[Cite as *Graves v. Graves*, 2014-Ohio-5812.]

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

SHARON GRAVES,	:	
Plaintiff-Appellee ,	:	Case No. 14CA694
vs.	:	
ROY L. GRAVES,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

COUNSEL FOR APPELLANT: Joshua D. Price, Price Law Office, P.O. Box 591, Pomeroy, Ohio 45769

APPELLEE PRO SE: Sharon Graves, 11614 State Route 139, Jackson, Ohio 45640

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED:12-22-14

ABELE, P.J.

{¶ 1} This is an appeal from a Vinton County Common Pleas Court judgment that granted a divorce to Sharon Graves, plaintiff below and appellee herein, and Roy Graves, defendant below and appellant herein.

{¶ 2} Appellant raises two assignments of error for review:

> FIRST ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT COMMITTED SUBSTANTIAL ERROR AND ABUSED ITS DISCRETION IN ORDERING APPELLANT TO PAY ALL OF THE MARITAL DEBTS IN ADDITION TO ORDERING SPOUSAL SUPPORT."
>
> SECOND ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN AWARDING AN AMOUNT OF SPOUSAL SUPPORT TO APPELLEE WHICH WAS UNREASONABLE, INAPPROPRIATE, AND UNSUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL."

{¶ 3} The parties married on December 12, 1994 and had no children born as issue of the marriage. On February 21, 2012, appellee filed a divorce complaint. Appellant subsequently counterclaimed for divorce.

{¶ 4} Before the final hearing, the parties stipulated to all issues, except whether appellee should receive spousal support and how to allocate the marital debt. The parties agreed that neither party has significant assets and that each party shall retain the personal property in their individual control. They also agreed that appellant receives approximately $3,000 per month as a disability benefit and that both parties have medical conditions that prevent them from working.

{¶ 5} On July 19, 2013, the trial court held a final hearing regarding (1) the parties' agreement, (2) whether to award appellee spousal support, and (3) how to allocate the marital debt. At the hearing, both parties testified that they did not enjoy a high standard of living during the marriage and that they both suffered from extensive health issues that left them unable to work.

{¶ 6} Appellee stated that she is sixty-two years old and presently lives in her son's garage. She testified that when the parties first separated, she lived in a small house, but had to move when she could no longer pay the utility bills. Appellee explained that during the marriage when she controlled the parties' finances, she opened several credit card accounts, in her name only, to purchase clothing, Christmas gifts, birthday gifts, items "that we needed for the family," and groceries.

{¶ 7} Appellant stated that he is seventy-four years old and lives with his son. Appellant testified that he pays his son $400 a month for a "roof over his head." When questioned whether he has other monthly expenses, appellant stated that he purchases food and clothing for himself, but he was unable to state how much he spends per month on food and clothing.

{¶ 8} On January 2, 2014, the trial court entered findings of fact and conclusions of law and incorporated the parties' stipulations. The court found that the $5,050 outstanding credit card debt was accumulated during the marriage and constituted marital debt. The court explained: "The charges were for clothing, Christmas gifts, groceries, house, etc. The cards were opened in [appellee's] name only because [appellant] couldn't get credit. Until 2007/2008 [appellant] took care of the bills then turned it over to [appellee]."

{¶ 9} The trial court also found that (1) appellant receives approximately $3,000 per month in disability income, (2) appellee does not have any income, (3) appellee does not have any retirement accounts, and (4) appellee is not eligible for social security. The court stated that it considered the factors set forth in R.C. 3105.171(F)(1) through (10) and determined that it is equitable to order appellant to pay all of the marital debt. The court explained: "[Appellant] has income and [appellee] has no income. That is, he has the ability to pay the debts and she has no ability to pay the debts."

{¶ 10} With respect to spousal support, the court stated:

> "The consideration of spousal support as determined herein is made after an equitable division of the martial assets and obligations as required by O.R.C. 3105.171(C)(3). The determination with regard to spousal support as set forth herein is deemed appropriate and reasonable pursuant to O.R.C. 3105.18, taking into consideration all factors as set forth in [R.C.] 3105.18(C)(1)."

