

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

RHONDA K. INGRAM,	:	
	:	
Plaintiff-Appellee,	:	Case No. 09CA19
	:	
vs.	:	Released: April 29, 2010
	:	
TED ALLEN INGRAM,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
Defendant-Appellant.	:	

APPEARANCES:

Ted A. Ingram, Millfield, Ohio, Appellant, pro se.

Rhonda K. Ingram, The Plains, Ohio, Appellee, pro se.

McFarland, P.J.:

{¶1} Appellant, Ted Ingram, appeals from the judgment of the Athens County Court of Common Pleas granting a divorce to Appellant and Appellee, Rhonda Ingram. On appeal, Appellant raises four assignments of error, contending that the trial court erred and abused its discretion in 1) failing to take into consideration the temporary spousal support paid to Appellee in its division of the marital property; 2) failing to take into consideration the value of debts paid by Appellant in its division of marital property and liabilities; 3) in dividing the parties' undivided 28/60th interest

in certain real estate upon divorce; and 4) awarding Appellant all of the joint marital debt.

{¶2} Because we conclude that the trial court did not abuse its discretion in failing to take into consideration the temporary spousal support paid to Appellee during the pendency of the divorce when it divided the parties' marital property, we overrule Appellant's first assignment of error. Further, because we conclude that the trial court did not abuse its discretion in dividing the parties' marital property and marital debt, excluding the parties' tax liability, we overrule Appellant's second and third assignments of error. However, because we conclude that the trial court abused its discretion in awarding all of the parties' joint tax liabilities to Appellant, we sustain Appellant's fourth assignment of error. Accordingly, we affirm the judgment of trial court in part, reverse it in part and remand it for further action consistent with this opinion.

FACTS

{¶3} The parties were married in 1993 and have no children together. In July 2007, Appellee left the marital residence and the parties permanently separated. Appellee filed a complaint for divorce and motion for temporary orders on July 10, 2007. In her motion for temporary orders, Appellee requested that the court order Appellant to pay one half of her rent in the

amount of \$207.50 per month, reasoning in her affidavit in support thereof that she was entitled to this amount in consideration for having granted Appellant permission to stay in the marital home, mortgage free. The trial court issued temporary orders on July 11, 2007, which included an order that Appellant pay one half of Appellee's rent in the amount of \$207.50 per month.

{¶4} Appellant subsequently filed an answer and objections to the motion for temporary orders on July 13, 2007. That same day, the trial court stayed the portion of its orders regarding payment of half of Appellee's rent and scheduled the matter for a hearing. After holding a hearing, the trial court issued modified temporary orders on August 21, 2007, ordering, among other things, that Appellant pay Appellee temporary spousal support in the amount of \$215.00 per month during the pendency of the divorce proceedings, to be paid on the first day of each month. Following a trial in May of 2009, the trial court issued the parties' decree of divorce. At the time the divorce decree was issued on May 29, 2009, Appellee had received temporary spousal support for twenty-one months totaling \$4515.00.

{¶5} In its decree, the trial court noted that because neither party had requested spousal support, none would be ordered. In its division of the marital property, the trial court concluded that the parties owned a 28/60th

interest in a piece of real estate, the value of which was speculative at best, and based upon expert testimony was probably not sellable. Thus, the trial court found that the best disposition was to award 50% of the asset to each party, resulting in each owning a 14/60th interest in the real estate. The trial court also awarded the mobile home to both parties, jointly, and directed them to work together to sell the asset within nine months, providing that either party could petition the court for a public sale if a sale was not completed within that time. The trial court divided the remaining marital property, including a shed, the parties' vehicles and other personal property, none of which are at issue in this appeal.

{¶6} With regard to the parties' debt, Appellant offered evidence of debts that he had already paid off and also testified that he had entered into a payment agreement with the IRS for the payment of several years of back taxes. In its decree, the trial court awarded both of the parties' businesses, Ingram Electric and ResiRat Kennels, to Appellant, along with the liabilities of each business. Specifically at issue herein, the trial court ordered that Appellant be solely responsible for the payment of the parties' federal, state and local tax debts. It is from this decree of divorce and division of marital property and debt that Appellant now brings his timely appeal, assigning the following errors for our review.

