[Cite as *Davis v. Davis*, 2005-Ohio-670.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

MICHELE D. DAVIS	:	
Plaintiff-Appellee	:	C.A. Case No. 20364
v.	:	T.C. Case No. 2001-DR-1373
CHARLES DAVIS	:	(Civil Appeal from Common Pleas Court, Domestic Relations)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 18th day of February, 2005.

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FAIN, J.

{¶ 1} Charles Davis appeals from a decision of the Montgomery County Court of Common Pleas, Domestic Relations Division, overruling his objections to a magistrate's decision and order. Davis contends that the trial court erred in awarding spousal support to his former spouse, Michele Lewis, because it is not appropriate and reasonable under R.C. 3105.18(C)(1). We conclude that the trial court properly considered the factors listed in R.C. 3105.18(C)(1) in relation to the

facts of this case and did not abuse its discretion in finding that an award of spousal support in the amount of $650 per month is appropriate and reasonable.

{¶ 2} Davis also contends that the trial court erred in overruling his objections to the magistrate's decision and order, because the magistrate failed to file an amended decision including findings of fact and conclusions of law pursuant to Civ.R. 53(E)(2). We conclude that the original magistrate's decision and order contains findings of fact and conclusions of law; therefore, the magistrate was not required to file an amended decision containing findings of fact and conclusions of law pursuant to Civ.R. 53(E)(2), and the trial court did not err in overruling Davis's objections to the magistrate's decision and order upon this ground.

{¶ 3} Davis contends that the trial court erred in modifying spousal support, because a material change of circumstances for Lewis was not demonstrated. We conclude that a material change of circumstances was demonstrated when Lewis testified that she has not been able to continue her part-time employment at Sinclair Community College due to a medical condition, resulting in a reduction in income for her. Therefore, we conclude that the trial court did not err in overruling Davis's objections to the magistrate's decision and order.

{¶ 4} Accordingly, the judgment of the trial court is affirmed.

I

{¶ 5} Michele (Davis) Lewis and Charles Davis were married in 1980, and had two children together. After living separate and apart for more than one year, Lewis and Davis were granted a final judgment and decree of divorce in May, 2002. The trial court ordered in the decree that "there shall be no award of spousal

support at this time, so long as the Defendant continues to pay the support order under Juvenile Case Number JC 2000-6194." The trial court retained jurisdiction over the issue of spousal support until November 30, 2008.

{¶ 6} In the juvenile case, Davis was ordered to pay $176 a week in child support. Davis's child support obligation terminated in October, 2002. In March, 2003, Lewis filed a motion for an award of spousal support, alleging that the termination of child support payments caused a material change of circumstances for her. After a hearing, a magistrate determined that spousal support would be appropriate and reasonable in this case and ordered that Davis pay Lewis $650 per month in spousal support until November 30, 2008, the death of either party, or Lewis's remarriage, whichever occurs first.

{¶ 7} Davis filed a motion for findings of fact and conclusions of law. Davis then filed objections to the magistrate's decision and order. The trial court found that the magistrate's decision contained sufficient findings of fact, rendering Davis's motion for findings of fact moot. The trial court also overruled Davis's objections to the magistrate's decision and order. From this order, Davis appeals.

II

{¶ 8} Davis's First Assignment of Error is as follows:

{¶ 9} "THE TRIAL COURT ERRED IN ITS DECISION TO AWARD SPOUSAL SUPPORT TO THE APPELLEE BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THAT THE AWARD WAS APPROPRIATE AND REASONABLE UNDER R.C. 3105.18(C) AND BECAUSE THE MAGISTRATE FAILED TO FILE AN AMENDED DECISION STATING

FINDINGS OF FACT OR CONCLUSIONS OF LAW."

{¶ 10} Davis contends that the trial court erred in awarding spousal support to Lewis, because it is not appropriate and reasonable under R.C. 3105.18(C)(1).

{¶ 11} We review a trial court's decision to award spousal support only for an abuse of discretion. *Cronin v. Cronin*, Greene App. Nos. 02-CA-110, 03-CA-75, 2005-Ohio-301, at ¶29. A trial court abuses its discretion when it makes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 5 OBR 481, 450 N.E.2d 1140.

