

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
UNION COUNTY**

BARBARA ROYCHOUDHURY,

PLAINTIFF-APPELLANT,

CASE NO. 14-14-19

v.

RONOJIT ROYCHOUDHURY,

O P I N I O N

DEFENDANT-APPELLEE.

**Appeal from Union County Common Pleas Court
Domestic Relations Division
Trial Court No. 13-DR-0063**

Judgment Affirmed

Date of Decision: June 8, 2015

APPEARANCES:

***Michael A. Marrocco* for Appellant**

***Robert C. Petty* for Appellee**

SHAW, J.

{¶1} Plaintiff-appellant, Barbara Roychoudhury (“Barbara”), appeals the September 15, 2014 Decree of Divorce issued by the Union County Court of Common Pleas, Division of Domestic Relations, granting her complaint for divorce against defendant-appellee, Ronojit Roychoudhury (“Ron”). Barbara assigns as error the trial court’s award of spousal support in the amount of \$600.00 a month for a period of fourteen years.

{¶2} The parties were married on March 22, 1986, and had no children born as issue of the marriage. During the course of the marriage, Ron worked outside the home in a manufacturing position while Barbara was employed intermittently managing apartment complexes.

{¶3} On March 25, 2013, Barbara filed for divorce. Ron subsequently filed an answer and the case proceeded to discovery.

{¶4} On May 22, 2014, the parties appeared before the magistrate and presented their stipulations regarding the agreed upon division of marital property, which included an allocation of the marital home. The stipulations stated as follows:

The parties represent that during the course of their marriage, they have acquired an interest in pieces of residential property, to wit: 14245 Pleasant Ridge Dr., Marysville, Ohio 43040, Union County. This property has an agreed value of \$161,500 and is encumbered by a mortgage with an approximate balance of \$78,675.00.

Husband shall be entitled to exclusive use and possession [sic] the home. It is agreed by the parties that Husband shall pay the monthly mortgage payments, real estate taxes and insurance on the home and hold Wife harmless and blameless thereon. Husband shall within 120 days of the signing of these Stipulations remove Wife's name from any indebtedness thereon. Upon removal of her name from any indebtedness, Wife shall immediately execute a quitclaim deed removing her name from the deed if necessary. In any event where the home is not refinanced removing Wife from any and all obligations thereon within the aforementioned time, the house shall immediately be placed for sale with an agreed upon relator. This Court shall have continuing jurisdiction over this matter.

Wife shall be entitled to one half of the equity in the home being \$41,412.50. Husband shall pay this amount to Wife within 120 days of the execution of these Stipulations.

(Joint Ex. at 2). The only matters that remained to be litigated were spousal support and the division of certain gold bracelets. The magistrate conducted a hearing on these outstanding issues, where each party presented evidence in support of their case.

{¶5} On June 4, 2014, the magistrate issued his decision recommending that the trial court award Barbara the gold bracelets and ordered Ron to pay spousal support in the amount of \$600.00 per month for a period of fourteen years or until further ordered by the court.

{¶6} Barbara subsequently filed objections to the magistrate's decision on the basis of the spousal support award. Specifically, Barbara maintained that she should be awarded permanent spousal support of \$1,475.00 a month in order to

equalize the parties' incomes and to provide her with a standard of living substantially equivalent to the one she enjoyed during the marriage.

{¶7} On August 8, 2014, the trial court overruled Barbara's objection to the magistrate's recommendation of spousal support.

{¶8} On September 15, 2014, the trial court issued its judgment entry representing the parties' Decree of Divorce. In this judgment entry, the trial court ordered the following:

Commencing on the first day of the month following the filing of this Judgment Entry, Defendant shall pay to Plaintiff the sum of \$600.00 per month plus the processing fee for a period of fourteen (14) years, or until Plaintiff's death, Defendant's death, Plaintiff's remarriage or cohabitation with an unrelated adult male.

(Doc. No. 53 at 3).

{¶9} Barbara filed this appeal, asserting the following assignments of error.

ASSIGNMENT OF ERROR NO. I

THE TRIAL COURT ERRED IN CONSIDERING THE PROPERTY SETTLEMENT AS CASH INCOME IN FASHIONING THE SPOUSAL SUPPORT AWARD.

ASSIGNMENT OF ERROR NO. II

THE COURT ERRED IN CONSIDERING APPELLEE'S BUDGET REQUIREMENTS IN FASHIONING A SPOUSAL SUPPORT AWARD.

ASSIGNMENT OF ERROR NO. III

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION REGARDING ITS DETERMINATION OF THE AMOUNT OF SPOUSAL SUPPORT PAYMENTS.

ASSIGNMENT OF ERROR NO. IV

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION REGARDING ITS DETERMINATION OF THE DURATION OF SPOUSAL SUPPORT PAYMENTS.

