[Cite as *Seitz v. Seitz*, 2010-Ohio-3655.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

SUSAN M. SEITZ	:	
Plaintiff-Appellant	:	C.A. CASE NO. 22426, 23698
v.	:	T.C. NO. 2005LS00002
DAVID R. SEITZ	:	(Civil appeal from Common Pleas Court, Domestic Relations)
Defendant-Appellee	:	
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O P I N I O N

Rendered on the 6th day of August, 2010.

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FROELICH, J.

{¶ 1} Susan M. Seitz appeals from a Final Judgment and Decree of Divorce entered by the Montgomery County Court of Common Pleas, Domestic Relations Division, which divided marital assets and determined spousal support (Case No. 22426). Mrs. Seitz also appeals from a judgment from the same court denying her Civ.R. 60(B) motion for relief from judgment (the divorce decree) (Case No. 23698). These appeals have been consolidated. For the following

reasons, the judgments of the trial court will be affirmed.

I

{¶ 2} David and Susan Seitz were married in 1966, and they have emancipated children from their marriage. In January 2005, Mrs. Seitz filed a complaint for legal separation, but the parties continued to use joint accounts for their living expenses. The complaint was subsequently amended to a complaint for divorce.

{¶ 3} The parties agreed on some issues related to the property settlement, while other issues were litigated in the trial court. In August 2007, the trial court entered a Final Judgment and Decree of Divorce, which divided the parties' assets and found that no spousal support was warranted. Mrs. Seitz filed a timely notice of appeal.

{¶ 4} In April 2008, Mrs. Seitz filed a Motion for Relief from Judgment pursuant to Civ.R. 60(A) and (B), which raised numerous issues related to the divorce decree. By the time the motion was heard by a magistrate, only three issues remained in dispute: spousal support, repayment of a loan to Mr. Seitz's brother, and tax liabilities. Additionally, the magistrate noted that the parties had agreed to amend the decree "to reflect that no hearing took place on September 26, 2006" and to reflect that the total amount due from Mr. Seitz to Mrs. Seitz was $17,023.35 (amending paragraph 24 of the decree). After a hearing on the disputed issues, the magistrate clarified the tax issues and "dismissed" the arguments with respect to spousal support and the loan repayment. The trial court adopted the magistrate's decision, and Mrs. Seitz filed an appeal from the denial of her motion for Civ.R. 60(B) relief.

{¶ 5} Mrs. Seitz has filed one brief in the consolidated appeal, in which she raises four

assignments of error.

II

{¶ 6} As a preliminary matter, we will briefly address the differences among a direct appeal, a motion for relief from judgment, and an appeal from the denial of a motion for relief from judgment.

{¶ 7} When a direct appeal is taken from a judgment of a trial court, the trial court is divested of jurisdiction except over issues that are "not inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the judgment" appealed. *Cramer v. Fairfield Medical Ctr.*, Fairfield App. No. 2007 CA 02, 2008-Ohio-6706, citing *State ex rel. Fire Marshal v. Curl*, 87 Ohio St.3d 568, 570, 2000-Ohio-248; *Gillam v. Johnson*, Montgomery App. No. 18379, citing *Catholic Social Serv. of Cuyahoga Cty*. (1994), 70 Ohio St.3d 141, 147. Civ.R. 60(B) is intended to provide relief from a final judgment in specific, enumerated situations, but it cannot be used as a substitute for a direct appeal. See *Doe v. Trumbull Cty. Children Services Bd.* (1986), 28 Ohio St.3d 128, paragraph two of the syllabus; *Colley v. Bazell* (1980), 64 Ohio St.2d 243, 245. Civ.R. 60(B) cannot be used to circumvent the appeals process "since it is the function of the appellate court to correct legal errors committed by the trial court." *Taylor v. Taylor* (Mar 27, 1987), Lawrence App. No. 1801 (citations omitted). Allowing a trial court to revisit its prior ruling under the guise of a Civ.R. 60(B) motion is "a disguised motion for reconsideration which has been explicitly held to be a nullity." *Smith*, supra, citing *Pitts v. Ohio Dept. of Transportation* (1981), 67 Ohio St.2d 378, paragraph one of the syllabus.

