[Cite as *Pryor v. Pryor*, 2009-Ohio-6670.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

Anthony C. Pryor,	:	
	:	
Plaintiff-Appellant,	:	Case No. 09CA3096
	:	
v.	:	
	:	
Gloria K. Pryor	:	**DECISION AND JUDGMENT ENTRY**
	:	
Defendant-Appellee.	:	
		File-Stamped date: 12-10-09

APPEARANCES:

Anthony C. Pryor, pro se, for Appellant.

Gloria K. Pryor, pro se, for Appellee.

Kline P.J.:

{¶1} Anthony C. Pryor (hereinafter "Anthony") appeals the judgment of the Ross County Court of Common Pleas. The trial court granted Anthony a divorce from Gloria K. Pryor (hereinafter "Gloria"). On appeal, Anthony first contends that the trial court did not (1) equitably divide the marital property or (2) follow the procedures of R.C. 3105.171. We disagree. Anthony did not provide a transcript of the final divorce hearing. Therefore, we must presume the regularity of the trial court proceedings. Next, Anthony contends that the trial court erred by failing to rule on various motions. We disagree. First, the record supports the trial court's decision to hold the final divorce hearing without Anthony being present. Second, any Civ.R. 75(D) report was irrelevant because there were no minor children involved in the divorce. And third, Anthony was not prejudiced by the trial court's implicit denial of his various evidentiary motions. Next, Anthony

contends that the trial court erred by failing to consider Gloria's "extreme cruelty" when it denied his request for spousal support. We disagree. Extreme cruelty is not an enumerated factor in R.C. 3105.18(C)(1). Thus, when determining any potential spousal support, the trial court did not have to consider Gloria's alleged cruelty. Accordingly, we overrule all of Anthony's assignments of error and affirm the judgment of the trial court.

I.

{¶2} Anthony and Gloria were married on May 26, 2000. They had one child together during their marriage.

{¶3} In 2002, Anthony and Gloria were indicted for various crimes. See, generally, *State v. Pryor*, Fairfield App. No. 05-CA-52, 2005-Ohio-6656; *State v. Pryor*, Fairfield App. No. 02CA91, 2004-Ohio-609. Gloria accepted a plea bargain and agreed to testify against Anthony. Anthony claims that Gloria "falsely testified" against him so that she could (1) obtain a lighter sentence and (2) deflect blame away from her own actions. Regardless, Anthony was convicted of several crimes and sentenced to a lengthy prison term.

{¶4} Anthony and Gloria were both incarcerated as a result of their crimes. Sometime thereafter, Gloria's mother adopted the only child produced from Anthony and Gloria's marriage. Moreover, Anthony, Gloria, and Anthony's mother were all denied visitation rights with the child.

{¶5} On June 29, 2005, Anthony filed for divorce on the grounds of extreme cruelty, adultery, incompatibility, imprisonment, and mental anguish. Anthony alleged that Gloria engaged in extreme cruelty by falsely testifying against him.

In his complaint, Anthony asked for several items of personal property, including his military records, an automobile, and various power tools. (In a letter sent to the trial court, Gloria said that there is "no property because it was lost due to our incarceration." She also claimed that Anthony's mother had his military records.)

{¶6} Over the next three years, Anthony filed numerous motions related to the divorce. In his first motion, Anthony asked to be transported to the trial court for any and all hearings. Later, he filed a motion requesting spousal support because of Gloria's "extreme cruelty." Anthony also filed several evidentiary motions related to his personal property and Gloria's supposedly false testimony. The trial court did not rule on any of Anthony's motions except to deny his motion for default judgment.

{¶7} Anthony was incarcerated during the proceedings below, and he has remained incarcerated throughout this appeal. However, Gloria was apparently released from prison sometime in 2006.

{¶8} On October 28, 2008, the trial court held a final divorce hearing. Anthony was not present at the hearing, but Gloria did appear unrepresented by counsel. In relevant part, the trial court's January 15, 2009 Decree of Divorce provides the following:

{¶9} "The court, having considered the evidence presented and noting that [Anthony] has filed what have been styled depositions of himself and a witness upon written questions pursuant to Ohio Civil Rule 31 and [Gloria] indicating that she has no objection to the court considering these matters, finds * * *.

{¶10} * * *

{¶11} It is therefore ORDERED, ADJUDGED and DECREED that:

{¶12} * * *

{¶13} 2) The minor child, * * * having been determined to be emancipated, neither parent is designated as the residential parent and legal custodian of [the child] and no support or companionship orders are made with regard to [the child].