{¶ 12} In determining whether an award of spousal support is appropriate and reasonable, a trial court is guided by R.C. 3105.18(C)(1), which lists several factors for the trial court to consider in reaching its decision. R.C. 3105.18(C)(1) provides as follows:

{¶ 13} "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:

{¶ 14} "(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;

{¶ 15} "(b) The relative earning abilities of the parties;

{¶ 16} "(c) The ages and the physical, mental, and emotional conditions of the parties;

{¶ 17} “(d) The retirement benefits of the parties;

{¶ 18} “(e) The duration of the marriage;

{¶ 19} “(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;

{¶ 20} “(g) The standard of living of the parties established during the marriage;

{¶ 21} “(h) The relative extent of education of the parties;

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

{¶ 23} “(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;

{¶ 24} “(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;

{¶ 25} “(i) The tax consequences, for each party, of an award of spousal support;

{¶ 26} “(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

{¶ 27} "(n) Any other factor that the court expressly finds to be relevant and equitable."

{¶ 28} In this case, the trial court stated that it reviewed the factors listed in R.C. 3105.18(C)(1) and found as follows:

{¶ 29} "The parties were married 21 years. Plaintiff is 42 years old and defendant is 45 years old. In 2002 she earned approximately $34,000.00 working three jobs. Due to health reasons she will no longer be able to work one of the part time positions, Sinclair Community College teaching. Thus her income will be reduced by approximately $2,520.00 ($630 per quarter). Plaintiff testified that her monthly expenses are approximately $1,800.00.

{¶ 30} "Defendant is currently employed at Delphi earning $21.45 per hour. He acknowledged that he works some overtime. In 2001 and 2002 he earned approximately $64,000.00 and $65,000.00 respectively. At the time of the hearing, he had earned $24,000.00. At that pace, he would earn approximately $80,000.00 in 2003.

{¶ 31} "The Court finds that the final decree of divorce provides for the continuing jurisdiction over the issue of spousal support. Considering the factors of R.C. 3105.18(C)(1), the Court finds an award of $650.00 per month as spousal support is reasonable and appropriate."

{¶ 32} Based on the foregoing, we conclude that the trial court properly considered the factors listed in R.C. 3105.18(C)(1) in relation to the facts of this case, and did not abuse its discretion in finding that an award of spousal support in

the amount of $650 per month would be appropriate and reasonable.

{¶ 33} Davis also contends that the trial court erred in overruling his objections to the magistrate's decision and order, because the magistrate failed to file an amended decision including findings of fact and conclusions of law pursuant to Civ.R. 53(E)(2).

{¶ 34} Civ.R. 53(E)(2) provides that if a request for findings of fact and conclusions of law is requested after the magistrate's decision is filed, "the magistrate shall include the findings of fact and conclusions of law in an amended magistrate's decision." Davis filed a motion for findings of fact and conclusions of law after the magistrate's decision was filed, and the magistrate did not file an amended decision. The trial court found that the magistrate's decision contained sufficient findings of fact, rendering Davis's motion for findings of fact moot.

{¶ 35} The magistrate's decision in this case stated as follows:

{¶ 36} "In considering whether spousal support is appropriate and reasonable, the court has reviewed the facts [sic] as set forth in R.C. 3105.18(C)(1)(a-n).

{¶ 37} "The plaintiff and the defendant were married on November 15, 1980. The parties had two children as issue of said marriage who are now emancipated.

{¶ 38} "The parties were divorced on May 31, 2002. They were married for 21 years and lived together in the same residence for 19 years.

{¶ 39} "The plaintiff is 42 years old. The plaintiff is a high school graduate. She has been employed at several places. She works for Nova House and works

between 40 - 60 hours a week. In addition, she is a part-time instructor at Sinclair. She also works part-time in a regional DUI program on the weekend. These jobs provide her source of income. Her income for 2002 was $34,000.

{¶ 40} "The plaintiff is not in perfect health. She suffers from severe back pain. This creates a difficulty for her in walking. There was no evidence of mental health disorder.

{¶ 41} "The plaintiff did not submit a financial affidavit. She testifies as to her monthly expenses. She incurs monthly expenses of approximately $1,827.

{¶ 42} "The defendant is 45 years old. The defendant has been employed at Delphi. He earns $21.45 per hour. In 2001, he earned $64,000 in income. In 2002, he earned $65,000 in income. As of April 15, 2003, his income was $24,000. If overtime remains the same, he should earn at least $84,000 for 2003.

{¶ 43} "The defendant is in good health and is not suffering from physical or mental issues.

{¶ 44} "Both parties filed a joint bankruptcy. As a result there were no marital debts.

{¶ 45} "The court has concluded that the defendant shall pay to the plaintiff an award of spousal support. Spousal support would be appropriate and reasonable in this case."