The trial court thus ordered appellant to pay appellee spousal support in the amount of $500 per month for eighteen months.

{¶ 11} On January 16, 2014, the trial court entered a final divorce decree in accordance with its earlier findings. This appeal followed.

I

MARITAL DEBT

{¶ 12} In his first assignment of error, appellant asserts that the trial court abused its discretion by ordering him to pay all of the marital debt. Appellant contends that the court's decision is inequitable because appellee incurred the debt "to lavish gifts upon her family, take care of her mother, and be able to buy things for herself." Appellant further asserts that allocating all of the martial debt to him is inequitable because paying the debts requires him to

use the income he receives from his disability benefits, which appellant contends is separate property. Appellant argues that a trial court is prohibited from considering disability benefits when dividing marital debt.

A

STANDARD OF REVIEW

{¶ 13} Trial courts enjoy broad discretion when dividing marital property in a divorce proceeding. Elliott v. Elliott, 4th Dist. Ross No. 05CA2823, 2005-Ohio-5405, ¶17; Holcomb v. Holcomb, 44 Ohio St.3d 128, 131, 541 N.E.2d 597 (1989). Accordingly, an appellate court will not reverse a trial court's decision regarding the allocation of marital property and debt absent an abuse of that discretion. Elliott at ¶17. "'The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, unconscionable, or arbitrary.'" Blakemore v. Blakemore, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983), quoting State v. Adams, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). Furthermore, when applying the abuse of discretion standard, a reviewing court may not substitute its judgment for that of the trial court. E.g., Savage v. Correlated Health Serv., Ltd., 64 Ohio St.3d 42, 55, 591 N.E.2d 1216 (1992); Freshwater at ¶77, quoting Graziano, 32 Ohio St.3d at 294, 513 N.E.2d 282 ("'Absent an abuse of discretion on the part of the trial court, the court of appeals may not engage in what amounts to a substitution of judgment of the trial court.'"). Moreover, a court that is reviewing whether a trial court abused its discretion when dividing marital property must view the property division in its entirety and consider the totality of the circumstances. Briganti v. Briganti, 9 Ohio St.3d 220, 222, 459 N.E.2d 896 (1984); accord Byers v. Byers, 4th Dist. Ross No. 09CA3124, 2010-Ohio-4424, ¶19; Elliott at ¶17.

B

R.C. 3105.171

{¶ 14} Although trial courts possess broad discretion to divide marital property, the Ohio Revised Code requires trial courts to divide marital and separate property equitably between the parties. R.C. 3105.171(B). In most cases, this requires the court to divide the marital property equally. R.C. 3105.171(C)(1). If, however, an equal division would produce an inequitable result, the court must divide the property equitably. Id.

{¶ 15} Additionally, "[a]lthough R.C. 3105.171 does not explicitly address the division of marital debt * * * martial debt is subject to allocation as part of the property distribution and that debt allocation is guided by the same equitable factors contained in R.C. 3105.171." Polacheck v. Polacheck, 9th Dist. Summit No. 26551, 2013-Ohio-5788, ¶18; accord Machesky v. Machesky, 4th Dist. Ross No. 10CA3172, 2011-Ohio-862, ¶10, quoting Smith v. Emery-Smith, 11th Dist. Geauga No. 2009-G-2941, 2010-Ohio-5302, ¶45 (stating that "'[a] trial court must take into account marital debt when dividing marital property'"); Elliott at ¶25; Samples v. Samples, 4th Dist. Washington No. 02CA21, 2002-Ohio-544. Thus, a trial court should also equally divide marital debt, unless an equal division would be inequitable.

{¶ 16} R.C. 3105.171(F) sets forth a list of factors that a trial court shall consider in order to ensure an equitable division of the parties' 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 retirement benefits of the spouses, excluding the social security benefits of a spouse except as may be relevant for purposes of dividing a public pension;
>
> (10) Any other factor that the court expressly finds to be relevant and equitable.