{¶ 8} Mrs. Seitz contended in her motion for relief from judgment and contends on

appeal that the trial court erred in resolving the property settlement and spousal support issues as it did. Her arguments were addressed to correcting legal errors committed by the trial court. For example, she stated: "Plaintiff alleges pursuant to Civil Rule 60(B)(1), (3), and (5) the Court failed to consider the expert testimony provided as to the Plaintiff and Defendant's true incomes, failed to consider the costs of healthcare for the Plaintiff, relied upon improper information offered by the Defendant as to the availability of certain pledged funds as they affect his income and failed to consider the income generated by Defendant from an annuity." This argument clearly demonstrates that Mrs. Seitz's Civ.R. 60(B) motion raised errors in the trial court's legal analysis which were subject to reversal, modification, or affirmance on direct appeal from the Final Judgment and Decree of Divorce. Thus, the trial court lacked jurisdiction to grant relief on the grounds presented in Mrs. Seitz's motion for relief from judgment. *Cramer*, supra; *Killam*, supra. Although the trial court denied the motion for relief from judgment on other grounds, we will affirm the denial of the motion based on our conclusion that the trial court lacked jurisdiction to grant relief on the grounds presented.

{¶ 9} We now turn to Mrs. Seitz's assignments of error. Having concluded that Mrs. Seitz's Civ.R. 60(B) motion for relief from judgment raised issues of fact and law which could be appropriately raised only on direct appeal, we will address the arguments in that context. We will address the arguments raised in support of the motion for relief from judgment and the trial court's decision on those issues only to the limited extent that they are helpful to our understanding of the issues raised on direct appeal.

III

{¶ 10} Mrs. Seitz's first assignment of error states:

{¶ 11} "THE COURT COMMITTED ERROR IN NOT AWARDING UNCONTESTED AND AGREED UPON FUNDS TO APPELLANT."

{¶ 12} Mrs. Seitz contends that Mr. Seitz had "surreptitiously liquidated certain financial accounts without [her] knowledge" and that the magistrate specifically reserved these issues to be resolved at the final hearing. She claims that Mr. Seitz had agreed to pay her "the value of said funds," but that, "despite [Mr. Seitz's] admissions and consent," the trial court failed to award these funds to her in its final judgment. Mr. Seitz claims that the parties orally agreed to offset some of their financial claims and that the property settlement agreement reflected these offsets.

{¶ 13} R.C. 3105.171(B) requires a court that grants a decree of divorce to divide the parties' marital property equitably between them. "'A trial court is vested with broad discretion when fashioning [the] division of marital property.'" *Smith v. Smith*, 182 Ohio App.3d 375, 2009-Ohio-2326, ¶15, quoting *Bisker v. Bisker* (1994), 69 Ohio St.3d 608, 609.

{¶ 14} When reviewing a division of marital property, an appellate court is limited to determining whether, after examining the totality of the circumstances, the trial court abused its discretion in formulating the award. *James v. James* (1995), 101 Ohio App.3d 668, 680; *Jones v. Jones* (Oct. 13, 2000), Montgomery App. No. 18082. An abuse of discretion occurs when the decision of a court is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 15} One of the issues raised by Mrs. Seitz under this assignment of error is the "Longleaf/Dreyfus joint account," which was one of the "white binder" issues. The "white binder" contained documentation of the parties' "small financial matters" or assets during the marriage. "White binder issues" were discussed in the lower court proceedings as one category

of property settlement issues. Mrs. Seitz claims that the redemption of the Longleaf and Dreyfus accounts had netted $3,147.95 collectively, and Mr. Seitz had kept this money, so she was entitled to half of that amount.