{¶ 46} The magistrate's decision and order demonstrates that the magistrate stated her findings of fact and conclusions of law when she considered the factors listed in R.C. 3105.18(C)(1) in relation to the facts of this case and reached the

conclusion to award spousal support based on those findings. Because the magistrate's decision and order contains the magistrate's findings of fact and conclusions of law, the magistrate was not required to file an amended decision containing findings of fact and conclusions of law, pursuant to Civ.R. 53(E)(2). We conclude that the trial court did not err in finding that the magistrate's decision contained sufficient findings of fact and conclusions of law, and therefore, did not err in overruling Davis's objections to the magistrate's decision and order on this issue.

{¶ 47} Davis's First Assignment of Error is overruled.

III

{¶ 48} Davis's Second Assignment of Error is as follows:

{¶ 49} "THE TRIAL COURT ERRED IN MODIFYING SPOUSAL SUPPORT BECAUSE THE APPELLEE FAILED TO DEMONSTRATE A CHANGE OF CIRCUMSTANCES, AS REQUIRED UNDER R.C. 3105.18(D) TO MODIFY THE SPOUSAL SUPPORT HOLDING IN THE FINAL JUDGMENT AND DECREE."

{¶ 50} Davis contends that the trial court erred in modifying spousal support, because a material change of circumstances was not demonstrated.

{¶ 51} In determining that an award of spousal support was appropriate and reasonable in this case, the trial court found that "[i]n 2002 she [Lewis] earned approximately $34,000.00 working three jobs. Due to health reasons she will no longer be able to work one of the part time positions, Sinclair Community College teaching. Thus her income will be reduced by approximately $2,520.00 ($630 per

quarter)."

{¶ 52} The trial court's finding is supported by the record. At the hearing, Lewis testified that at the time of the divorce, she had one full-time job at Nova House and two part-time jobs at a regional DUI program and Sinclair Community College. Lewis testified that since the divorce, she had not been able to continue employment at Sinclair Community College due to a medical condition. Lewis testified as follows:

{¶ 53} "Q. Ms. Davis, has anything occurred in your life since the time that you obtained your divorce until the present that caused you to have financial need?

{¶ 54} "A. As I stated I was not working at Sinclair due to a medical issue, so that's probably the biggest thing.

{¶ 55} "Q. Just for the record, what is that medical issue?

{¶ 56} "A. I get severe back pain, my back goes out where [sic] I'm home from work. I can't - - I don't go in. It is very difficult to walk, very difficult to get around. I've seen a physician as well as a chiropractor."

{¶ 57} Based on Lewis's testimony that she has not been able to continue her part-time employment at Sinclair Community College due to her medical condition, resulting in a reduction in her income, we conclude that a material change of circumstances was demonstrated. We conclude that the trial court did not err in overruling Davis's objections to the magistrate's decision and order awarding spousal support to Lewis in the amount of $650 per month.

{¶ 58} Davis's Second Assignment of Error is overruled.

IV

{¶ 59} Both of Davis's Assignments of Error having been overruled, the judgment of the trial court is affirmed.

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WOLFF, J., concur.

GRADY, J., dissenting:

{¶ 60} I agree that the record portrays both Michele Lewis's need for spousal support and Charles Davis's ability to pay, as well as changed circumstances required by R.C. 3105.18(E) in order to amend a prior spousal support order. However, there was no prior spousal support order to amend.

{¶ 61} R.C. 3105.18(A) defines spousal support to mean "any payment or payments to be made to a spouse or former spouse, or to a third party for the benefit of a spouse or former spouse, that is both for sustenance and support of the spouse or former spouse."

{¶ 62} The decree of divorce entered in the present case provides that "there shall be no award of spousal support at this time, so long as the Defendant continues to pay the support order under Juvenile Case Number JC 2000-6194." That order was for child support, which is paid for the benefit of a child. Michele Lewis was merely the obligee who was entitled by the order to receive the support payments on the child's behalf. R.C 3119.01(B)(3). Those payments were not for

her benefit, and are not spousal support.

{¶ 63} The jurisdiction of the court of common pleas and its divisions is provided by statute. Article IV, Section 4(B), Ohio Constitution. Jurisdiction to grant divorces is conferred on the court of common pleas by R.C 3105.01. R.C. 2301.03(F) assigns the exercise of that jurisdiction to the domestic relations division of the Court of Common Pleas of Montgomery County.