{¶ 17} At least one Ohio appellate court has recognized, however, that the R.C. 3105.171(F) factors "do not provide sufficient guidance when marital debts are not secured by particular assets and, perhaps more obviously, when marital debts exceed marital assets." Polachek at ¶21. The court explained:

> "When the couple's debts exceed total assets, 'the parties disparate earnings remain the only source for retiring [the debt] and are appropriately considered in it allocation.' American Law Institute, Principles of the Law and Family Dissolution: Analysis and Recommendations, Section 4.09(h) (June 2013). An equitable allocation of a marital estate that consists solely of debt necessarily requires a consideration of the parties' relative economic circumstances, as the debt can only be repaid with a future stream of income, as there is no pool of assets to cover the debts.
> * * * *
> Because significant unsecured debts often must be paid from a future stream of income, rather than by liquidating marital property, courts will often consider the relative incomes and earning abilities of the parties, despite the absence of those factors from R.C. 3105.171(F). Thus, although Ohio courts often purport to apply the factors of R.C. 3105.171(F) to divide marital debt, because those factors often fail to address the parties' ability to repay debts, courts often look beyond the specific factors set forth in the statute."

Polachek at ¶21 and ¶23.

{¶ 18} The Polachek court suggested that when a trial court divides marital debt, the court should examine the parties' "economic circumstances," which include the following factors: (1) the parties' relative abilities to repay the debt; (2) employment incomes and earning abilities, including relative education, skill, experience, and employability; (3) ages and physical and emotional health; (4) income from other sources; (5) other economic factors; and (6) any other factor that the court expressly finds to be relevant and equitable. Id. at ¶¶31-32.

{¶ 19} In the case at bar, we do not believe that anything in the record shows that the trial court acted arbitrarily, unreasonably or unconsciously by allocating all of the marital debt to appellant. The trial court considered the parties' economic circumstances and explicitly found that appellant has the ability to repay the debt, but appellee does not. The parties stipulated that both suffer from serious health issues that prevent them from seeking employment. Thus, neither party has any potential to receive employment income. Furthermore, the evidence in the record demonstrates that neither party has any assets to liquidate in order to satisfy the debt. Moreover, appellee does not receive any income whatsoever, while appellant receives approximately $3,000 per month in disability benefits. Thus, considering the totality of the parties' financial circumstances, we cannot conclude that the trial court abused its discretion by requiring appellant to pay the marital debt.

{¶ 20} Appellant nevertheless asserts that our decision in Elliott demonstrates that the trial court abused its discretion by allocating the marital debt to him. We, however, find Elliott distinguishable from the case sub judice. In Elliott, we determined that the trial court did not abuse its discretion by allocating a greater portion of the marital debt to the wife. We observed that the record showed that the wife "retained a far greater share of the parties' liquid assets,"

while most of the husband's assets could not be liquidated. Id. at ¶25. Additionally, we noted that (1) the husband was not aware of some of the accounts, (2) the wife controlled the parties' finances and paid the parties' bills during the marriage, and (3) for the most part, the wife incurred the charges. Id. at ¶26. We thus concluded that based upon the totality of the circumstances, the trial court did not abuse its discretion by allocating a greater portion of the parties' debt to the wife.

{¶ 21} In the case at bar, the facts differ. Unlike Elliott, appellant and appellee do not have any marital assets to satisfy the debt. Appellee has no income source, while appellant receives a $3,000 per month disability benefit. Moreover, even though appellee opened the accounts and incurred the charges, the evidence shows that appellee obtained the accounts during a period when appellant was unable to handle the parties' finances. Additionally, the trial court found that appellee used the credit cards to obtain groceries, clothing, gifts, and household items. Contrary to appellant's argument, appellee did not use the credit cards to "lavish" gifts upon herself and her family. Considering all of the foregoing circumstances, we are unable to conclude that the trial court abused its discretion by allocating all of the marital debt to appellant. Given appellee's lack of financial resources, the court reasonably could have determined that allocating all of the debt to appellant, who received approximately $3,000 per month, was the most equitable solution under the circumstances.