ASSIGNMENTS OF ERROR

- I. TRAIL [SIC] COURT ERRED AND ABUSED ITS DESCRETION [SIC] IN OMITTING, WITHOUT FINDING OF FACT OR CONCLUSION [SIC] OF LAW, THE VALUE OF THE SPOUSAL SUPPORT PAID, IN THE DISTRIBUTION OF AWARD OF MARITAL ASSETS, GRANTING PLAINTIFF AN ECONOMICAL [SIC] WINDFALL.
- II. TRAIL [SIC] COURT ERRED AND ABUSED ITS DESCRETION [SIC] IN OMITTING, WITHOUT FINDING OF FACT OR CONCLUSION [SIC] OF LAW, THE VALUE OF COMUNITY [SIC] DEBTS PAID SOLEY [SIC] BY DEFENDANT DURING THE 23 MONTH SEPERATION [SIC], IN THE DISTRIBUTION OF AWARD OF MARITAL ASSETS/DEBITS [SIC] GRANTING PLAINTIFF AN ECONOMICAL [SIC] WINDFALL.
- III. TRAIL [SIC] COURT ERRED AND ABUSED ITS DESCRETION [SIC] IN THE SEPERATION [SIC] AND DISTRIBUTION AWARD OF MARITAL ASSETS, BY DIVIDING ‘UNDIVIDED SHARED INTEREST’ IN REAL ESTATE ASSETS HELD, IN DIRECT CONFLICT OF RC 3105.171(F) AND RC 3105.171(I) [SIC].
- IV. THE TRIAL COURT ERRED AND ABUSED ITS DESCRETION [SIC] IN FAILING TO COMPLY WITH OR 3105,171 [SIC] AWARING APPELLANT BY OMMISSION ALL THE COMMUNITY DEBT INCLUDING JOINT INCOME TAX LIABILITIES, WITHOUT FINDING OF FACT OR CONCLUSION [SIC] OF LAW, BEING A GROSS ABUSE OF DESCETION [SIC].”

STANDARD OF REVIEW

{¶7} Each of Appellant’s assigned errors challenges the trial court’s division of marital property in one manner or another. As such, we set forth the applicable standard of review at the outset.

{¶8} As we have previously recognized, a trial court enjoys broad discretion in crafting an equitable division of marital property in a divorce proceeding. *Elliott v. Elliott*, Ross App. No. 05CA2823, 2005-Ohio-5405 at ¶16, citing *Elliott v. Elliott*, Ross App. No. 03CA2737, 2004-Ohio-3625 at ¶12 (“*Elliott II*”), relying on R.C. 3105.171(C)(1); *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 131, 541 N.E.2d 597; *Worthington v. Worthington* (1986), 21 Ohio St.3d 73, 76, 488 N.E.2d 150; *Martin v. Martin* (1985), 18 Ohio St.3d 292, 294-295, 480 N.E.2d 1112; *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 355, 421 N.E.2d 1293. Despite the trial court's broad discretion, Ohio law requires the court to divide marital and separate property equitably between the parties. *Id.*, citing R.C. 3105.171(B). In most cases, this requires the court to divide the marital property equally. *Id.*, citing R.C. 3105.171(C)(1). However, if equal division would produce an inequitable result, the court must divide the property equitably. *Id.* Because the court must consider both the assets and liabilities, an equitable division of marital property necessarily implicates an equitable division of marital debt. *Id.*, citing R.C. 3105.171(F)(2).

{¶9} We will not reverse a trial court's allocation of marital property and debt absent an abuse of discretion. *Elliott v. Elliott* at ¶ 17, citing *Holcomb* at 131, 541 N.E.2d 597. An abuse of discretion connotes more

than a mere error of judgment; it implies that the court's attitude is arbitrary, unreasonable or unconscionable. *Id.*, citing *Masters v. Masters*, 69 Ohio St.3d 83, 85, 1994-Ohio-483, 630 N.E.2d 665; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. When applying this standard of review, we may not freely substitute our judgment for that of the trial court. *Id.*, citing *In re Jane Doe I* (1991), 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181; *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169, 559 N.E.2d 1301. Instead, we must view 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. *Id.*, citing *Briganti v. Briganti* (1984), 9 Ohio St.3d 220, 222, 459 N.E.2d 896. It is with these principles in mind that we consider Appellant's assigned errors.

