

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

WILLIAM SCOTT KING,	:	Case No. 13CA7
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
BRITTNEY T. KING,	:	
n/k/a BRITTNEY T. SCOTT,	:	
	:	
Defendant-Appellant.	:	<b>RELEASED: 12/29/2014</b>

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APPEARANCES:

Brittney Scott, Tiffin, Ohio, pro se Appellant.

William King, Wellston, Ohio, pro se Appellee.

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Harsha, J.

{¶1} Following our remand Brittney King, n/k/a Brittney Scott, appeals the trial court's judgment on several issues. First she argues that the trial court erred by failing to value the marital home before awarding it to William Scott King. However, in her direct appeal Scott did not challenge the trial court's finding that she agreed the marital home should be awarded to King. Thus, under the law of the case doctrine the marital home was not a contested asset that the trial court had to value on remand, so we reject her argument.

{¶2} Next she argues that the trial court abused its discretion by determining the amount of the parties' tax lien to be \$80,000 because King's tax returns show his tax liabilities are only \$31,944. Nevertheless, both parties testified that the Internal Revenue Service (IRS) placed the tax lien on the marital home before February 2010, even though King's tax liability was still undetermined. King was the only party to

provide evidence of the amount of the lien and testified it was approximately \$80,000. Based on his testimony there was some competent, credible evidence to support the trial court's valuation of \$80,000, making Scott's argument meritless.

{¶3} Likewise, Scott claims that the trial court erred in valuing the parties' Harley Davidson motorcycle and Toyota truck. Our review of the record shows that King was the only party to provide a value for the truck and testified he thought it was worth \$5000 to \$5500. Accordingly, the trial court's value of \$5250 was not against the manifest weight of the evidence. King also testified that the Harley Davidson was worth "maybe \$9500." However, Scott provided three Kelley Blue Book values that were all higher than \$9500. Thus, there was no competent, credible evidence to support the court's value of \$8750 and we agree its valuation was against the manifest weight of the evidence.

{¶4} Scott further claims that the trial court erred by omitting King's 2008 federal income tax refund and the balance in their bank account on the termination date of their marriage from the marital property distribution. Scott relies solely on King's filed 2008 tax return as evidence that he received a refund. However, King testified at trial that he was still in the process of working with the IRS to determine his tax liability for the years 2005 through 2010 and we cannot assume just because he filed his return claiming a refund, that he actually received a refund in that amount.

{¶5} Turning to the bank account, Scott alleges only that the parties had \$11,317 in the bank on the termination date of their marriage, but in violation of the Ohio Appellate Rules of Procedure, fails to clarify what bank or account she believes

contained this balance, or point to any evidence in the record to support her assertion. Accordingly, we summarily reject her argument.

{¶6} Scott also argues that the trial court abused its discretion by failing to classify, value, and distribute income that King allegedly concealed. However, Scott did not raise this issue in her initial appeal and the law of the case doctrine precludes her from raising the issue now.

{¶7} Regarding financial misconduct, Scott alleges the trial court abused its discretion by failing to classify the parties' Mercedes Benz, two \$2500 certificates of deposit, a Dodge Neon and a Nissan van as marital or separate property and placing a monetary value on each item before deciding whether King committed any financial misconduct concerning these assets. We agree that without the trial court identifying these assets as either marital or separate and in the absence of any other findings to support its decision, we cannot meaningfully review its judgment.

{¶8} In addition Scott claims that the trial court abused its discretion by denying her spousal support without first classifying, valuing and distributing all the marital property. Because property division is a factor the trial court must consider in deciding whether to award spousal support we agree. After the court makes a new distribution of property on remand, it must also re-evaluate its decision on spousal support.

{¶9} In the initial appeal we reversed the trial court's judgment regarding the dependency tax exemption and remanded the case so the court could determine whether awarding King the exemption was in the children's best interests. On remand the trial court found that Scott can claim the children as dependents for tax purposes. She now contends that the trial court should have credited her for the two years after

the original divorce decree that King was able to claim the dependency tax exemption for the children. Under the law of the case doctrine, on remand the trial court had to proceed from the point where the error occurred, i.e. the original divorce decree. Thus, we agree and remand the case for the trial court to consider whether to credit Scott for the two years of the tax dependency exemption she was unable to claim.