{¶ 22} We further disagree with appellant that the trial court's decision allocating the martial debt to him effectuates an improper division of his disability benefits.[1] To support his

[1] We recognize that disability benefits constitute compensation for personal injury and thus, ordinarily, do not constitute marital property subject to division. Mann v. Mann, 4th Dist. Athens No. 09CA38, 2011-Ohio-1646, ¶28.

argument, appellant relies upon Hirzel v. Ooten, 4th Dist. Meigs Nos. 06CA10 and 07CA13, 2008-Ohio-7006. In Hirzel, the appellant argued that the trial court improperly considered appellant's lump sum Social Security disability payment when the court divided the marital property and debt. We agreed with the appellant and stated: "[S]ocial security lump sum payments are not marital assets subject to division, nor are they to be considered in the division of property." Id. at ¶44.

{¶ 23} However, in Neville v. Neville, 99 Ohio St.3d 275, 2003-Ohio-3624, 791 N.E.2d 434, ¶11, the Ohio Supreme Court held that a trial court may consider a party's "future Social Security benefits" when equitably dividing marital property. In Neville, the court recognized that pension and retirement benefits are marital assets subject to division, but observed that federal law forbids the transfer or assignment of Social Security benefits. The Neville court explained: "Although a party's Social Security benefits cannot be divided as a marital asset, those benefits may be considered by the trial court under the catchall category as a relevant and equitable factor in making an equitable distribution." Id. at ¶11.

{¶ 24} In the case sub judice, the trial court, unlike the Hirzel court, did not attempt to divide appellant's disability benefit. Instead, the court considered appellant's future disability income in relation to the parties' abilities to pay the marital debt. Considering appellant's future disability income in this context is akin to a trial court considering a party's future Social Security benefits when equitably dividing marital property.

{¶ 25} We considered a similar issue in Byers v. Byers, 4th Dist. Ross No. 09CA3124, 2010-Ohio-4424. In Byers, the trial court ordered the husband to pay spousal support in an amount sufficient to pay for the wife's health insurance. On appeal, the husband asserted that

because Social Security benefits are the only income he receives (apart from his defined benefit plan and investment accounts), the trial court's spousal support constituted an improper division of his Social Security benefits. We recognized that a trial court may consider a party's Social Security benefit in relation to all marital assets when making an equitable division, but it cannot actually divide that benefit to effectuate a spousal support award. Id. at ¶14, citing Bishman v. Bishman, 4th Dist. Washington No. 07CA30, 2008-Ohio-1394. Consequently, we determined that the trial court did not violate this principle by requiring the husband to pay spousal support, even though Social Security benefits provided his primary income stream. We explained: "[T]he trial court did not overtly order the division of Appellant's Social Security benefits: it ordered him to pay money, from whatever source, to cover Appellee's health insurance." Id. at ¶15.

{¶ 26} Similarly, in the case at bar the trial court did not overtly order the division of appellant's disability benefit. Instead, the trial court considered appellant's disability income in relation to the parties' marital debts when it equitably divided those debts. The court, however, did not actually divide appellant's disability benefit. We are not willing to conclude, as appellant requests, that allocating the marital debt to him effectively divided his disability benefit.

{¶ 27} Furthermore, Hirzel and Neville were concerned with dividing Social Security benefits, which federal law flatly prohibits. Even if we determined that allocating the entire marital debt to appellant effected a division of his separate property, i.e., his disability benefits, R.C. 3105.171 does not flatly prohibit a trial court from considering a party's separate property when equitably dividing marital property (or debt). R.C. 3105.171(B) expressly states that the

trial court "shall divide the marital and separate property equitably between the spouses." R.C. 3105.171(D) contemplates situations when a court may deem it inequitable to disburse a party's separate property to that party. Moreover, R.C. 3105.171(E) authorizes a trial court to "make a distributive award to facilitate, effectuate, or supplement" a marital property division and permits the court to secure a distributive award by placing a lien on separate property. Furthermore, R.C. 3105.171(J) allows a trial court to "issue any orders under this section that it determines equitable."

{¶ 28} Thus, after considering all of the above, we are unable to conclude that R.C. 3105.171 flatly prohibits a trial court from considering a party's separate property in the form of disability benefits when it allocates marital debt. Consequently, we disagree with appellant that the trial court abused its discretion by ordering him to pay the entire marital debt.

{¶ 29} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's first assignment of error.