ASSIGNMENT OF ERROR I

{¶10} In his first assignment of error, Appellant essentially contends the trial court erred and abused its discretion in failing to take into consideration the temporary spousal support paid to Appellee in its division of the marital property. More specifically, Appellant argues that granting Appellee temporary spousal support during the pendency of the divorce and then granting her half of the marital assets upon divorce essentially provided

Appellee with a windfall. Appellee contends that the temporary spousal support was ordered to even out the living expenses of the parties, considering that Appellant was living in the marital home rent free during the pendency of the divorce.

{¶11} As set forth above, a trial court enjoys broad discretion in crafting an equitable division of marital property in a divorce proceeding and we will not reverse a trial court's allocation of marital property and debt absent an abuse of discretion. *Elliott*, supra. In *Elliott*, we noted as follows, with regard to the issue raised by Appellant:

“Temporary orders issued by a court pursuant to Civ.R. 75 are interlocutory in nature. Therefore, a court may fashion its final orders of property division and spousal support to correct any irregularities that occurred during the pendency of the divorce. *McCreery v. McCreery* (Jan. 22, 1998), Tuscarawas App. No. 97AP020012. We have previously found that payments made by a party pursuant to temporary orders can constitute part of a trial court's equitable property division. *Brown v. Brown* (Sept. 8, 1998), Highland App. No. 97CA0948. See, also, *Utt v. Utt*, Columbiana App. No. 02CO47, 2003-Ohio-6720, at ¶ 13. Therefore, the trial court could properly consider the amounts each of the parties expended pursuant to its temporary orders.” *Elliott*, supra, at ¶21.

Although we recognized in *Elliott* that a trial court “may” fashion its final orders to correct irregularities in the proceedings and that a trial court “could” consider amounts paid in connection with temporary orders, we find no support contained therein which would suggest that a trial court abuses its discretion by not taking such matters into consideration.

{¶12} Further, we find *Elliott* to be factually distinguishable from the facts presently before us. In *Elliott*, the husband was ordered to pay spousal support and also the mortgage on the house during the pendency of the divorce, while the wife was awarded the right to reside in the marital property during that time. Here, Appellant was permitted to reside in the marital home, which was mortgage free, while Appellee incurred rental expenses as a result of moving out of the marital home. As such, we find no irregularity present which needed to be taken into consideration by the trial court when crafting the division of marital property. Accordingly, we find no abuse of discretion by the trial court and therefore affirm its decision in this regard.

ASSIGNMENT OF ERROR II

{¶13} In his second assignment of error, Appellant contends that the trial court erred and abused its discretion failing to take into consideration the value of debts paid by Appellant in its division of marital property. Appellant seems to argue that the trial court failed to take into consideration the fact that he had had paid off several marital debts during the pendency of the divorce, without the assistance of Appellee, when it divided that marital property and debts. Specifically, Appellant cites his payment of a Spiegel card, a Wal-Mart card, a debt for the purchase of a water filtration device,

and payments made on a 2003 joint IRS tax debt, all totaling \$4044.25.

Appellant claims that Appellee should have been responsible for at least half of these debts.

{¶14} In response to Appellant's arguments, Appellee contends that while she possibly should have been held responsible for part of the payment for the Spiegel and Wal-Mart cards, the water filtration device was a business expense of Ingram Electric, which Appellant was awarded in the divorce, along with all of its liabilities. Appellee further questions whether the tax debts complained of by Appellant are business related taxes or are personal in nature.

{¶15} As set forth above, a trial court has broad discretion in crafting an equitable division of marital property. *Elliott*, supra. Further, the version R.C. 3105.171(F) that was in effect at the time the parties divorce action began sets forth the following factors for the trial court to consider in making a division of marital property: "(1) The duration of the marriage; (2) The assets and liabilities of the spouses; (3) The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage; (4) The liquidity of the property to be distributed; (5) The economic desirability of retaining intact an asset or an interest in an asset; (6) The tax consequences

of the property division upon the respective awards to be made to each spouse; (7) The costs of sale, if it is necessary that an asset be sold to effectuate an equitable distribution of property; (8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses; (9) Any other factor that the court expressly finds to be relevant and equitable.”