{¶ 64} The domestic relations court's jurisdiction is invoked when an action for divorce is commenced pursuant to Civ.R. 3(A). The court's jurisdiction in the action terminates, unless otherwise provided by statute, when a judgment and decree of divorce is entered, because the decree is a final order in a special proceeding. *Langer v. Langer* (1997), 123 Ohio App.3d 348.

{¶ 65} There are two statutory exceptions which continue the jurisdiction of the court invoked in a divorce action after the final decree has issued. One involves terms of the decree involving the care, custody, and control of minor children ordered pursuant to R.C. Chapter 3109. The other exception involves spousal support, and is found in R.C. 3105.18(E). That section provides, in pertinent part:

{¶ 66} "[I]f a continuing order for periodic payments of money as spousal support is entered in a divorce or dissolution of marriage action that is determined on or after January 1, 1991, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony or spousal support unless the court determines that the circumstances of either party have changed and unless one of the following applies:

{¶ 67} "(1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support."

{¶ 68} R.C. 3105.18(E)(1) confers continuing jurisdiction to modify an order for periodic payments of money as spousal support which is entered in a final decree of divorce if the decree specifically authorizes the court to modify the amount or terms of spousal support the court has ordered. Such an authorization, or "reservation of jurisdiction" as it is sometimes called, cannot confer any continuing jurisdiction unless the decree contains an order for periodic payments of money as spousal support.

{¶ 69} In the present case, the divorce decree expressly provides that "there shall be no award of spousal support at this time." The further clause continuing that denial of that relief "so long as Defendant continues to pay" the child support required in a juvenile court proceeding is not an order for periodic payments of money as spousal support, because child support is not spousal support. Therefore, whether Defendant satisfies that obligation or is relieved of it is immaterial with respect to the "continuing jurisdiction" the provision purports to confer.

{¶ 70} Defendant-Appellant has not challenged the domestic relations court's jurisdiction to now enter a spousal support order. However, a court's jurisdiction may be challenged at any phase of the proceeding, including on appeal, and the

issue may be raised by the court itself. Indeed the court should raise the issue when constitutionally conferred jurisdiction is distorted or nonexistent.

{¶ 71} R.C. 3105.011 confers full equitable powers and jurisdiction on the domestic relations courts which are "appropriate to the determination of domestic relations matters." In recent years, some parties and courts have, at least in my view, used that provision to expand the court's powers beyond applicable statutory limits. The matter is equally serious, if not even more so, when the court's jurisdiction is involved, because mischief is then even more likely to occur.

{¶ 72} In the present case, if Michele Davis had a need for spousal support when her marriage to Charles Davis was terminated in 2002, she could have prosecuted the claim. She didn't, and instead deferred the issue through a defective "reservation of jurisdiction" that was coupled to termination of child support, which was no doubt anticipated. That merely perpetuates the conflict a divorce action should fully resolve if at all possible. And, it does so by creating continuing jurisdiction that cannot exist.

{¶ 73} The courts are not social service agencies, available on a perpetual basis to ameliorate any and all problems in marital relationships. Courts exercise the judicial power conferred on them by Article IV, Section 1 of the Ohio Constitution. Even in its equitable applications, that power is best exercised with precision and restraint. Careful observation of the jurisdictional boundaries which acts of the General Assembly impose in exercise of the authority conferred on it by Article IV, Section 4(B) is necessary to achieve those goals. In my view, that was

not done here.

{¶ 74} Returning to where I began, it should have seemed obvious in 2002 when the parties terminated their marriage of twenty-one years that Michele Lewis had a need for spousal support and that Charles Davis had the ability to pay it. That year, Michele Lewis worked three jobs and earned $34,000.00. Charles Davis worked but one job and earned $65,000.00, almost twice what his wife earned. His annual child support obligation was $9,152.00, but would terminate in another year. Some spousal support was even then justified, and had spousal support in some amount been ordered Charles Davis could have sought a modification of his child support obligation. See R.C. 3119.022. And, had spousal support been ordered and jurisdiction "reserved," Michele Lewis could have legitimately sought an upward modification in 2004 when her health deteriorated. More importantly, the court would have possessed the continuing jurisdiction to grant that relief. None of that was done, and the alternative that was followed both perpetuated uncertainty and distorted the court's jurisdiction.

{¶ 75} For the foregoing reasons, I would reverse and vacate the order imposing a spousal support obligation from which this appeal was taken, upon a finding that the domestic relations court lacked jurisdiction to enter the order.

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