II

SPOUSAL SUPPORT

{¶ 30} In his second assignment of error, appellant asserts that the trial court abused its discretion by awarding appellee spousal support. Appellant contends that the trial court should not have considered his disability benefits–his separate property and only source of income–when it determined whether to award spousal support. Appellant further asserts that the trial court failed to indicate the basis for its award in sufficient detail to enable this court to determine that the award is fair, equitable, and in accordance with the law.

{¶ 31} Generally, trial courts enjoy broad discretion to determine spousal support issues. Kunkle v. Kunkle, 51 Ohio St.3d 64, 67, 554 N.E.2d 83 (1990); Cherry v. Cherry, 66 Ohio St.2d 348, 421 N.E.2d 1293 (1981). Consequently, an appellate court will not reverse a trial court's spousal support decision absent an abuse of discretion. Bechtol v. Bechtol, 49 Ohio St.3d 21, 24, 550 N.E.2d 178 (1990); Holcomb v. Holcomb, 44 Ohio St.3d 128, 131, 541 N.E.2d 597 (1989). "Abuse of discretion" has been defined as an attitude that is unreasonable, arbitrary, or unconscionable. E.g., Blakemore, supra.

{¶ 32} R.C. 3105.18(B) allows trial courts, upon a party's request and after property distribution, to award reasonable spousal support. 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.

{¶ 33} When making a spousal support award, a trial court must consider all statutory factors and not base its determination upon any one factor taken in isolation. Kaechele v. Kaechele, 35 Ohio St.3d 93, 518 N.E.2d 1197 (1988), paragraph one of the syllabus. Additionally, although a trial court possesses broad discretion to determine whether spousal support is reasonable and appropriate, it must consider the statutory factors and must indicate the basis for a spousal support award in sufficient detail to enable a reviewing court to determine that the award complies with the law. Kaechele at paragraph two of the syllabus. In the absence of a request for findings of fact and conclusions of law, however, Kaechele does not require the trial court to list and comment on each factor. Brown v. Brown, 4th Dist. Pike No. 02AP689, 2003–Ohio–304, ¶10. Rather, Kaechele and R.C. 3105.18(C) only require a trial court to reveal the basis for its award in either its judgment or the record. Id.; Carman v. Carman, 109 Ohio App.3d 698, 704, 672 N.E.2d 1093 (12th Dist. 1996). If the record reflects that the trial court considered the statutory factors, and if the judgment contains details sufficient for a reviewing court to determine that the support award is fair, equitable, and in accordance with the law, the reviewing court will uphold the award. Chattree v. Chattree, 8th Dist. Cuyahoga No. 99337, 2014-Ohio-489, ¶71.

{¶ 34} In the case at bar, we first consider appellant's argument that the trial court failed to indicate the basis for the spousal support award in sufficient detail to enable us to determine that the award complies with the law. Appellant contends that the trial court failed to engage in a factor-by-factor analysis of the R.C. 3105.18(C) factors, despite his Civ.R. 52 request for findings of fact and conclusions of law.

{¶ 35} Civ.R. 52 provides:

> "When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise * * *, in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law."

{¶ 36} "'[A] trial court has a mandatory duty under Civ.R. 52 to issue findings of fact and conclusions of law upon request timely made.'" State ex rel. Papp v. James, 69 Ohio St.3d 373, 377, 632 N.E.2d 889 (1994), quoting In re Adoption of Gibson, 23 Ohio St.3d 170, 173, 23 OBR 336, 492 N.E.2d 146 (1986). The purpose of this provision is "to aid the appellate court in reviewing the record and determining the validity of the basis of the trial court's judgment." Werden v. Crawford, 70 Ohio St.2d 122, 124, 24 O.O.3d 196, 435 N.E.2d 424 (1982). A trial court substantially complies with Civ.R. 52 if "the contents of the opinion, when considered together with other parts of the record, form an adequate basis upon which to decide the narrow legal issues presented.'" State ex rel. Gilbert v. Cincinnati, 125 Ohio St.3d 385, 2010-Ohio-1473, 928 N.E.2d 706, ¶38, quoting Brandon/Wiant Co. v. Teamor, 135 Ohio App.3d 417, 423, 734 N.E.2d 425 (1999); accord Nolan v. Nolan, 4th Dist. Scioto No. 11CA3444, 2012-Ohio-3736, ¶40. Findings and conclusions "'must articulate an adequate basis upon which a party can mount a challenge to, and the appellate court can make a determination as to the