{¶16} Here, Appellant was permitted to live in the marital home, rent free, during the pendency of the divorce. The record reveals that while Appellant operated Ingram Electric during the course of the marriage, Appellee was employed as an account clerk on a part time basis at a rate of \$7.85 an hour.¹ The evidence presented at the final hearing also indicated that Appellee was taking classes and based upon her income, qualified for public rental assistance. Thus, we cannot conclude that the trial court abused its discretion in its division of marital property, specifically in relation to awarding Appellant responsibility for the marital credit card debts and water filtration device, which benefitted Ingram Electric.

{¶17} However, the only tax information contained in the record is the parties’ personal and business return for the year 2006. That return indicates

¹ An item of contention between the parties related to Appellee’s health and ability to work. While Appellee claimed that she was prevented from working full time due to health conditions, Appellant argued that she simply did not want to work. No definitive evidence was presented to substantiate either party’s position.

that the bulk of the parties' income was attributable to the operation of Ingram Electric, which Appellant was awarded upon divorce. Nonetheless, Appellant seems to be raising errors related to the payment of taxes related to tax year 2003. Thus, we will address this portion of Appellant's argument in our analysis of Appellant's fourth assignment of error, which deals with the additional tax liabilities covered by the divorce decree.

{¶18} Accordingly, we overrule Appellant's assignment of second assignment error, to the extent that it deals only with payment of the marital credit cards and water filtration device, and affirm the trial court's decision in this regard.

ASSIGNMENT OF ERROR III

{¶19} In his third assignment of error, Appellant contends that the trial court erred and abused its discretion in dividing the parties' undivided 28/60th interest in certain real estate upon divorce, relying on R.C.

3105.171(F)(5) in support. R.C. 3105.171(F)(5) provides that:

“(F) In making a division of marital property and in determining whether to make and the amount of any distributive award under this section, the court shall consider all of the following factors:

* * *

(5) The economic desirability of retaining intact an asset or an interest in an asset.”

Thus, Appellant argues that the trial court's division of the parties' undivided 28/60th interest in the real property at issue, into two 14/60th interests to each party, was in violation of R.C. 3105.171(F)(5) and therefore was an abuse of discretion. We disagree.

{¶20} As set forth above, a trial court has broad discretion in crafting an equitable division of marital property. *Elliott*, supra. Further, while the version R.C. 3105.171(F) that was in effect at the time the parties divorce action began provided that the court should consider the economic desirability of retaining intact an asset or an interest in an asset; it also permits the court to take into consideration any other factor that the court expressly finds to be relevant and equitable, as set forth in section (9).

{¶21} Here, the trial court concluded in the divorce decree that the value of the parties' interest in the land in question was "speculative at best" and that "the parties' minority interest in the real estate is probably not saleable [sic]." The concern that the parties' minority interest was not sellable was further supported by expert testimony contained within the record. Thus, the trial court concluded that "the best disposition of this asset is to award 50% to each of the parties." As such, we find the trial court's reasoning with regard to the proper disposition of this marital asset to be supported by the record and find no abuse of discretion in the trial court's

disposition of this real property.² Thus, we overrule Appellant's third assignment of error and affirm the trial court's decision in this regard.

ASSIGNMENT OF ERROR IV

{¶22} In his fourth and final assignment of error Appellant contends that the trial court erred and abused its discretion in awarding Appellant all of the joint marital debt. Specifically, Appellant challenges the trial court's order insofar as it requires him, without any contribution from Appellee, to pay the "Community Income Tax liabilities." Appellant claims that the 2006 joint tax return, which is part of the record, indicates that the taxes owed were marital debt, not business debt. Appellant points to 1) a 2003 federal tax debt of \$442.80; 2) a 2004 federal tax debt of \$1965.78; 3) a 2006 federal tax debt of \$1403.16; and 4) a 2006 state tax debt of \$278.55, which total \$4090.29 and which Appellant claims were all joint tax debts.³ Appellant argues that the trial court failed to equally distribute the tax burden and in doing so, granted Appellee a "debt free windfall."

² Appellant also argues that the trial court's disposition of the property would disturb the operation of his businesses, which are operated from the property; however, in light of the fact that the property consists of approximately 49 acres and two other individuals also own separate interests in the property as well, we find no merit to Appellant's argument. If Appellant was able to operate his businesses from the property with two other individuals having ownership interests then we see no reason why Appellant cannot continue to do so while Appellee also utilizes her separate interest in the property.