## I. FACTS

{¶10} We considered Scott's initial appeal in *King v. King*, 4th Dist. Jackson No. 12CA2, 2013-Ohio-3426. There we reversed the trial court's property division and remanded so that the trial court could classify their property pursuant to R.C. 3105.171(B) as marital or separate, place a value on each contested asset and debt, consider any potential financial misconduct by either party, and thereafter equitably divide the property and revisit the issue of spousal support.

{¶11} On remand the trial court filed an entry and found that "all personal property was previously divided except for a 2000 Toyota truck and a Harley-Davidson motorcycle." The court found these vehicles were marital property and assigned them each a monetary value. In "consideration of potential liens for unfiled tax returns," the court granted the vehicles to King. The court clarified that the amount of liens was still undetermined, but based on King's testimony found the parties' tax liability "to be approximately \$80,000." And because the liens were based on King's income earned during the marriage, the court found the associated taxes to be marital debt, but ordered King to pay the debt and hold Scott harmless of any tax liabilities. The court also found "there [was] no other personal property, marital or non-marital, to distribute."

{¶12} In response to Scott's allegations of financial misconduct, the court found that she failed to prove King committed financial misconduct concerning the Mercedes Benz, two \$2500 certificates of deposit, the Dodge Neon and Nissan van. Furthermore, after considering all the factors set forth in R.C. 3105.18(C)(1), the court found that spousal support was not appropriate and ordered neither party to pay spousal support. Another appeal followed.

## II. ASSIGNMENTS OF ERROR

{¶13} Scott raises nine assignments of error for our review:

1. TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO FOLLOW THE MANDATE INSTRUCTED BY THE APPELLATE COURT BY FAILING TO CLASSIFY MARITAL ASSETS, PLACE A MONETARY VALUE ON ASSETS, AND MAKE AN EQUAL AND/OR EQUITABLE DISTRIBUTION AND INSTEAD OMITTED MARITAL ASSETS.
2. TRIAL COURT ABUSED ITS DISCRETION AGAIN WHEN IT ESTIMATED APPELLEE'S TAX LIENS TO BE \$80,000, THEN CLASSIFIED THE "SPECULATIVE AMOUNT" AS MARITAL DEBT, AND MADE AN UNEQUAL AND UNEQUITABLE[SIC] DISTRIBUTION TO APPELLEE – WHICH WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.
3. TRIAL COURT ABUSED ITS DISCRETION BY VALUING THE 2006 HARLEY DAVIDSON AND THE 2003 TOYOTA TRUCK.
4. TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO CLASSIFY, VALUE, AND EQUALLY AND/OR EQUITABLY DIVIDE APPELLEE'S 2008 TAX REFUND FILED IN APRIL 2010.
5. TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO CLASSIFY, VALUE, AND EQUALLY AND/OR EQUITABLY DIVIDED[SIC] APPELLANT'S PORTION OF THE \$11,317.00 OF MARITAL INCOME IN THE PARTIES' BANK ACCOUNT.
6. TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO CLASSIFY, VALUE AND EQUALLY AND/OR EQUITABLY DIVIDED[SIC] APPELLANT'S PORTION OF THE MARITAL INCOME THAT APPELLEE CONCEALED FROM BEING CLASSIFIED AND DIVIDED EQUAL[SIC] AND/OR EQUITABLY.

7. TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO CREDIT APPELLANT FOR 2 YEARS OF THE TAX DEPENDENCY CREDIT IT AWARDED APPELLEE[SIC] WHEN IT WAS AN ABUSE OF DISCRETION TO AWARD APPELLEE THE TAX DEPENDENCY CREDIT INITIALLY.

8. TRIAL COURT ABUSED ITS DISCRETION WHEN IT MADE THE RULING THAT APPELLANT FAILED TO PROVE APPELLEE HAD COMMITTED FINANCIAL MISCONDUCT WITHOUT FIRST COMPLYING[SIC] THE MANDATED STATUTE OF R.C. 3105.17(B)[SIC].

9. TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT SPOUSAL SUPPORT WITHOUT FIRST COMPLYING WITH THE MANDATED STATUTE OF R.C. 3105.17(B)[SIC].