{¶14} 3) Each party shall receive those items of household goods and furnishings, personal effects and personal property currently in that party's possession free and clear of the claims of the other party.

{¶15} 4) Each party is to receive any bank accounts of any type, pension or profit sharing plans in that party's name free and clear of the claims of the other party.

{¶16} * * *

{¶17} 6) No spousal support shall be required."

{¶18} Anthony appeals, asserting the following three assignments of error: I. "THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION WHEN IT FAILED TO CONDUCT A HEARING PURSUANT TO OHIO REVISED CODE 3105.171." II. "THE TRIAL COURT ABUSED ITS DISCRETION AND DENIED APPELLANT DUE PROCESS OF LAW WHEN IT DID NOT RULE ON THE MOTIONS PENDING BEFORE CONDUCTING THE FINAL HEARING ON DIVORCE." And, III. "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO ISSUE THE APPELLANT SPOUSAL

SUPPORT FOR THE MENTAL ANGUISH AND EXTREME CRUELTY SUFFERED DUE TO THE APPELLEES [sic] BEHAVIOR."

II.

{¶19} Gloria, as the appellee, filed a pro se brief on June 23, 2009, but that brief did not comply with App.R. 16 & 19. This court gave Gloria the opportunity to file another brief, but she failed to do so. Therefore, "[u]nder App. R. 18(C), we are authorized to accept [Anthony's] statement of the facts and issues as correct and reverse the trial court's judgment as long as his brief reasonably appears to sustain such action." *Sprouse v. Miller*, Lawrence App. No. 06CA37, 2007-Ohio-4397, at fn. 1, citing *State v. Miller* (1996), 110 Ohio App.3d 159, 161-162. However, in deciding this appeal, we have chosen to review (1) the entire record and (2) the merits of each assignment of error.

III.

{¶20} In his first assignment of error, Anthony essentially contends that the trial court did not (1) equitably divide the marital property or (2) follow the procedures of R.C. 3105.171.

{¶21} We review the overall appropriateness of the trial court's property division in a divorce proceeding under an abuse of discretion standard. See *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, at paragraph two of the syllabus. However, the characterization of property as separate or marital is a mixed question of law and fact, not a discretionary matter. *Barkley v. Barkley* (1997), 119 Ohio App.3d 155, 159. As such, we review the determination regarding the proper characterization of property under the manifest weight of the evidence

standard. Id., citing *Wylie v. Wylie* (June 4, 1996), Lawrence App. No. 95CA18; *Miller v. Miller* (Dec. 1, 1993), Washington App. No. 93CA7. We will not reverse the trial court's judgment as being against the manifest weight of the evidence if some competent, credible evidence supports the court's judgment. *Sec. Pacific Natl. Bank v. Roulette* (1986), 24 Ohio St.3d 17, 20; *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus.

{¶22} Once the court makes the determination of whether property is marital or separate property, we review the actual distribution of the asset under the more deferential abuse of discretion standard. *Kelly v. Kelly* (1996), 111 Ohio App.3d 641, 642-643, citing R.C. 3105.171(D). An abuse of discretion connotes more than a mere error of judgment; it implies that the court's attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When applying this standard of review, we may not freely substitute our judgment for that of the trial court. *In re Jane Doe I* (1991), 57 Ohio St.3d 135, 137-138; *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169. Instead, we must view a property division in its entirety, consider the totality of the circumstances, and determine whether the trial court abused its discretion when dividing the parties' marital assets and liabilities. *Briganti v. Briganti* (1984), 9 Ohio St.3d 220, 222.

{¶23} R.C. 3105.171(B), in part, provides: "In divorce proceedings, the court shall * * * determine what constitutes marital property and what constitutes separate property. * * * [U]pon making such a determination, the court shall

divide the marital and separate property equitably between the spouses, in accordance with this section."

{¶24} Here, we note that Anthony failed to provide a transcript of the final divorce hearing. In relevant part, App.R. 9(B) provides: "At the time of filing the notice of appeal the appellant, in writing, shall order from the reporter a complete transcript or a transcript of the parts of the proceedings not already on file as the appellant considers necessary for inclusion in the record and file a copy of the order with the clerk." Because Anthony bears the burden of demonstrating error by reference to matters in the record, he has a duty to provide a transcript of the proceedings. "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. See, also, *Gibson v. Gibson*, Washington App. No. 05CA49, 2006-Ohio-2880, at ¶9.