{¶ 16} The evidence presented at trial with respect to the Longleaf and Dreyfus accounts was as follows: The Longleaf and Dreyfus accounts were held as part of Mr. Seitz's defined benefit plan. It is unclear when the accounts were redeemed, but the parties agreed that the total value of the two accounts was $61,350.10 at redemption. They also agreed that the proceeds from the redemption were offset by defined benefit plan contributions by Mr. Seitz in 2005 of $40,817 and by an amount of $17,385.15, which was applied to reduce the mortgage on their Myrtle Beach condominium. After these offsets, $3,147.95 of the redemption amount for the Longleaf and Dreyfus accounts remained in Mr. Seitz's possession. Mrs. Seitz based her claim that she was entitled to $1,573.98 on this amount ($3,147.95 ÷ 2 = $1,573.98). Mr. Seitz claimed, however, that there were several additional expenses in 2005 and 2006 associated with administration and redemption of the accounts, including administrative and termination fees. Mr. Seitz claims that these additional expenses totaled $3,501.12, such that he had actually paid $353.17 "out of [his] own funds" and did not owe Mrs. Seitz any proceeds from the redemption of these accounts.

{¶ 17} At the hearing in the trial court, Mrs. Seitz did not refute Mr. Seitz's testimony about the additional fees incurred in the final months of administration and in the termination of the Longleaf and Dreyfus accounts. Indeed, her own exhibit showed payments and fees made from those funds while the divorce was pending totaling more than $1,600, which are not reflected in the figures she uses.

{¶ 18} Mrs. Seitz's post-trial brief addressed numerous "white binder" issues, but not the Longleaf and Dreyfus accounts. Mr. Seitz's reply to Mrs. Seitz's post-trial brief does seem to address these assets, although not by name: he points to an April 6, 2005 "entry for Partial Release of Restraining Orders," which expressly released restraining orders previously filed against these two accounts. Mr. Seitz claims that, after the funds were released, they were "used in satisfaction of a joint obligation."

{¶ 19} The resolution of conflicting evidence and assessment of witness credibility were matters for the trial court; a trial court is not required to explain why it weighs some factors or testimony more heavily than others, and an appellate court should not second guess a trial court's factual determination unless there has been an abuse of discretion. *Rock v. Cabral* (1993), 67 Ohio St.3d 108, 112; *Aldo v. Angle*, Clark App. No. 09-CA-103, 2010-Ohio-2008, at ¶33. With respect to the Longleaf and Dreyfus accounts, the trial court reasonably credited Mr. Seitz's testimony that those funds had been exhausted, and it did not abuse its discretion in refusing to award any of the funds to Mrs. Seitz.

{¶ 20} Mrs. Seitz also claims that the trial court "inadvertently" failed to award her $2,101.11 in proceeds from the sale of the parties' Myrtle Beach condominium and $4,465.30 from a Key Bank account that Mr. Seitz used on personal expenditures. Mr. Seitz contends that no amounts are owed from the sale of the condominium or the Key Bank account because any money he retained from these sources was offset by money that Mrs. Seitz kept or that was owed to him by Mrs. Seitz due to his payment of her health insurance premiums while the divorce was pending.

{¶ 21} On May 23, 2007, the trial court issued a decision in which it stated: "During the

pendency of this action, the Myrtle Beach condominium has been sold, and proceeds from that sale have been distributed in a manner agreeable to the parties." With respect to bank accounts, the trial court's decision stated: "The Court is uncertain as to the continued existence of bank accounts, either checking or savings, at the time of this final hearing. If any such accounts continue to exist, the balances therein shall be equalized. The Court is assuming that most of the accounts not specifically mentioned in the summary have been exhausted for current and ongoing living expenses." The Key Bank account was not included in the summary. The court specifically noted that the Key Bank account may have been closed and the proceeds transferred elsewhere.

{¶ 22} After the trial court's May 2007 decision, both parties filed proposed decrees with the trial court. Mrs. Seitz also filed a motion to clarify the trial court's decision, but the issues raised therein did not relate to the Myrtle Beach property or the Key Bank account. In its ruling on the motion to clarify, the court commented on the proposed decrees, observing: "It would appear that the parties have reached some additional compromises that are duplicated in both of these decrees." In response to the "clarification" sought by Mrs. Seitz, the court also stated: "The court understood that both parties used monies from the joint accounts during a significant period of separation. It was the court's understanding that none of those specific accounts cited in the plaintiff's decree were in existence at the time of the final hearing." Copies of the proposed decrees are not contained in the record; it is unclear to which account(s) this comment refers and what compromises the parties might have reached. The Key Bank account, however, was a joint account that remained in existence for some time after the parties' separation. The Final Judgment and Decree of Divorce made no mention of the Myrtle Beach property or the Key

Bank account.

