordered alimony for a period which is exactly one-third of the length of the parties marriage, and one-fourth of his income monthly.

{¶ 5} He also argues the trial court did not properly consider that Charlene is a healthy individual capable of working full time, and that he is limited by health issues to a fifty hour week. He also argues that the spousal support order is unreasonable because it reduces his monthly income by one-fourth when his income is limited because of his heart condition.

{¶ 6} Charlene argues that there is no evidence that the trial court relied on a mathematical formula in setting the spousal support order. We disagree. It is obvious that the trial court used a mathematical formula in making both computations.

{¶ 7} The Ohio Supreme Court has held that in making a sustenance alimony award, the trial court must consider all the factors listed in R.C. 3105.18(B) and not base its determination on one of these factors taken in isolation. *Kaechle v. Kaechle* (1988), 35 Ohio St.3d 93. The goal is to reach an equitable result, and the method by which the goal is achieved cannot be reduced to a mathematical formula. *Kaechle,* at 96.

{¶ 8} In determining whether spousal support is appropriate and reasonable, and determining the nature, amount, and duration of the support, the court should consider a number of factors, including the duration of the parties' marriage. See, R.C. 3105.18(C)(1)(e).

{¶ 9} The trial court did not explain why it awarded Charlene spousal support for 104 months. It is obvious that the trial court used a mathematical

formula in considering the length of the Manleys' marriage. Considering the length of the Manleys' marriage, the court's award of spousal support to Charlene for 104 months is not unreasonable. The trial court should not, however, use a formula except as a starting point in determining what spousal support to award in a long term marriage. The formula used by the trial court does provide the benefit of predictability and it does assist counsel in advising their clients concerning the likelihood of a spousal support award and its probable duration.

{¶ 10} Charlene demonstrated a need for the spousal support and Robert has not demonstrated that he cannot meet that support obligation working a 40 hour week. The appellant's first assignment of error must be overruled.

{¶ 11} In his second assignment, appellant contends that the trial court erred when it found that he was in arrears in the payment of temporary spousal support in the amount of $330.41. Appellant contends he paid a $109 utility bill on the marital residence and an alarm system bill in the amount of $580.85 after the temporary spousal support order was entered on September 17, 2002. Appellant also says he gave appellee $400 the first of September 2002 to help her meet her financial obligations.

{¶ 12} Mrs. Manley argues this assignment should be overruled because Robert only paid $400 toward the September monthly temporary order of $730.41 leaving the deficiency the court found. Mrs. Manley argues the utility and alarm system payment should be considered a voluntary gift by Robert not in compliance with the court's order.

{¶ 13} The record discloses that Mr. Manley testified he paid $580 on

September 10, 2003 to Secure Net upon a delinquent account. Manley testified the monthly charge for the alarm system was $31 a month so the account was delinquent for over a year. In support of his testimony, Robert offered Defendant's Exhibit F which corroborated his testimony that he paid the long overdue alarm system bill.

{¶ 14} In her financial disclosure affidavit, Charlene stated she had "other" housing expenses of $40 per month. Presumably this "other" expense included the monthly alarm system bill of $31.00 per month and the court considered this monthly expense in setting the temporary support award. The trial court did not explain why it denied

{¶ 15} Robert credit on the support arrearage for the $580 he paid for the alarm system expense.

{¶ 16} The obligations to support a spouse is based on the marriage contract and on R.C. 3103.03, which requires a married person to support his or her spouse. R.C. 3105.18(B) and Civ.R. 75(N) provide that the court may, for good cause shown, grant temporary spousal support to either of the parties for sustenance and expenses during the pendency of a divorce action while the parties are still husband and wife. Temporary spousal support is automatically terminated when a decree of divorce is granted. *Rahm v. Rahm* (1974), 39 Ohio App.2d 74. Any arrearage obligation is then uncollectible, unless the final decree specifies the arrearages as due. *Swanson v. Swanson* (1976), 48 Ohio App.2d 85. Before specifying an arrearage in temporary spousal support as due, the court should consider any other payments the obligor has made for the obligee's sustenance and expenses while

the divorce action was pending and allow a credit against the arrearage obligation as is reasonable.

{¶ 17} We agree with the appellant that the trial court abused its discretion in failing to credit him with his $580 payment. Charlene lived in the marital premises during this period and she benefitted from the appellant's payment of this bill. The second assignment of error is Sustained.

{¶ 18} In his third assignment, Robert Manley contends the trial court erred in finding that $25,000 of the equity in the parties' residence is the separate property of Mrs. Manley.

{¶ 19} Mrs. Manley testified her parents gave her $25,000 as a gift to her to assist her in the purchase of the parties' marital home on Harlou Drive. Arizona Newsome corroborated her daughter's testimony that she and her husband had given her $25,000 as an advance upon her inheritance to assist her and Robert in the purchase of a new house. She identified a document she prepared for her signature and her husband's evidencing their intention to make this gift to their daughter. (Plaintiff's Exhibit 4).