{¶10} Due to the interrelated nature of Barbara's assignments of error, we elect to address them together.

First, Second, Third, and Fourth Assignments of Error

{¶11} On appeal, Barbara challenges the trial court's award of spousal support. Specifically, Barbara maintains that the trial court erroneously considered the cash payout she received from the equity in the marital home and Ron's monthly "budget" in ordering its spousal support award. Barbara also claims that the trial court's award of \$600.00 a month for fourteen years constitutes an abuse of discretion.

{¶12} Initially, we note that when awarding spousal support, the "trial court is provided with broad discretion in deciding what is equitable upon the facts and circumstances of each case." *Kunkle v. Kunkle*, 51 Ohio St.3d 64, 67 (1990). Moreover, trial courts are granted broad discretion concerning awards of spousal support. *Id.* Their orders will not be reversed on appeal absent an abuse of that

discretion. *Id.* An abuse of discretion is more than an error of judgment; rather, it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, (1983).

{¶13} The award of spousal support is not based solely on the “need” of the party, but on what is “appropriate and reasonable” under the factors listed in R.C. 3105.18(C)(1). *Welch v. Welch*, 3d Dist. Union No. 14-14-05, 2015-Ohio-1595, ¶ 18. Specifically, R.C. 3105.18(C) states:

(1) In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors:

- (a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;**
- (b) The relative earning abilities of the parties;**
- (c) The ages and the physical, mental, and emotional conditions of the parties;**
- (d) The retirement benefits of the parties;**
- (e) The duration of the marriage;**
- (f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;**
- (g) The standard of living of the parties established during the marriage;**

- (h) The relative extent of education of the parties;**
- (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;**
- (j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;**
- (k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;**
- (l) The tax consequences, for each party, of an award of spousal support;**
- (m) The lost income production capacity of either party that resulted from that party's marital responsibilities;**
- (n) Any other factor that the court expressly finds to be relevant and equitable.**

(2) In determining whether spousal support is reasonable and in determining the amount and terms of payment of spousal support, each party shall be considered to have contributed equally to the production of marital income.

{¶14} In this case, the magistrate thoroughly analyzed each statutory factor in his decision. Specifically, the magistrate found the following evidence supported his recommendation of a spousal support award in the amount of \$600.00 per month for a period of fourteen years.

- 1. Wife is employed as an apartment complex property manager earning \$12.50 per hour working an average of 37 hours per week. This equates to \$24,050.00 per year. Husband works for Honda of America earning \$25.50 per hour for a 40-hour week. His base income is \$53,040 per year; however, with the addition of overtime and bonuses, Husband earned \$63,269.27 in 2013; \$62,886.07 in 2012; and \$60,586.40 in 2011.**
- 2. Husband does not anticipate any change in his employment or income for the foreseeable future. Wife would like to advance her career but sees no opportunity to do so absent obtaining a professional certification. Both parties are working at their full potential based upon their work history and present qualifications.**
- 3. Wife is age 53. Husband is age 50. Wife was unable to work from 1995 until 1999 as a result of a brain injury suffered in an automobile accident. Husband suffers from diabetes and asthma as well as the afflictions common to men of his age working in manufacturing, including back and neck problems and carpal tunnel syndrome. Neither party has any physical, mental and emotional conditions that deprive them of their ability to work in their present fields.**
- 4. The parties' only retirement or pension plans are as set forth in Exhibit 1.¹ Wife does not have a pension through her present employment. Under the circumstances, the parties' retirement assets are modest.**
- 5. The parties have been married for 28 years—DOM: March 22, 1986.**
- 6. There are no children and both parties are able to work outside of the home.**
- 7. The court has equitably divided the parties' assets by providing a substantially equal distribution of the marital assets.**

¹ The parties' retirement accounts were Ron's 401(k) account with an approximate value of \$122,797.00 and a Honda of America pension with an undetermined present value. The parties agreed that each was entitled to an equal share of these assets.

8. The marital standard of living was middleclass but with very little discretionary spending.

9. Both parties have a high school diploma.

10. Neither party is seeking additional education or training; however, Wife testified that a professional certification as a property manager would significantly improve her income but the curriculum would take two years to complete and is cost prohibitive. The court questions the credibility of Wife's estimate of the cost.

11. There is no evidence that either party's ability to progress in a career was compromised by marital responsibilities.

12. Husband provided evidence and testimony that his monthly expenses require \$6,183.36 per month, including debt service and \$500.00 per month in spousal support. With adjustment in discretionary spending, a budget for Husband of \$4,000 per month is within reason. Wife testified that her budget is \$1,600.00 per month which does not provide adequately for transportation or other essential needs.