{¶ 23} Mrs. Seitz correctly points out that Mr. Seitz admitted having funds from the Myrtle Beach condominium and from the Key Bank account in his possession. He did not admit, however, that he owed Mrs. Seitz half of those monies. He asserted that those funds had been offset against amounts that Mrs. Seitz had owed to him for her expenditures from marital accounts and for the cost of her health insurance premiums from July 1, 2006 through the time of the divorce. Although the trial court did not expressly endorse this view, it repeatedly stated its belief that these issues had been resolved between the parties and, in its May 2007 decision, characterized the resolution of the "white binder" issues as "offsets." In its decision on Mrs. Seitz's motion to clarify the decision, the court noted "additional compromises" reached by the parties and that both parties had used monies from joint accounts after their separation, concluding that Mrs. Seitz was not entitled to additional funds in relation to these expenditures.

{¶ 24} Based on the trial court's statements in its decisions predating the Final Judgment and Decree of Divorce, we do not share Mrs. Seitz's opinion that the failure to award her additional funds from the Myrtle Beach property account and the Key Bank account was an oversight on the part of the trial court. The trial court's decisions indicate its conclusion that no additional award was warranted.

{¶ 25} The first assignment of error is overruled.

IV

{¶ 26} Mrs. Seitz's second assignment of error states:

{¶ 27} "THE COURT CORRECTLY FOUND THAT APPELLEE FAILED TO

ESTABLISH A PERSONAL LOAN WAS TRANSFORMED INTO A BUSINESS ASSET BUT THEN FAILED TO AWARD APPELLANT HER SHARE OF THE LOAN PROCEEDS."

{¶ 28} This assignment of error relates to a personal loan that the parties made to Mr. Seitz's brother, Joe Seitz, a decade before the divorce in the amount of $20,000. According to Mrs. Seitz, Mr. Seitz failed to establish that this loan had ever been repaid or that the debt had been converted from a personal asset to a business asset, as Mr. Seitz claimed. She asserted that she should have been awarded half of the outstanding loan balance in the property settlement. Mr. Seitz presented evidence that Joe had repaid the loan by doing construction work on the marital home and on the parties' check cashing stores. Mr. Seitz claims that the repayment of the loan was reflected in the values of the residence and the business and that the trial court reasonably concluded that it was no longer an asset that needed to be divided.

{¶ 29} In the Final Judgment and Decree of Divorce, the trial court addressed the Joe Seitz loan as follows: "[T]here is insufficient, contradictory evidence presented in court that the loan to Joe Seitz was in fact forgiven for other services rendered. The Court notes that the value that was contributed to the franchises by Joe Seitz's efforts is incorporated into the overall valuation of the businesses which have been equally divided." Mrs. Seitz contends that the trial court's reference to "insufficient" evidence is inconsistent with its conclusion that the value of Joe's services had been incorporated into the value of the parties' business. She argues that the trial court's statement about insufficient evidence regarding the loan was correct, but that it improperly concluded that Joe's Seitz's work in repayment of the loan had been incorporated into the division of assets.

{¶ 30} Both the trial court's May 2007 decision and its Final Judgment and Decree of

Divorce include the confusing language about "insufficient, contradictory evidence," followed by the conclusion that the value of the work Joe contributed to the business had been included in the value of the business and divided equitably between the parties.[1] The trial court addressed this issue in more detail in response to Mrs. Seitz's motion for relief from judgment. As we explained supra, the issues raised in Mrs. Seitz's Civ.R. 60(B) motion were properly raised on direct appeal, and not in a motion for relief from judgment. However, we will consider the trial court's decision on the Civ.R. 60(B) motion to the extent that it helps to clarify the court's conclusion with respect to the Seitz loan.