{¶ 20} The trial court noted the following in finding that Charlene's parents gave the $25,000 as a gift to Charlene alone:

{¶ 21} "Mr. Manley testified the source of the $25,000 down payment was indeed from Charlene's parents. However, Mr. Manley thought Charlene's parents gifted this money to both he and Charlene. He stated the parents never told him the money was a gift to Charlene alone. Mr. Manley said he would not have agreed to buy the home on Harlou Drive if he knew the $25,000 was a gift solely to

Charlene. At the time they bought a home they could only afford a $60,000.00 home. Mr. Manley did however state that the fact of the $25,000 being a gift solely to Charlene could have been his in-laws 'little secret.'

{¶ 22} "Both parties agree the initial $25,000 down payment was from funds gifted by Charlene's parents, therefore tracing of funds is not at issue in this matter.

{¶ 23} "The Court finds from clear and convincing evidence that the $25,000 gift used for the down payment on the home located on Harlou Drive was to Charlene alone. The Court finds the testimony of both Charlene Manley and Arizona Newsome credible regarding the donative intent. Said intent is further evidenced by a notarized document introduced as Plaintiff's Exhibit 4."

{¶ 24} There is competent evidence in this record from which the trial court could have concluded by clear and convincing evidence that Charlene's parents had gifted her the $25,000 down payment. The trial court was in the better position to assess the credibility of the parties and Mrs. Manley's mother. The third assignment is overruled.

{¶ 25} Appellant contends in his fourth assignment that the trial court abused its discretion when it concluded that the indebtedness on two credit cards were "marital" debts to be divided equally between the parties.

{¶ 26} Appellant contends that he introduced evidence that the balance due on the AT&T credit card was $2940.90 in September 2002. Indeed, appellant notes that appellee admitted that the AT&T credit card balance was approximately $2000. (Tr. 34). Also, appellee listed the AT&T credit card balance as $2000 in her financial disclosure affidavit filed in August 2002. Mrs. Manley testified that she

had the roof on the parties' house around the chimney repaired for $800 shortly after the divorce was filed. She provided Plaintiff's Exhibit 7 to corroborate her testimony. She also had the drywall inside the house next to the chimney repaired for $150.00. She had these items charged because she said she did not have the money to do the repairs. She also testified that the roof to the house needed to be replaced and she provided an estimate of $5200 to complete this roofing project. Mrs. Manley also stated she charged $1100 to the credit card for the removal of a large tree which was leaning and was ready to fall on a fence and shed at the rear of the parties' home. Mrs. Manley testified that the AT&T credit card balance was approximately $8500 at the time of the final divorce hearing. She said she purchased Christmas gifts in December 2002 after she and Robert separated and gave them to Robert to distribute. (Tr. 35).

{¶ 27} Robert also contends that he should not have been required to split the Lazarus charge account balance of $900 as of the date of the final divorce because the balance was only $200 at the time the parties separated in September 2002. Mrs. Manley admitted she made additional charges on the Lazarus account after the parties separated. (Tr. 35-36).

{¶ 28} Mrs. Manley argues that the trial court did not err in deciding that the chimney repair and tree removal expenses were marital debts since these were conditions that must have occurred during the marriage but were remedied only after the parties separated. We agree with Mrs. Manley. The balance of the credit card indebtedness, Mrs. Manley testified she spent on Christmas gifts for the family and gave the gifts to Robert to distribute. Robert did not refute Mrs. Manley's

testimony about the Christmas gifts and the expenditures for them.

{¶ 29} Mrs. Manley did not provide an explanation, however, for the $700 increase in the credit card balance on the Lazarus account after the parties separation date. As such, Mr. Manley should only be responsible for one-half of the $200 indebtedness absent some explanation by the court. In this latter respect, Robert's fourth assignment of error is sustained.

{¶ 30} The judgment of the trial court is Affirmed in part and Reversed in part. This matter is Remanded to the trial court to enter a judgment consistent with this opinion.

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YOUNG, J., concurs.

GRADY, J., concurring:

{¶ 31} I agree that the trial court did not abuse its discretion when it ordered Robert Manley to pay one-half the $8,600 balance due on the AT&T credit card, not because the entire amount represented his marital obligation, however.

{¶ 32} As it is authorized by R.C. 3105.171(A)(2)(b) to do, the trial court found that the parties' marriage had terminated on the date of their separation. Approximately $2,940.00 was owed on the AT&T card at that time. Like marital property the parties jointly own, marital debt that they jointly owe should be divided with reference to the amount of the debt on the date of the final hearing or on an earlier time when the marriage terminated. Therefore, $2,940 of the $8,600

balance owed at the time of the decree was marital debt the court could equally divide between the parties as it did.

{¶ 33} The remaining $5,660.00 of the balance owed cannot be marital debt because it was incurred by Charlene Manley after the date of separation, when the marriage had terminated. However, because the expenditures involved were for repairs on the marital residence Charlene Manley was awarded, the obligation to pay one-half that amount is a distributive award from his separate property which the court could reasonably order Robert Manley to pay to effectuate the award of marital property to Charlene Manley. See R.C. 3105.171(A)(1) and (E)(1). Absent an abuse of discretion, which is not shown, I would affirm the court's order requiring Robert Manley to pay one-half the $8,600 balance on that basis.

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