### III. LAW AND ANALYSIS

#### A. Property Division

{¶14} Trial courts must divide marital property equitably between the spouses. R.C. 3105.171(B). Usually, this requires that marital property be divided equally. R.C. 3105.171(C)(1). “However, if the trial court determines that an equal division would produce an inequitable result, it must divide the property in a way it deems equitable.” *O’Rourke v. O’Rourke*, 4th Dist. Scioto No. 08CA3253, 2010-Ohio-1243, ¶ 15; R.C. 3105.171(C)(1). In contrast, “the court shall disburse a spouse’s separate property to that spouse.” R.C. 3105.171(D). Because the trial court possesses great discretion in reaching an equitable distribution, we will not reverse its division of property absent an abuse of discretion. *O’Rourke* at ¶ 15.

{¶15} “[U]nder R.C. 3105.171(B), a court is under a mandatory duty to classify property in a divorce proceeding as either marital or separate before dividing the property.” *Girton v. Girton*, 4th Dist. Athens No. 08CA30, 2009-Ohio-4458, ¶ 6. And because “[a] trial court must take into account marital debt when dividing marital property,” it must also classify the parties’ debts, as well as assets, before distributing

their property. *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.

{¶16} Furthermore, the trial court must also value the parties' property before distributing it. *Bray v. Bray*, 4th Dist. Ross No. 10CA3167, 2011-Ohio-861, ¶ 28. "Indeed, a trial court must place a monetary value on every contested asset of the parties in a divorce proceeding." *Id.* "In any order for the division or disbursement of property or a distributive award made pursuant to [R.C. 3105.171], the court shall make written findings of fact that support the determination that the marital property has been equitably divided \* \* \*." R.C. 3105.171(G). "[T]he trial court must make findings 'in sufficient detail to allow for meaningful appellate review of its decision.'" *O'Rourke* at ¶ 16, quoting *Knight v. Knight*, 4th Dist. Washington No. 99CA27, 2000 WL 426167, \*4 (Apr. 12, 2000). See also *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 518 N.E.2d 1197 (1988), paragraph two of the syllabus.

### 1. The Marital Home

{¶17} In her first assignment of error Scott argues that the trial court erred by failing to classify certain assets as marital or separate and place a value on them. Specifically, she argues that the trial court violated R.C. 3105.171(B) by failing to value the marital home before awarding it to King and omitting other marital assets from the property division.

{¶18} In the trial court's original decree of divorce, it found that "both [King] and [Scott] agree there is no equity in the residential real estate located at 99 N. Chestnut Street, Jackson, Ohio. Plaintiff wishes to retain the property and Defendant agrees it

may be awarded to him, subject to any mortgage.” Accordingly the court granted the marital home to King, subject to “all obligations related to the real estate” and ordered him to “hold [Scott] harmless therefrom.”

{¶19} In her initial appeal Scott did not challenge the trial court’s finding that she agreed King should be awarded the marital home. The only issue she raised with the marital home was that the court awarded King the home without first giving it a value. However, the “reason we require trial courts to place a monetary value on assets is to ensure that *contested* items of personal property are distributed equitably.” (Emphasis sic.) *Rinehart v. Rinehart*, 4th Dist. Athens No. 98CA24, 1999 WL 1240851, \*5 (Dec. 1, 1999). And a review of the testimony at the final hearing shows King testified that he wished to keep the home and Scott agreed the house has no equity. Because there was no dispute over the value of the marital home, the trial court was not required to place a value on it under R.C. 3105.171(B) on remand and we reject her argument. *See Rinehart* at \*5.

{¶20} The law of the case doctrine is rooted in the principles of res judicata and issue preclusion and provides that the decision of a reviewing court remains the law of that case on the legal questions involved for all subsequent proceedings at both the trial and appellate levels. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 35; *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). The doctrine “precludes a litigant from attempting to rely on arguments at a retrial which were fully pursued, or available to be pursued, in a first appeal.” *Hubbard ex rel. Creed v. Sauline*, 74 Ohio St.3d 402, 404-405, 659 N.E.2d 781(1996). Thus, “[n]ew arguments are subject to issue preclusion, and are barred.” *Id.*



{¶21} Scott also argues that the trial court “failed to classify and place a value” on certain assets. Particularly, she claims that the trial court should have classified, valued, and distributed the parties’ Mercedes Benz, two \$2500 certificates of deposit, Dodge Neon, and Nissan van. However, because this argument is related to her eighth assignment of error, we address it there.