{¶ 31} When the magistrate addressed the Joe Seitz loan in response to Mrs. Seitz's Civ.R. 60(B) motion for relief from judgment, he stated:

{¶ 32} "During the course of the parties' divorce, [Mrs. Seitz] made a claim for one half of a $20,000 loan from marital assets made to [Mr. Seitz's] brother, Joe Seitz. This loan occurred in 1997 as a part of a real estate purchase in Vandalia. [Mrs. Seitz] alleges that Joe Seitz purchased his current residence and an adjacent property with this loan. Furthermore, [Mrs. Seitz] alleges that there was an oral contract that upon the sale of the adjacent property, the loan would be repaid. There was no indication of a signed contract evidencing the terms stated by [Mrs. Seitz].

{¶ 33} "However, Joe Seitz has performed work on the parties' marital residence and their United Check Cashing stores. Joe Seitz performed extensive work on the parties' stores in December 2001 and September 2003. Joe Seitz was paid for his manual labor at a rate of $21

[1]This issue was not raised in Mrs. Seitz's motion to clarify the court's May 2007 decision.

per hour but made no profit from his work in the United Check Cashing stores. Additionally, the parties received a significant benefit from having Joe Seitz perform the work, in that the final cost of construction work was considerably less than any of the estimates they had received from other general contractors.

{¶ 34} "However, the court found that there was contradictory, insufficient evidence to warrant a finding that Joe Seitz's loan had been extinguished as a result of the work he performed on the two United Check Cashing stores. However, the Court did find that the work Mr. Seitz performed at the United Check Cashing stores was included in the valuation of the United Check Cashing business, and as a result, [Mrs. Seitz] had already received her share of the allegedly unpaid debt."

{¶ 35} In sum, the magistrate concluded that Joe Seitz had repaid the loan by performing construction work on the Seitz's business. (This conclusion is not necessarily inconsistent with the trial court's statement that the loan had not been forgiven, because repayment of a loan is different from forgiveness of a loan.) The magistrate further concluded that, because the loan had been repaid to the business, Mrs. Seitz had already received her share of the proceeds in the property distribution. The trial court adopted this conclusion and found Mrs. Seitz's argument "not to be well taken."

{¶ 36} Based on our thorough review of the record and on the magistrate's and trial court's resolutions of this issue in response to Mrs. Seitz's motion for relief from judgment, we conclude that the evidence offered with respect to the alleged loan was not "insufficient" and that the trial court reasonably concluded that the loan had been repaid. Joe Seitz testified at length about work he had done in repayment of the $20,000 loan. Joe was a toolmaker by trade, but he

became a commercial general contractor at his brother's urging because Mr. Seitz could not find a reasonably-priced contractor to do the "build-outs" of the two check-cashing stores. Joe testified that he had worked on the first store from January through August 2002 and on the second store from "winter" of 2003 through September 2003. He testified that he worked approximately 200 hours on the first store and 300 hours on the second store. Although Joe was paid for his manual labor at his toolmaker's rate, he did not receive any payment for serving as the general contractor, and he kept his job as a toolmaker while completing the build-outs for the Seitzes. He also testified that he did many repairs to the Seitzes' house over the years without pay, which he would have valued at approximately $14,000.

{¶ 37} Joe testified that, although the parties had originally contemplated that he would pay back the loan when he sold one of his properties, Mrs. Seitz knew about the change in plans whereby he would work in payment of the loan instead. She had never asked Joe about repayment of the loan in the intervening years. Joe stated that "[e]verything was washed and we started at zero," meaning the loan had been repaid in full, after he became a contractor for the store projects and contributed his labor to those projects.

{¶ 38} Mr. Seitz also testified that Joe did lots of work at the parties' stores and home, and that the parties' understanding when the loan was made had been that Joe would either work off the loan or pay them back. Mrs. Seitz did not offer an explanation for Joe's extensive work on the business if it were not done in repayment of the loan, and she did not have any documentation of her claim that the only source of repayment was to be the proceeds from the sale of Joe's property.