{¶25} Without a transcript of the final divorce hearing, we must also presume that the trial court followed R.C. 3105.171. See, e.g., *Dasani v. Dasani*, Lucas App. No. L-05-1297, 2006-Ohio-6806, at ¶11-17; *Childers v. Childers*, Scioto App. No. 05CA3007, 2006-Ohio-1391, at ¶21-23; *Lambert v. Lambert*, Portage No. 2004-P-0057, 2005-Ohio-2259, at ¶27-29.

{¶26} Accordingly, we overrule Anthony's first assignment of error.

IV.

{¶27} In his second assignment of error, Anthony contends that the trial court erred by failing to rule on his various motions. "[M]otions that a trial court fails to explicitly rule upon are deemed denied once a court enters final judgment." *Savage v. Cody-Ziegler, Inc.*, Athens App. No. 06CA5, 2006-Ohio-2760, at ¶28. See, also, *In re Lewis* (Apr. 30, 1997), Athens App. Nos. 96CA1760 & 96CA1763. Therefore, we construe Anthony's second assignment of error in the following manner: that the trial court erred in *denying* Anthony's various motions.

A. Anthony's Appearance at the Final Divorce Hearing

{¶28} First, Anthony contends that he should have been present for the final divorce hearing. Anthony filed at least two motions on this subject, including a "Motion to Transport to Divorce Hearing" and a "Motion to Convey to Final Divorce Hearing."

{¶29} "As an incarcerated prisoner, [Anthony] had no absolute due process right to attend a civil trial to which he was a party." *Lopshire v. Lopshire*, Portage App. No. 2008-P-0034, 2008-Ohio-5946, at ¶35, citing *Mancino v. Lakewood* (1987), 36 Ohio App.3d 219, 221. See, also, *Matter of Vandale* (June 30, 1993), Washington App. No. 93CA31. "'A ruling on the request of an incarcerated criminal to prosecute a pro se civil action by requiring penal authorities to transport him to a preliminary hearing or trial rests within the sound discretion of the trial court.'" *Abuhilwa v. Board*, Pickaway App. No. 08CA3, 2008-Ohio-5326, at ¶7, quoting *Mancino* at 221.

{¶30} "The *Mancino* court recognized that whether a prisoner should be permitted to attend a civil trial to personally argue his case depends upon the

particular circumstances of each case. * * * The court enumerated a number of criteria that a trial court should weigh in making that determination, including: '(1) whether the prisoner's request to be present at trial reflects something more than a desire to be temporarily freed from prison; (2) whether he is capable of conducting an intelligent and responsive argument; (3) the cost and convenience of transporting the prisoner from his place of incarceration to the courthouse; (4) any potential danger or security risk the prisoner's presence might pose; (5) the substantiality of the matter at issue; (6) the need for an early resolution of the matter; (7) the possibility and wisdom of delaying the trial until the prisoner is released; (8) the probability of success on the merits; and (9) the prisoner's interest in presenting his testimony in person rather than by deposition.'" *Abuhilwa* at ¶8, quoting *Mancino* at 221-222 (internal citation omitted). Further, a trial court does not have to assess the *Mancino* factors "on the record when the record sufficiently shows the basis of the analysis." *Abuhilwa* at ¶8, citing *E.B. v. T.J.*, Cuyahoga App. No. 86399, 2006-Ohio-441, at ¶19. See, also, *Rowe v. Stillpass*, Lawrence App. No. 06CA1, 2006-Ohio-3789, at ¶22.

{¶31} Here, the trial court did not explicitly rule on Anthony's motions regarding his attendance at the final divorce hearing. Therefore, the trial court did not discuss any of the *Mancino* factors on the record. However, we believe that the record supports the decision to hold the final divorce hearing without Anthony being present. First, the trial court could have reasonably found that the cost and inconvenience of transporting Anthony to the final divorce hearing outweighed any of the other relevant factors. See *Abuhilwa* at ¶9. Second, the

trial court noted that Anthony "filed what have been styled depositions of himself and a witness upon written questions pursuant to Ohio Civil Rule 31[.]" Decree of Divorce at 2. And according to the Divorce Decree, the trial court did indeed consider Anthony's evidence. Thus, the trial court could have reasonably found that Anthony did not have a legitimate interest in presenting his testimony in person. Third, the record shows (1) that there were no minor children involved in the divorce and (2) that there were no significant marital assets. Thus, the trial court could have reasonably concluded that the matter at issue was not particularly substantial. And finally, it is apparent that Anthony was attempting to reargue his criminal trial in the proceedings below. As Anthony notes, he filed hundreds of pages of exhibits "showing the Trial Court that [Gloria] had falsified evidence in [Anthony's] criminal trial to help the prosecution obtain a conviction against [Anthony.]" Merit Brief of Petitioner-Appellant at 10. Thus, the trial court could have reasonably found that Anthony was so preoccupied with his criminal trial that he was incapable of conducting an intelligent argument regarding the divorce.