## 2. The Tax Lien

{¶22} In Scott’s second assignment of error she argues that the trial court abused its discretion when it determined the amount of the parties’ tax lien to be \$80,000. She contends that the evidence introduced by King shows only \$31,944 in tax consequences for failing to timely file his personal tax returns. Likewise, in her third assignment of error Scott claims the trial court abused its discretion in its valuation of the parties’ 2000 Toyota truck and 2006 Harley Davidson motorcycle.

{¶23} The valuation of a specific asset in a divorce case is a question of fact, and therefore we review the issue under a manifest weight of the evidence standard.

*Shupert v. Shupert*, 4th Dist. Adams No. 12CA940, 2013-Ohio-604, ¶ 22.

“Consequently, we will not reverse the trial court’s valuation as long as it is supported by some competent, credible evidence.” *O’Rourke*, 4th Dist. Scioto No. 08CA3253, 2010-Ohio-1243, at ¶ 17, citing *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. ““This standard of review is highly deferential and even ‘some’ evidence is sufficient to sustain the judgment and prevent a reversal.”” *O’Rourke* at ¶ 17, quoting *Barkley v. Barkley*, 119 Ohio App.3d 155, 159, 694 N.E.2d 989 (4th Dist.1997).

**{¶24}** King testified at trial that he did not timely file personal income tax returns for the years 2005 through 2010, a fact that Scott concedes in her brief. From 2004 to 2010 King worked out of the country as a private security consultant earning approximately \$120,000 annually, with the exception of 2007 when he returned home. King claims that during this time, Scott was taking care of their personal finances and he believed she had filed their personal tax returns. She claimed that it was not her responsibility to file his tax returns.

**{¶25}** On remand the trial court found the evidence “was clear that tax returns for the years 2005 through 2010 either were not filed or not timely filed.” It also found that King’s income during this period was marital income and the taxes associated with that income are marital debt. Based on King’s estimate, the court determined the parties’ tax liability “to be approximately \$80,000,” but clarified that the liens were “potential” only because the amount was still undetermined. However, Scott argues that King’s tax returns for 2009 and 2010 submitted as evidence at trial show his tax liabilities are only \$31,944 and it was his responsibility to provide the court with evidence to the actual tax obligations if King wanted the court to consider any other amount.

**{¶26}** At trial King testified he did not timely file his tax returns for 2005 through 2010 and his tax liability for this period had “not been cleared up yet.” He also testified that when he returned home in 2010, he discovered there was a lien on the martial home for “a little over \$80,000.” He introduced evidence of his tax returns for 2008 through 2010, however as Scott notes, he failed to provide copies for 2005 through 2007. Scott testified that the IRS had placed the tax lien on the home due to King not

filing personal tax returns and the lien had attached sometime before she left the home in February 2010, possibly in 2009.

{¶27} Thus, according to the parties' testimony the tax lien was placed on the home in either 2009 or 2010, even though King's final tax liability was still undetermined. Based on the evidence, it is uncertain how the determination of King's tax liability would impact the tax lien. However, we need not address this because Scott's assignment of error only attacks the court's estimate of the tax lien on the home and both parties agree the IRS placed the lien on the home prior to King arriving home in 2010. King was the only party to testify about the lien amount and stated he thought it was approximately \$80,000. Based on King's testimony there was some competent, credible evidence to support the trial court's approximation of \$80,000 and its valuation of the tax lien was not against the manifest weight of the evidence.

### 3. The Parties' Vehicles

{¶28} Scott also argues that the trial court erred in its valuation of the parties' vehicles. Specifically, she contends that the trial court erred by valuing the Toyota truck at \$5250, higher than the purchase price, and the Harley Davidson motorcycle at \$8750, lower than any value presented by the parties.

{¶29} R.C. 3105.171, which governs property distribution, does not express how a trial court should determine the value of marital property. *Strauss v. Strauss*, 8th Dist. Cuyahoga No. 95377, 2011-Ohio-3831, ¶ 36. Thus, a trial court has "broad discretion to develop a measure of value when dividing marital property." *Covert v. Covert*, 4th Dist. Adams No. 03CA778, 2004-Ohio-3534, ¶ 16. "When valuing a marital asset, a trial court is neither required to use a particular valuation method nor precluded from using

any method. \* \* \* However, the court may not simply adopt an intermediate figure without a supporting rationale when the parties present substantially different valuations of an asset.” *Id.* at ¶ 29.