{¶ 39} In performing its duty to weigh the evidence, the trial court could have chosen not

to credit the testimony of Joe and Mr. Seitz regarding the loan. However, there was evidence to support the conclusion that the loan had been repaid, so the trial court's statement that there was "insufficient" evidence that Joe's loan had been repaid with labor is, standing alone, not supported by the record. Moreover, Joe's testimony about the amount of work he performed at the stores and his unpaid role of general contract or on the projects was unrefuted, and the trial court's conclusion that the loan had not been forgiven was not inconsistent with its conclusion that the loan had been repaid. Thus, we accept the trial court's conclusion that Joe's work had been incorporated into the value of the business and that Mrs. Seitz had been compensated for the loan because its value was reflected in the value of the business. Based on the evidence presented, this conclusion was a sound one, and it was implicitly reiterated in the trial court's resolution of the motion for relief from judgment. Mrs. Seitz was not entitled to additional compensation for the value of the 1997 loan to Joe Seitz.

{¶ 40} The second assignment of error is overruled.

V

{¶ 41} Mrs. Seitz's third assignment of error states:

{¶ 42} "THE COURT COMMITTED ERROR IN PERMITTING APPELLEE TO REMOVE APPELLANT FROM THE HEALTH INSURANCE POLICY AND THEN REQUIRING APPELLANT TO REIMBURSE APPELLEE PERSONALLY FOR PREMIUMS PAID BY THE BUSINESS."

{¶ 43} Mrs. Seitz contends that the trial court erred in ordering her to reimburse Mr. Seitz for health insurance premiums paid on her behalf.

{¶ 44} During the parties' marriage, they had insurance through their business, and the business paid the premiums. Mrs. Seitz was initially listed on the policy as an employee, rather than a spouse, so that the company would have enough employees to qualify for a group policy, and she did in fact work at the business. Mrs. Seitz was employed at the business until ten months after their separation, when her employment was terminated. (The parties separated in January 2005, and Mrs. Seitz's employment was terminated in November 2005.) With the end of Mrs. Seitz's employment, her health insurance also terminated. Mrs. Seitz asked the trial court to order Mr. Seitz to keep her on the business's health insurance policy while the divorce was pending, and the trial court agreed. However, the trial court required Mrs. Seitz to reimburse Mr. Seitz for the insurance premiums that he paid on her behalf from July 2006 until the divorce was finalized in August 2007.

{¶ 45} Mrs. Seitz claims that the trial court erred in ordering her to reimburse Mr. Seitz for the health insurance premiums because Mr. Seitz "never personally paid any premium" and the business deducted the payments on its tax returns. She also asserts that her classification as an employee on the policy, rather than as a spouse, was for the business's benefit – so that it could qualify for group coverage – and that she should have been treated as if she were covered as a spouse. Finally, she claims that Mr. Seitz violated R.C. 3105.71 by terminating her health insurance coverage and that, for this reason, she should not have been required to reimburse Mr. Seitz.

{¶ 46} It was clear from the evidence presented about the check cashing business and its finances that Mr. Seitz's income was closely tied to the business's performance. Moreover, the business was awarded to Mr. Seitz in the property settlement, and its entire value was offset

against other assets in the property settlement. Mrs. Seitz's suggestion that costs to the business had no impact on Mr. Seitz's finances as an individual is not accurate. Even if the insurance premiums were paid by the business, they certainly had an effect on the funds available to Mr. Seitz. Accordingly, we are unpersuaded that the trial court erred in ordering Mrs. Seitz to reimburse Mr. Seitz for payments made by the business.

{¶ 47} Mrs. Seitz also relies on R.C. 3105.71(A), which provides that a party to a divorce, who is the named insured or subscriber to a health insurance policy "that provided health insurance coverage for his spouse and dependents immediately prior to the filing of the action, *** shall not cancel or otherwise terminate or cause the termination of such coverage for which the spouse and dependents would otherwise be eligible until the court determines that the party is no longer responsible for providing such health insurance coverage for his spouse and dependents." Even assuming that R.C. 3105.71(A) applied to the Seitzs' situation (which is unclear because Mrs. Seitz seems to have been the named insured on her own employee policy), the statute does not address who must pay for the health insurance coverage; it only requires that the insured or subscriber not cancel or terminate such coverage. Thus, this statute did not preclude the trial court from ordering Mrs. Seitz to pay for the coverage that she obtained through her husband's policy while the divorce was pending.

