

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

ANITA M. GARZA,

PLAINTIFF-APPELLEE,

CASE NO. 11-14-08

v.

ANTHONY J. GARZA,

OPINION

DEFENDANT-APPELLANT.

**Appeal from Paulding County Common Pleas Court
Domestic Relations Division
Trial Court No. DIV-98-228**

Judgment Affirmed

Date of Decision: March 2, 2015

APPEARANCES:

***Shane M. Lee* for Appellant**

***Joseph R. Burkard* for Appellee**

WILLAMOWSKI, J.

{¶1} Defendant-appellant Anthony J. Garza (“Anthony”) brings this appeal from the judgment of the Court of Common Pleas of Paulding County denying his motion to terminate spousal support to plaintiff-appellee Anita M. Garza (“Anita”). Anthony argues on appeal that the trial court abused its discretion in modifying the original property settlement and by not modifying the spousal support order. For the reasons set forth below, the judgment is affirmed.

{¶2} Anthony and Anita were married on September 7, 1994. Doc. 1. No children were born during the marriage. *Id.* On December 23, 1998, Anita filed a complaint for divorce. *Id.* On December 21, 1999, the trial court granted the complaint for divorce. Doc. 14. Per the divorce decree, the parties had entered into an agreement for the division of assets and payment of debts, which was adopted by the trial court. *Id.* Pursuant to the agreement, Anthony was required to pay the second mortgage on the home in lieu of spousal support because the proceeds of the loan were used in his business ventures. *Id.* at 2-3. A nunc pro tunc entry was filed on January 14, 2000, which also provided that Anthony was responsible for an additional \$23,350 in mortgage debt due to the proceeds being used in his business. Doc. 15.

{¶3} On February 22, 2000, Anita filed a show cause motion because Anthony was not paying his share of the mortgage, credit card debt and for failing

to transfer his ownership interests in property as ordered by the trial court. Doc. 16. A hearing was held on the motion on March 14, 2000. Doc. 19. At that time, the parties entered into an agreement to amend the original agreement. *Id.* The new agreement provided that Anthony would pay spousal support in the amount of \$352.37 until the credit card was paid in full. *Id.* At that time, the spousal support would be reduced to \$274.36 per month until the first mortgage was paid in full. *Id.* at 2. Then the spousal support would terminate. *Id.* The spousal support would not terminate upon the death of either party or the cohabitation or remarriage of Anita. *Id.* The trial court entered this order on March 27, 2000. *Id.*

{¶4} On August 31, 2011, Anita and Anthony filed a joint motion to modify the terms of the spousal support. Doc. 21. The modification indicated that Anthony would continue to pay spousal support as set forth in the terms of the divorce even though the house was to be sold. *Id.* On September 6, 2011, the trial court ordered that Anthony would pay \$207.50 in spousal support per month until June 30, 2025, as agreed by the parties. Doc. 22. This order was approved and signed by Anthony. *Id.*

{¶5} On January 15, 2014, Anthony filed a motion to terminate the spousal support. Doc. 23. The basis for the motion was that the house was subject to a foreclosure action and that Anita was no longer making mortgage payments. *Id.* Anita filed her memorandum in opposition to the motion to terminate spousal

support on February 4, 2014. Doc. 25. A hearing was held on the motion on February 27, 2014, and Anthony was granted leave to amend his motion. Doc. 27. The amended motion again requested that spousal support be terminated because the original decree of divorce indicated that neither party would pay spousal support and did not reserve the right to modify the order. Doc. 28. Anita filed her response to the amended motion on May 12, 2014. Doc. 33. On August 21, 2014, the trial court entered judgment denying the motion to terminate spousal support. Doc. 34. Anthony filed his notice of appeal from this judgment on September 19, 2014. Doc. 37. On appeal, Anthony raises the following assignments of error.

First Assignment of Error

The trial court erred as a matter of law and abused its discretion when it determined that R.C. 3105.18 did not apply to the underlying action.

Second Assignment of Error

The trial court erred as a matter of law and abused its discretion when it determined that the court had jurisdiction to modify the [parties'] property settlement after the initial decree of divorce.

{¶6} In the first assignment of error, Anthony argues that the trial court abused its discretion by not applying R.C. 3105.18.

(A) As used in this section, “spousal support” means any payment or payments to be made to a spouse or former spouse * * * that is both for sustenance and for support of the spouse or former spouse. “Spousal support” does not include any payment made to a spouse or former spouse, or to a third party for the benefit of a spouse or former spouse, that is made as part of a

division or distribution of property or a distributive award under [R.C. 3105.171].

R.C. 3105.18. The facts of this case clearly indicate that what was called “spousal support” was not, by the definition set forth in the statute, “spousal support.” The amount ordered to be paid was not paid for the sustenance and support of the spouse. Instead, the amount was ordered to be paid through the enforcement agency as an agreed upon method for insuring that the property division payments ordered were timely made. This determination is supported by the fact that the payments were reduced as the ordered credit card payment was paid in full and then would be completed upon the final payment of the first mortgage. The amount of the support was tied to the amount of the payments required towards both the credit card payment and the first mortgage. Additionally, the order determined that the payments were neither income for Anita nor deductible by Anthony, as traditional sustenance spousal support would be. These payments were actually part of the property division, and not spousal support as set forth in the statute. Pursuant to the statutory definition, spousal support does not include the property division. Thus, R.C. 3105.18 is not applicable in this case and the trial court did not abuse its discretion in refusing to apply it. The first assignment of error is overruled.

{¶7} In the second assignment of error, Anthony claims that the trial court erred by ordering spousal support in violation of R.C. 3105.171 because the

original divorce decree did not provide for it. Specifically, Anthony argues that the trial court violated R.C. 3105.171 by modifying the original divorce decree by ordering spousal support. However, as discussed above, what the trial court ordered in its 2000 order statutorily was not spousal support, but was rather a method of paying a property division. The trial court did not modify the original decree by adding spousal support. Rather, the trial court merely ordered how the property division payments would be made. Additionally, this court notes that this order was done as the result of a show cause motion because Anthony was not making the prior court ordered payments. The new payment method was the result of an express agreement between Anthony and Anita in response to the show cause motion.¹ This judgment entry was not appealed. A nunc pro tunc entry changing the name of the bank to be paid was filed in 2005, signed by both Anita and Anthony personally, and it also was not appealed. The 2011 modification filed by both Anita and Anthony jointly was also signed by Anthony indicating his continued agreement to the payment arrangement. Again, no appeal was taken. Even if there were a modification, the parties expressly agreed to it in 2011, which would permit the amendment under R.C. 3105.171(I). Therefore, the trial court did not err in allowing the payment arrangement even though it was called “spousal support”. The second assignment of error is overruled.

¹ Under the amended version of R.C. 3105.171(I), a modification expressly agreed to by the parties is permitted. The final modification occurred in 2011, after the effective date of the amended statute.

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{¶8} Having found no prejudicial error in the particulars assigned and argued, the judgment of the Court of Common Pleas of Paulding County is affirmed.

Judgment Affirmed

SHAW and PRESTON, J.J., concur.

/jlr