{¶30} At trial King testified that he was “not good at estimating values,” but believed the Toyota truck was worth \$5000 to \$5500. Although Scott contends that Exhibit Q1 shows a copy of the title, that exhibit only shows the title for the Mercedes Benz. And although King also testified that he traded in the Mercedes Benz for the Toyota truck, Scott does not point to any other evidence to establish its value; our review of the record shows he did not testify about the purchase price of the truck. Accordingly, the trial court’s value of \$5250 was not against the manifest weight of the evidence and we reject Scott’s argument.

{¶31} Turning to the motorcycle, King testified that the value of the Harley Davidson was “maybe \$9500,” but “it was hard to say.” And although Scott provided the court with several Kelley Blue Book values for the motorcycle, they were all higher than \$9500. Thus, there was no competent credible evidence to support the trial court’s value of \$8750 and we agree its value was against the manifest weight of the evidence. On remand the trial court must determine the value of the motorcycle based on the evidence.

#### 4. Bank Account Balance & King’s 2008 Tax Refund

{¶32} In her fourth and fifth assignments of error Scott argues that the trial court erred by omitting King’s 2008 federal income tax refund and the balance in the bank account on the termination date of their marriage from the marital property distribution.

King argues that Scott did not raise these arguments in her initial appeal and therefore is barred from raising them now by the doctrines of res judicata and the law of the case.

{¶33} In her first appeal Scott presented a list of items that she believed were marital property that the trial court omitted from its property distribution. Included in that list was “\$11,317.00 in the bank as of February 12, 2010,” and the “2008 tax refund of \$5396.” However, in the assignment of error she presented no specific argument concerning these assets; nor did she point to evidence in the record to support her assertion that the assets were marital property. Therefore, we did not specifically address them when we sustained her assignment of error and remanded the case. Thus, we agree with King’s argument that the doctrine of law of the case applies and precludes our review now. Although, the doctrine will not be applied to achieve unjust results, the application of the rule is necessary “to ensure consistency of results in a case” as well as “to avoid endless litigation by settling the issues \* \* \*.” *Nolan*, 11 Ohio St.3d at 3, 462 N.E.2d 410. Nevertheless, even if we were to address these arguments, our decision would reject them on the merits.

{¶34} Regarding the 2008 tax refund, Scott points to the tax documents submitted by King. She contends that based on his 2008 federal income tax return, he received a refund in the amount of \$5396, which the trial court should have considered marital property and divided equitably. However, as we already pointed out King testified at trial that he was “still in the process” of working with the IRS to determine his tax liability for the years 2005 through 2010 and his taxes for that time had “not been cleared up yet.” Likewise, Scott points to no evidence in the record that King actually received a tax refund for 2008. Rather, his testimony at trial showed that although he

had recently filed his 2008 federal income tax return, his tax liability was still uncertain. We cannot assume just because he filed his return claiming a refund, that he actually received a refund in that amount. This is especially so in light of his considerable other federal tax liability. Moreover, we have no reason to believe that the trial court did not consider this refund when estimating King's overall tax liability for the years 2005 through 2010. Accordingly, we reject Scott's argument.

{¶35} Turning to the bank account, Scott alleges only that "the parties had \$11,317.00 in the bank as of February 12, 2010," and the trial court erred by failing to equitably distribute this money. However, she fails to clarify what bank or account she believes contained this balance on the termination date of their marriage, or point to any evidence in the record to support her assertion. App.R. 16(A)(7) requires an appellant to include in her brief "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." It is not our responsibility to "hunt through" the record to find where an alleged error occurred. *State v. Allen*, 4th Dist. Scioto No. 96CA2421, 1997 WL 691470, \*6, fn. 12 (Nov. 7, 1997). "The provisions of App.R. 16(A)(7) place this responsibility squarely on appellant. An appellate court may disregard an assignment of error presented for review if the party raising it fails to identify *in the record* where the error took place." (Emphasis sic.) *Id.*; App.R. 12(A)(2). We again recognize that Scott has filed this appeal pro se, but like members of the bar, pro se litigants are required to comply with rules of practice and procedure. *King*, 4th Dist. Jackson No. 12CA2, 2013-Ohio-3426 at ¶ 17. And because she makes no attempt to comply with App.R. 16(A)(7)

by citing a place in the record to support her fifth assignment of error, we summarily reject it. *See id.*