{¶ 48} The third assignment of error is overruled.

VI

{¶ 49} Mrs. Seitz's fourth assignment of error states:

{¶ 50} "THE COURT COMMITTED ERROR IN NOT AWARDING SPOUSAL

SUPPORT TO APPELLANT ON A NEARLY FORTY (40) YEAR MARRIAGE WHEN A GREAT DISPARITY EXISTS IN THE PARTIES' INCOME."

{¶ 51} Mrs. Seitz claims that the trial court abused its discretion in failing to award spousal support at the end of a forty-year marriage when there is a "very large difference" in the parties' incomes.

{¶ 52} Pursuant to R.C. 3105.18, a court must consider the following factors in determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, terms of payment, and duration of spousal support:

{¶ 53} "(a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under [R.C. 3105.171];

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

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

{¶ 56} "(d) The retirement benefits of the parties;

{¶ 57} "(e) The duration of the marriage;

{¶ 58} "(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;

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

{¶ 60} "(h) The relative extent of education of the parties;

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

{¶ 62} "(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;

{¶ 63} "(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;

{¶ 64} "(l) The tax consequences, for each party, of an award of spousal support;

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

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

{¶ 67} The following facts are undisputed. Mrs. Seitz was 58 years old at the time of the divorce, and Mr. Seitz was 62. The parties were married for over forty years, during which Mr. Seitz was the primary wage earner. Mr. Seitz had completed college and was trained as an electrical engineer, but he had not worked in that field for over twenty years. Mrs. Seitz had a high school education. When Mr. Seitz's previous employer was bought out by another company several years before the divorce, the couple decided to open a check-cashing business because Mr. Seitz no longer had marketable skills as an engineer. The check-cashing industry had been subject to increased regulation since the time the business opened.

{¶ 68} The parties had substantial assets, and a large percentage of these assets was tied to the check-cashing business. Mr. Seitz's portion of the marital assets included the couple's check-cashing business, while Mrs. Seitz received a comparable value in other types of assets.

{¶ 69} The profitability of the business and, in particular, Mr. Seitz's ability to draw income from it was a major point of contention with respect to the award of spousal support.

Mrs. Seitz claimed that Mr. Seitz chose not to take distributions from the business, although he could have done so; she claimed that, in foregoing distributions, Mr. Seitz intentionally lowered his income. Mr. Seitz asserted that he had not taken distributions because of seasonal fluctuations in the business and because, during peak periods, the business needed the money that would have been used for a distribution. He claimed that it was simpler, from a business perspective, to take a loan from the business to help cover his living expenses than to take a distribution "[b]ecause there's not available money in the company to take out on a permanent basis." In other words, Mr. Seitz anticipated that funds he took as a distribution would need to be repaid to the company, and it was simpler to take a loan from the company than to repay a distribution. He paid interest on the loan.

{¶ 70} Mr. Seitz testified that business was "still trending down" in 2006 as compared with 2005. The company's net income was $77,877 in 2005, and Mr. Seitz estimated that it would be down approximately ten percent in 2006. The parties stipulated that the value of the business at the time of the divorce was $361,750, and that it was a marital asset. For several years preceding the divorce, Mr. Seitz had not collected a salary from the business, and the parties had lived off of their other assets. In June 2005, Mr. Seitz started collecting a salary of $36,000, but that amount was later reduced because the business could not afford to pay it. Mr. Seitz projected that his income in 2006 would be approximately $25,692. Mr. Seitz worked sixty to seventy hours per week.

{¶ 71} At the time of the divorce, Mrs. Seitz was employed at a golf course earning $10 per hour and working thirty to thirty-five hours per week. Thus, the trial court determined that her annual income was approximately $16,900. She did not receive benefits. Mrs. Seitz was

not pursuing additional education or job training. She had received a $140,000 inheritance from a neighbor.