propriety of, resolved disputed issues of fact and the trial court's application of the law.'" Truex v. Truex, 179 Ohio App.3d 188, 195, 2008-Ohio-5690, 901 N.E.2d 259, ¶27 (5th Dist.), ¶27, quoting Kroeger v. Ryder, 86 Ohio App.3d 438, 442, 621 N.E.2d 534 (1993). "A trial court's decision reciting various facts and a legal conclusion satisfies the requirements of Civ.R. 52 when, together with other parts of the trial court's record, the decision forms an adequate basis upon which to decide the legal issue presented upon appeal." Mahlerwein v. Mahlerwein, 160 Ohio App.3d 564, 2005-Ohio-1835, 828 N.E.2d 153 (4th Dist.), ¶22.

{¶ 37} A trial court's failure to substantially comply with the requirements of Civ.R. 52 constitutes reversible error. Id., citing In re Adoption of Gibson, 23 Ohio St.3d at 172. Thus, when a party argues that the trial court's findings are insufficient, a reviewing court must determine whether the trial court substantially complied with the procedural rule requiring the court to make separate findings of fact and conclusions of law. In re Cunningham, 4th Dist. Athens No. 03CA26, 2004-Ohio-787, ¶25, citing Brandon/Wiant Co. v. Teamor, 135 Ohio App.3d 417, 423, 734 N.E.2d 425 (8th Dist. 1999).

{¶ 38} In the case at bar, we agree with appellant that the trial court did not engage in a factor-by-factor analysis of the R.C. 3105.18(C) factors, even though appellant filed a Civ.R. 52 request for findings of fact and conclusions of law. We do not agree, however, that this failure means that the trial court did not substantially comply with Civ.R. 52. Instead, we believe that the trial court's findings of fact and conclusions of law, together with its divorce decree and other parts of the record, form an adequate basis upon which to decide the legal issues presented.

{¶ 39} In the case sub judice, the trial court stated that it considered all of the R.C. 3105.18(C) factors. Moreover, even though the trial court did not specifically analyze each R.C.

3105.18(C) factor, other parts of the record show that the court considered those factors and was aware of them. For instance, R.C. 3105.18(C)(1)(a) requires the trial court to consider the parties' income from all sources, and the trial court found that appellee did not have any income, while appellant received income in the form of disability benefits. R.C. 3105.18(C)(1)(b) requires the trial court to consider the relative earning abilities of the parties, and the trial court found that neither appellee nor appellant possessed any earning ability. R.C. 3105.18(C)(1)(g) requires the trial court to consider the parties' standard of living that they established during the marriage, and the trial court observed that appellant and appellee did not enjoy a high standard of living. We believe that the trial court's findings, while not expressly tied to the R.C. 3105.18(C) factors, are sufficient to enable this court to determine the basis for its spousal support award. "Furthermore, assuming the court erred, such error is harmless." In re Cunningham, 4th Dist. Athens No. 03CA26, 2004-Ohio-787, ¶26.

{¶ 40} Additionally, we find appellant's reliance on Baker v. Baker, 4th Dist. Meigs No. 477 (Feb. 10, 1993), misplaced. Appellant contends that Baker held that "[m]inimal findings of fact cannot justify an award of spousal support." However, that is not what we held in Baker. Instead, we stated: "In reaching its conclusion here, the trial court included minimal findings of fact with respect to the division of debt and no findings of fact related to its award of spousal support. Absent such findings, we have no basis to review the award to determine whether the court abused its discretion in making the award." (Emphasis added.) Thus, in Baker we stated that we could not review the trial court's spousal support award because it did not enter any findings of fact. We did not state that we could not review the trial court's spousal support

award because it entered "minimal findings of fact." Our reference to "minimal findings of fact" concerned the trial court's division of debt, not the court's spousal support award.

{¶ 41} Appellant next argues that the trial court abused its discretion by awarding appellee spousal support when his disability benefits provide his only source of income. Appellant essentially contends that a trial court cannot consider a party's separate property when determining whether to award spousal support. We do not agree.