³ Appellant does not argue that Appellee should be jointly responsible for the other business related tax debts which were listed on the parties' joint Exhibit #1 that was submitted at the divorce hearing. We note, however, that only the parties' 2006 tax return is included in the record. Thus, we have no way to substantiate whether the tax debts Appellant complains of are in fact, business or personal.

{¶23} Appellee agrees that the tax debt at issue is “personal community debt,” but argues that if that the tax debt awarded to Appellant is reversed on appeal that the entire division of debt should be remanded in order that her \$12,109 student loan, which was also listed on the parties’ joint Exhibit #1, can be divided between the parties. Although there may have been some merit to Appellee’s argument regarding the \$12,000 student loan debt, this argument is not properly before us as it was not raised by Appellant and Appellee has failed to file a cross-appeal, in accordance with App.R. 3(C)(1).⁴ Thus, we will not address any argument regarding the trial court’s failure to address that debt in the divorce decree.

{¶24} The divorce decree issued by the trial court provided that:

“Defendant shall retain as his property the business known as Ingram Electric, along with all assets and liabilities associated therewith, including tax liabilities. To the extent that he owns a breeding business, he shall also retain that business (known as ResiRat Kennels) and it shall be his property along with the liabilities associated therewith, including any tax liabilities.

* * *

Defendant shall have the responsibility of discharging any taxes the parties still owe, regardless if state, local, or federal, but not including unpaid trailer taxes, which shall be paid from the proceeds of its sale.”

⁴ App.R. 3(C)(1) “Cross Appeal Required” provides that “A person who intends to defend a judgment or order against an appeal taken by an appellant and who seeks to change the judgment or order, in the event the judgment or order may be reversed or modified, an interlocutory ruling merged into the judgment or order, shall file a notice of cross appeal within the time allowed by App.R. 4.

Thus, considering the division of marital property and debt as a whole, it appears that Appellant and Appellee were each awarded half of the real property, half of the mobile home and half of the shed. Appellant was awarded certain personal property and tools, Appellee was awarded certain personal property, and each was awarded their own personal vehicle. Appellant was awarded both businesses, Ingram Electric and ResiRat Kennels, along with their liabilities, including tax liabilities.

{¶25} Each party was ordered to be responsible for their own premarital student loans; however, the trial court did not address or include in the division of marital debt Appellee's \$12,000 student loan, which she claims was taken out during the marriage. Evidence was offered that Appellant had already paid off certain marital credit cards and one other debt related to the operation of Ingram Electric. Evidence was also offered that Appellant had entered into a payment agreement with the IRS for payment of back taxes. However, the trial court, without stating its reasoning or providing any explanation, ordered that Appellant "shall have the responsibility of discharging any taxes the parties still owe, regardless if state, local or federal * * *."

{¶26} As we have already noted, the only tax information appearing in the record relates to the parties 2006 joint return, which indicates that the

parties' filing status was married, filing jointly. The only other documentation of the parties' tax debts appears on the parties' joint Exhibit #1, which was submitted as part of the divorce hearing. There is no indication in the record that Appellee disputed that the tax debts complained of by Appellant were, in fact, joint tax debts. In fact, Appellee concedes on appeal that they were. As such, we conclude that the trial court's order, insofar as it places the responsibility for repayment of these joint tax debts solely upon Appellant, was an abuse of discretion. Thus, we sustain Appellant's fourth assignment of error and reverse and remand this matter to the trial court for further action consistent with this opinion.

**JUDGMENT AFFIRMED IN PART,
REVERSED IN PART
AND CAUSE REMANDED.**

Harsha, J.:

{¶27} I concur in part and dissent in part as I would affirm the judgment of the trial court in its entirety.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED IN PART, REVERSED IN PART AND THE CAUSE REMANDED and that the Appellee and Appellant split costs.

The Court finds there were reasonable grounds for this appeal.

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

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Kline, J.: Concurs in Judgment and Opinion.

Harsha, J.: Concurs in Part and Dissents in Part with Opinion.

For the Court,

BY: _____
Judge Matthew W. McFarland
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.