{¶ 72} The business itself and mutual funds that were pledged as collateral on a loan to the business comprised a substantial portion of the assets awarded to Mr. Seitz in the divorce. Mr. Seitz testified that over $337,000 of the mutual funds he received was pledged as security for the business's line of credit and that he could not access these funds; Mrs. Seitz disputed this claim. Mrs. Seitz received the total value of her IRA and approximately seventy-five percent of Mr. Seitz's IRA. Each party received over $1 million in assets (in various forms of liquidity) when their property was divided. Expert testimony was presented that Mrs. Seitz could begin to draw on the IRAs in less than eighteen months (at age 59½) and, with respect to this gap, her own expert stated that "that can be worked around" – apparently because she could support herself with other assets or pay to liquidate a portion of that amount. Mrs. Seitz's expert also testified that, over ten years, based on projections for the growth of Mr. Seitz's business, his earning capacity would significantly exceed hers.

{¶ 73} In its decision on spousal support, the trial court stated:

{¶ 74} "Testimony was received during these proceedings from financial advisers which estimated, based on the division of financial assets to each party of more than $1 million each, that the wife could earn annual income, from conservatively invested liquid assets, between $50,000 and $70,000 per year. The [husband's] earning ability from divided assets is less because more of his assets are pledged to the business. In terms of current earned income, the parties are in an approximately equivalent position. Still, overall, the [husband's] earning potential is greater. He is age eligible to draw some monies from or set up an annuity to pay him

annual income from his retirement funds.

{¶ 75} "In balancing the current financial circumstances of the parties against the other factors in the spousal support statute, such as longevity of marriage, potentially disparate earning capacity, it is the conclusion of the Court that no spousal support be awarded at this time, however, the Court shall retain jurisdiction over the issue of spousal support as to amount and duration. ***"

{¶ 76} Domestic relations courts are granted broad discretion concerning awards of spousal support, and their orders will not be disturbed on appeal absent an abuse of discretion. *Smith v. Smith*, 182 Ohio App.3d 375, 2009-Ohio-2326, ¶77. Where, as in this case, the parties take different views of one another's actions and motives, the trial court must resolve conflicts in the evidence. The trial court properly considered the length of the marriage, the parties' earning abilities, educations, and ages, and the fact that they lived very comfortably during the marriage. The trial court also reasonably credited the testimony that more of the assets distributed to Mrs. Seitz were capable of earning income, whereas a large portion of the assets awarded to Mr. Seitz were tied up in the business or pledged as collateral and, thus, incapable of earning interest income. Moreover, based on the evidence presented, the trial court could have reasonably concluded that, at the time of the award, the business was struggling. The trial court did not err in giving significant weight to these factors.

{¶ 77} The trial court retained jurisdiction over spousal support and, therefore, can modify the spousal support award if future circumstances warranted such action. For example, if the business becomes more profitable, if Mr. Seitz is able to access the funds pledged as security, if the interest income projected by the trial court proves to have been inaccurate, or if either party

gains or loses income for other reasons, the trial court may modify the spousal support order upon a proper motion.[2] Mrs. Seitz's ability to fully access IRA funds at the "magical age," as described by the trial court, will also affect her ability to demonstrate a need for spousal support in the future. As Niels Bohr once said, "prediction is very difficult, especially if it is about the future." By retaining jurisdiction, the trial court eliminated the need to speculate about future circumstances, notwithstanding the parties' attempts to present evidence about what the future might hold.

{¶ 78} The trial court did not abuse its discretion in resolving the issue of spousal support as it did.

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

VII

{¶ 80} The judgments of the trial court will be affirmed.

. . . . . .

BROGAN, J. and GRADY, J., concur.

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[2]We note that Mrs. Seitz did file a motion to modify spousal support while her motion for relief from judgment was pending, and the motion was overruled. Although she refers to the denial of her motion to modify in her argument, she did not raise the denial of this motion in her notice of appeal or in her statement of the assignments of error. She also does not address the standard for a modification of spousal support in her brief or otherwise argue that issue in a meaningful way. Accordingly, we are of the view that Mrs. Seitz did not appeal from the denial of her motion to modify spousal support.

Hon. Judith A. King