{¶ 42} R.C. 3105.18(C)(1)(a) clearly and unambiguously states that a trial court must consider "the income of the parties, from all sources," when determining whether spousal support is appropriate and reasonable. Thus, when trial courts determine whether to award spousal support, courts may consider a spouse's veteran's administration disability benefits, Social Security disability benefits, and Social Security retirement benefits, even if that income is a spouse's only source of income. Dilley v. Dilley, 11th Dist. Geauga No. 2010-G-2957, 2011-Ohio-2093, ¶62 (disability benefits); Simpson v. Simpson, 12th Dist. Clermont No. CA2006-04-028, 2007-Ohio-224, ¶24 (Social Security retirement benefits); DiNunzio v. DiNunzio, 11th Dist. Lake No. 2005-L-124, 2006-Ohio-3888, ¶59 (Social Security disability benefits); Crites v. Crites, 6th Dist. Wood No. WD-04-034, 2004-Ohio-6162, ¶22 (veteran's disability benefits); Cardone v. Cardone, 9th Dist. Summit No. 18349, 1998 WL 224934 (May 6, 1998) (veteran's disability benefits).

{¶ 43} In the case at bar, the trial court obviously considered appellant's disability income when it determined whether to award spousal support. R.C. 3105.18(C)(1)(a) explicitly requires trial courts to consider the parties' income, "from all sources," which includes a party's disability

income. We therefore do not agree with appellant that the trial court improperly considered his disability income when determining whether to award appellee spousal support.

{¶ 44} Moreover, the trial court did not abuse its discretion by awarding appellee spousal support. Even though the court did not specifically apply each of the R.C. 3105.18(C) factors, the record shows that the parties were married for approximately seventeen years and, that during the later years, appellee took care of appellant. The trial court noted that appellee did not have any income from any source, but appellant did have $3,000 per month income. The only expense appellant could document was $400 in monthly rent. Appellant stated that he also purchases food and clothing, but he was unable to state how much he spends per month on food and clothing. The evidence also shows that appellee is unemployable and, thus, incapable of earning an income. Appellee lives in her son's unheated garage because she cannot afford to maintain her own home. Both parties suffer from medical conditions that leave them unable to work. Given the parties' respective financial situations, we cannot state that the trial court acted arbitrarily, unreasonably, or unconscionably by awarding appellee $500 per month for eighteen months. Consequently, we disagree with appellant that the trial court abused its discretion by awarding appellee spousal support.

{¶ 45} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

Hoover, J.: Concurring in part and dissenting in part.

{¶ 46} I concur in judgment and opinion with respect to the first assignment of error. As for the second assignment of error, I respectfully dissent.

{¶ 47} Trial courts generally enjoy broad discretion to determine spousal support issues. *Kunkle v. Kunkle,* 51 Ohio St.3d 64, 67, 554 N.E.2d 83 (1990); *Cherry v. Cherry,* 66 Ohio St.2d 348, 421 N.E.2d 1293 (1981). Consequently, an appellate court will not reverse a trial court's spousal support decision absent an abuse of discretion. *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 24, 550 N.E.2d 178 (1990); *Holcomb v. Holcomb,* 44 Ohio St.3d 128, 131, 541 N.E.2d 597 (1989). "Abuse of discretion" has been defined as an attitude that is unreasonable, arbitrary or unconscionable. E.g., *Hufman v. Hair Surgeon, Inc.,* 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985).

{¶ 48} This Court has previously found that Social Security benefits cannot be actually divided to effectuate spousal support. *Bishman v. Bishman,* 4th Dist. Washington No. 03CA54, 2005-Ohio-4379, ¶ 13. In *Bishman,* the trial court ordered the appellant husband to pay one-half of his monthly Social Security benefit to the appellee wife. *Id*. at ¶ 1. This court reversed the trial court's decision. We found that "[t]he trial court abused its discretion by actually dividing the benefit, instead of considering it in relation to all marital assets." *Id*. at ¶ 13.