13. Spousal support of \$7,200.00 per year will result in a tax savings to Husband of \$2,096 per year, more or less, depending on Husband's income and deductions claimed.

14. The court assumes each party will draw full social security benefits when they are age 67.

(Doc. No. 41 at 4-6).

{¶15} Barbara objected to the magistrate's decision and asserted that she is entitled to a greater amount of spousal support for an indefinite period of time due to the fact that Ron will continue to live in the marital home as a result of the parties' stipulated property division while she is limited by her finances and can

only afford a small one-bedroom apartment. Thus, Barbara argued that the spousal support award should serve to equalize the parties' incomes and to provide her with a standard of living equivalent to the one she enjoyed during the marriage.

{¶16} In overruling her objection, the trial court made the following observations and findings:

In the present case, the parties agreed that it is equitable or fair that Husband should retain the marital home and pay Wife \$41,412.50 in exchange for her equity in the property. It is agreed that Husband is to remove Wife's name from the note and pay Wife her interest within 120 days of signing the agreement. In any event Husband fails to complete his agreement to refinance and pay Wife her interest, the house is to be sold.

In part, Wife bases her objection to the Magistrate's spousal support recommendation on the fact that Husband will be living in a house as he has during the marriage and she is relegated to a small apartment. This argument fails to recognize that Wife has made an election to take her equity out of the real estate in the form of a cash out while Husband has elected to keep his equity invested in the property and to live in the house. As a result, Wife will have more cash than Husband. Each party has made a choice and asked the court to approve that choice as a fair allocation of assets and debts.

Wife further argues that she is entitled to spousal support of \$1,475.00 per month because of the disparity in the income between the parties. Wife argues she is entitled to equalization of income because it is self-evident that equalization is fair because it is equal.

* * *

The court FINDS that Wife does have the ability to more fully support herself through education or additional work. It is her responsibility to make efforts in this regard. The court further FINDS that there is no ability of the Husband to pay the amount requested by Wife and at the same time meet the revised budget of \$4,000 as found by the Magistrate and refinance the home to pay Wife the agreed upon \$41,412.50 for her equity. In fact, the Husband will still be unable to meet the revised monthly budget at the spousal support amount awarded by the Magistrate, although the shortfall is significantly less.

(Doc. No. 52 at 4-5).

{¶17} In her first assignment of error, Barbara asserts that the trial court erred by improperly considering the equity cash payout that she received as a result of the parties' property settlement as "income" for purposes of spousal support. The record does not support Barbara's claim that the trial court used her property settlement payment as "income" in the calculation of spousal support. It is clear from the entry the court considered this property settlement payment for the purposes of analyzing the money available to meet Barbara's claimed monthly budgetary needs. We note such consideration is specifically recognized as a factor in determining whether spousal support is appropriate and reasonable in R.C. 3105.18(C)(1)(i). *See* R.C. 3105.18(C)(1)(i) (directing the court to consider "the relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties" in calculating a spousal support award). *See also, Hutta v. Hutta*, 5th Dist. Delaware No. 10CAF040031, 2011-Ohio-3041, ¶ 24. Accordingly, we find Barbara's argument on this point to be without merit.

{¶18} Next, Barbara argues that the trial court improperly considered Ron’s “budget” in fashioning its spousal support award. In particular, Barbara takes issue with the following statements made by the trial court in its journal entry overruling her objection to the magistrate’s decision. “The ‘size of the pie’ is not within the court’s control. Sometimes there is not enough to go around to sustain comparable standards of living and a party is required to make adjustments.” (Doc. No. 52 at 5). Barbara maintains in her brief that the factors in “R.C. 3105.18(C) do not specifically contemplate a party’s ‘ability’ to pay” and claims that the trial court was precluded from such a consideration. (Appt. Brief at 7).

{¶19} The relevant case authority does not support Barbara’s assertion in this regard. Rather, it is well-established that an award of spousal support should not exceed the obligor’s ability to pay support. *See e.g., Norbut v. Norbut*, 2d Dist. Greene No. 06-CA-112, 2007-Ohio-2966, ¶ 21; *White v. White*, 7th Dist. Columbiana No. 02-CO-074, 2003-Ohio-3279, ¶ 32; *Lee v. Lee*, 10 Ohio App.3d 113, 114 (8th Dist. 1983)(stating that “the financially dependent spouse may well have a right to economic support sufficient to maintain his or her standard of living prior to the divorce, to the extent that the financially supportive spouse has the economic ability to provide that support”). Moreover, “[i]n making a spousal support award, a trial court must ‘consider all of the relevant factors in [R.C.