{¶32} Accordingly, we find that the trial court did not abuse its discretion when it denied Anthony's request to attend the final divorce hearing.

B. The Civ.R. 75(D) Report

{¶33} Anthony further contends that the trial court did not provide him with a Civ.R. 75(D) report. Anthony filed several motions on this subject, including a "Motion for Investigation Report pursuant to Civ.R. 75(D)" and a "Renewed Motion for Investigation Report pursuant to Civ.R. 75(D)."

{¶34} In relevant part, Civ.R. 75(D) provides: "On the filing of a complaint for divorce, annulment, or legal separation, where minor children are involved * * * the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of the parties to the action. The report of the investigation shall be made available to either party or their counsel of record upon written request not less than seven days before trial."

{¶35} The trial court initially ordered a Civ.R. 75(D) report, presumably because of Anthony's complaint for divorce.[1] In his complaint, Anthony claimed that he had parental rights to the minor child from the marriage. However, the record shows that neither Anthony nor Gloria had any parental rights to the child. Gloria's mother adopted the child after Anthony and Gloria were incarcerated, and Anthony was denied any visitation rights with the child. Therefore, any potential Civ.R. 75(D) report was irrelevant to the present case.

{¶36} Accordingly, the trial court did not err by implicitly denying Anthony's various motions related to the Civ.R. 75(D) report.

C. Evidentiary Motions

{¶37} Anthony also contends that the trial court should have granted his various evidentiary motions. Because the trial court did not rule on his various motions, Anthony claims that he "was not given an opportunity to be heard at his final divorce hearing in any fashion[.]" Merit Brief of Petitioner-Appellant at 9.

[1] Although it is not entirely clear from the record, it appears that no Civ.R. 75(D) report was ever completed.

{¶38} Here, we do not believe that Anthony was prejudiced by the trial court's implicit denial of his evidentiary motions. The trial court explicitly stated that it had considered the evidence filed by Anthony. Thus, Anthony is mistaken when he claims that "there is no[] evidence to support that the court considered or even looked at these motions prior to making a ruling or a Decree of Divorce." Id. Further, we once again note that Anthony has not provided a transcript of the final divorce hearing. Therefore, we must presume the regularity of the proceedings below. And as a result, Anthony cannot demonstrate that he was prejudiced by the trial court's failure to grant his evidentiary motions.

{¶39} Accordingly, for the foregoing reasons, we overrule Anthony's second assignment of error.

V.

{¶40} In his third assignment of error, Anthony contends that the trial court failed to consider Gloria's "extreme cruelty" when the trial court denied his request for spousal support – the "extreme cruelty" being Gloria's act of supposedly falsifying evidence in Anthony's criminal trial. Essentially, Anthony contends that he should be awarded spousal support as compensation for his "mental anguish."

{¶41} R.C. 3105.18(C)(1)(a)-(n) provides: "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."

{¶42} Here, "extreme cruelty" and "mental anguish" are not enumerated factors in R.C. 3105.18(C)(1). Thus, in denying Anthony's request for spousal support, the trial court did not have to consider Gloria's alleged cruelty. Further, a "trial court must consider all of the factors under R.C. 3105.18(C), and must not

base its determination upon any one of the factors taken in isolation." *Brown v. Brown*, Pike App. No. 02CA689, 2003-Ohio-304, at ¶10, citing *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, at paragraph one of the syllabus. Anthony has made no arguments based on any of the factors listed in R.C. 3105.18(C)(1), either at the trial court level or on appeal. Instead, he requested spousal support based solely on Gloria's alleged cruelty. And even if the trial court considered her alleged cruelty a relevant factor under R.C. 3105.18(C)(1)(n), the trial court could not have granted Anthony spousal support for that reason alone.

{¶43} Accordingly, we overrule Anthony's third assignment of error. Having overruled all of Anthony's assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED, and appellant pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.