{¶ 49} This Court also stated in *Bishman,* at ¶ 10 and ¶ 11:

> In general, retirement and pension benefits earned during the course of the marriage are marital assets. As such, they must be considered in the division of property. *Hoyt v. Hoyt* (1990), 53 Ohio St.3d 177, 178, 559 N.E.2d 1292.
>
> However, pursuant to federal law, Social Security benefits are not subject to

division in a divorce proceeding. *Hoyt*, at fn3. Section 407(a), Title 42, U.S.Code "forbids any transfer or assignment of Social Security benefits and, in general, protects these benefits from 'execution, levy, attachment, garnishment, or other legal process." ' *Neville v. Neville*, 99 Ohio St.3d 275, 791 N.E.2d 434, 2003-Ohio-3624, ¶ 7.

{¶ 50} In *Neville*, the Ohio Supreme Court acknowledged that Social Security benefits are not considered a marital asset and that federal law prohibits the division of such benefits in a divorce proceeding. Nonetheless, the Court held that "[i]n making an equitable distribution of marital property in a divorce proceeding, a trial court may consider the parties' future Social Security benefits in relation to all marital assets." Id. at syllabus. Essentially, the Court's decision allows a trial court to offset a party's future Social Security benefits, but still prohibits a trial court from deviating from federal law by actually dividing that benefit.

{¶ 51} A more recent case from this Court addressed an award of spousal support in relation to a parties' Social Security benefit. In *Byers v. Byers*, 4th Dist. Ross No. 09CA3124, 2010-Ohio-4424, this Court upheld an award of spousal support even though the only income that appellant received was from his Social Security benefits.[2] This Court found that "the trial court did not overtly order the division of Appellant's Social Security benefits: it ordered him to pay money, from whatever source, to cover Appellee's health insurance." *Id*. at ¶ 15. In *Byers*, the parties owned several properties in Arizona. *Id*. at ¶ 2. In addition, the parties owned substantial

[2]Appellant William E. Byers also received monies from his defined benefit plan and investment accounts, which were already equally divided between the parties. *Byers* at ¶ 6.

assets in the form of various different retirement and investment accounts. *Id*. Therefore, this Court found that the trial court did not abuse its discretion by awarding spousal support or that it impermissibly divided the appellant's Social Security benefits to effectuate spousal support. *Id*. at ¶ 15.

{¶ 52} This case is similar to *Byers* in that no overt order was made dividing the appellant's Social Security benefit. However, in contrast to *Byers*, the appellant does not own any other real properties; and he does not own substantial assets in the form of retirement and investment accounts. Appellant has access to very little personal property. He only had $175 in a checking account at the time of the final hearing. The appellant does not have any motor vehicles. The appellant is 73 years old with no ability to work. All of the marital debt in the total amount of approximately $14,899 was allocated to the appellant. Appellant's net income after deductions for taxes is only $2,819.19.

{¶ 53} In the case at bar, appellant has no other source of income nor does he have any other assets from which to derive monies to pay the spousal support order. Although not actually or overtly encumbered by the spousal support order, the Social Security benefits are the only source of income from which the appellant will have available to pay the spousal support. Presumably, he will also be using his Social Security benefits to pay towards the $14,899 in marital debt that was allocated to him. Federal and state law should not be able to be sidestepped by not overtly or actually stating that the Social Security benefits shall be divided with 16-17% to wife and 83-84% to husband. This actual effectuation of the payment for spousal support seems to be prohibited by federal and state law. Social Security Act, § 207, 42 U.S.C.A. § 407(a).

{¶ 54} Although the trial court acted properly by considering the Social Security benefits of the appellant in relation to all marital assets in making the spousal support award, it abused its discretion after engaging in the consideration by making the spousal support award since no other assets or sources of income were available to pay the spousal support award other than the Social Security benefits.

{¶ 55} I would affirm the trial court's judgment with respect to the allocation of marital debts; however, I would reverse the judgment with respect to the spousal support award.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant 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 Vinton County Common Pleas Court to carry this judgment into execution.

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

McFarland, J.: Concurs in Judgment & Opinion
Hoover, J.: Concurs in Judgment & Opinion as to Assignment of Error I and Dissents, with attached opinion, as to Assignment of Error II

For the Court

BY:_____
Peter B. Abele
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.