3105.18] * * * then weigh the need for support against the ability to pay’ ” *Sears v. Sears*, 5th Dist. Knox No. 12-CA-09, 2012-Ohio-5968, ¶ 27, citing *Layne v. Layne*, 83 Ohio App.3d 559, 562-563 (2d Dist. 1992). “Each of the factors under R.C. 3105.18(C)(1) relates, either directly or indirectly, to the obligee spouse’s need or the obligor spouse’s ability to pay support.” *Abbott v. Abbott*, 6th Dist. Fulton No. F-06-020, 2007-Ohio-5308, ¶ 78. Accordingly, “a spousal support award must balance the obligee’s need for support against the obligor’s ability to pay.” *Tremaine v. Tremaine*, 111 Ohio App.3d 703, 707 (2d Dist. 1996).

{¶20} In addition, the record demonstrates that Ron provided evidence and testimony that his monthly expenses totaled \$6,138.36. The trial court adopted the magistrate’s recommendation to reduce Ron’s monthly budget to \$4,000.00 a month after “adjustments in discretionary spending.” (Doc. No. 41 at 5). The trial court considered Barbara’s request for a permanent spousal support award of \$1,475.00 a month and specifically found that such an award exceeded Ron’s ability to pay, even with the revised budget. The trial court also observed that Barbara “does have the ability to more fully support herself through education and additional work.” (Doc. No. 52 at 5). Notably, the record supports the trial court’s findings regarding both Ron’s ability to pay Barbara’s requested spousal support and Barbara’s ability to elevate her own financial situation.

{¶21} With regard to Barbara’s remaining challenges as to the amount and duration of the trial court’s spousal support award, we note that “equalization of income is not a factor that must be considered or a goal in divorce cases.” *Bachtel v. Bachtel*, 7th Dist. Mahoning No. 03 MA 75, 2004-Ohio-2807, ¶ 41. The award must nonetheless be equitable in light of the factors in each case. *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 96, (1988). To be equitable, the parties should, *if feasible*, enjoy a standard of living comparable to that enjoyed during the marriage, adjusted by the factors set forth in R.C. 3105.18. *Buckles v. Buckles*, 46 Ohio App.3d 102, 110 (12th Dist. 1988). However, “there is no legal requirement that incomes be equalized or that the lifestyle of the marriage be maintained at the same level by both parties after the divorce.” *Hutta v. Hutta*, 5th Dist. Delaware No. 10CAF040031, 2011-Ohio-3041, ¶ 24.

{¶22} In the present case, it is apparent from the record that the trial court carefully considered each of the statutory factors in fashioning its spousal support award. We acknowledge Barbara’s position that the amount and duration of the spousal support award should be greater due to the fact that the marriage lasted 28 years. However, this is just one factor the trial court had to consider in deriving a spousal support award. The trial court “must consider all the factors listed in R.C. 3105.18(C)(1) and not base its determination upon any one of those factors taken in isolation.” *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 96 (1988). Here, the record

establishes that the trial court's consideration of all the factors led to its determination that a spousal support award of \$600.00 a month for fourteen years was not only reasonable and appropriate, but also equitable under the circumstances. We cannot find that the trial court abused its discretion in arriving at this determination.

{¶23} For all these reasons, the assignments of error are overruled and the judgment is affirmed.

Judgment Affirmed

PRESTON, J., concurs.

/jlr

ROGERS, P.J., Concurring separately.

{¶24} I concur with the opinion of the majority. I write separately to express my concern with what appears to be a growing problem with trial court magistrates and their understanding of the role that they play in trial court proceedings.

{¶25} Pursuant to Civil Rule 53, a magistrate may be appointed by a court of record to "assist courts of record" to the limited extent of the authorization contained in the order of reference.² "Subject to the terms of the relevant

² Civ.R. 53(C)(1).

reference, a magistrate may enter orders without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party.” Civ.R. 53(D)(2)(a)(i). Magistrates’ orders are effective without further judicial action.

{¶26} However, the authority to issue a magistrate’s order must be distinguished from a magistrate’s decision, which “* * * is not effective unless adopted by the court.” Civ.R. 53(D)(4)(a).

{¶27} With increasing frequency this court has noticed magistrates’ decisions, which are articulated in terms of authority and decisiveness, and which express an attitude of finality. Indeed the magistrate’s decision in the case before us today twice states, in bold print and capitalized letters: **“IT IS THEREFORE ORDERED, ADJUDGED AND DECREED.”** (Emphasis sic.) (Docket No. 41 p. 2, 7).

{¶28} Magistrates should understand their position in the hierarchy of the judicial system and act accordingly. To presume a higher authority, or even to convey an appearance of more authority, than that which is authorized by law and the Civil Rules causes participants in the legal system to question the role of the trial judge. The final responsibility lies with the trial judge, and no conduct should be permitted which allows anyone to question that role. *See Vian v. Vian*, 3d Dist. Mercer No. 10-13-05, 2013-Ohio-4560, ¶ 54 (Rogers, J., concurring).