### 5. Concealed Income

{¶36} In her sixth assignment of error Scott argues that the trial court abused its discretion by failing to classify, value, and distribute income that King allegedly concealed. Scott claims that King “made large cash deposits” while unemployed and cites R.C. 3105.171(E) allowing the trial court to make a greater award of marital property to a spouse upon a finding that the other spouse has committed financial misconduct. However, other than identifying a \$9500 debit after filing for divorce Scott does not identify what “large cash deposits” she believes King made in an attempt to conceal his income. Moreover, Scott did not raise this issue in her initial appeal. Once again the doctrine of law of the case bars claims that the appellant raised or could have raised on direct appeal. *See Quality Car & Truck Leasing*, 4th Dist. Scioto No. 13CA3565, 2014-Ohio-1291, ¶ 16. Because Scott did not raise any issue with King’s alleged large cash deposits in her first appeal, the doctrine of the law of the case precludes her from raising the issue now.

### B. Financial Misconduct

{¶37} In her eighth assignment of error Scott alleges the trial court abused its discretion by failing to classify the parties’ Mercedes Benz, two \$2500 certificates of deposit, Dodge Neon and Nissan van as marital or separate property and to place a monetary value on each item in violation of R.C. 3105.171(B),<sup>1</sup> before deciding whether

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<sup>1</sup> In her assignment of error Scott claims the court failed to comply with R.C. 3105.17(B). However, because that statute does not pertain to her assignment of error, we assume she meant to identify R.C. 3105.171(B).

King committed any financial misconduct with regard to the assets. Returning to her first assignment of error, Scott claims that these are assets that were acquired by the parties during the marriage and the trial court erred by omitting them from its distribution of marital property.

{¶38} R.C. 3105.171(E)(4) authorizes the trial court to make a distributive or greater award of marital property to one spouse upon a finding that the other spouse “has engaged in financial misconduct, including but not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets.” “The decision of whether to make an award under this statute is reviewed for an abuse of discretion.” *Jacobs v. Jacobs*, 4th Dist. No. 02CA2846, 2003-Ohio-3466, ¶ 22. An abuse of discretion is more than an error of judgment; it implies that the trial court’s attitude was unreasonable, arbitrary or unconscionable. *Id.* The burden of proving financial misconduct is on the complaining spouse. *Id.* at ¶ 25.

{¶39} “Marital property” includes “[a]ll real and personal property that currently is owned by either or both of the spouses \* \* \* and that was acquired by either or both of the spouses during the marriage.” R.C. 3105.171(A)(3)(a)(i). “During the marriage” means “the period of time from the date of the marriage through the date of the final hearing in an action for divorce \* \* \*,” but if the trial court determines those dates to be inequitable it “may select dates that it considers equitable in determining marital property.” R.C. 3105.171(A)(2).

{¶40} In Scott’s initial appeal we noted that both parties testified about the assets that she claims King improperly disposed of. However, the trial court did not address these assets or financial misconduct in its entry. On remand the trial court



again did not address these assets and summarily concluded that Scott “failed to prove financial misconduct as to the Mercedes Benz, two \$2500 certificates of deposit, Dodge Neon and Nissan van.” We agree that without the trial court identifying these assets as either marital or separate and in absence of any other findings to support its decision, we cannot meaningfully review its judgment. Accordingly, the court erred by not first making these findings.

{¶41} Scott also argues that King's failure to file his personal income tax returns for years 2005 through 2010 amounted to financial misconduct. However, she did not present this argument in her initial appeal, so the law of the case doctrine precludes her from raising the issue now. *See Quality Car & Truck Leasing*, 4th Dist. Scioto No. 13CA3565, 2014-Ohio-1291, at ¶ 16.

### C. Spousal Support

{¶42} In her ninth assignment of error Scott claims that the trial court abused its discretion by denying her spousal support without first classifying, valuing and distributing all the marital property.

{¶43} Under R.C. 3105.171(C)(3), “[t]he court shall provide for an equitable division of marital property \* \* \* prior to making any award of spousal support to either spouse \* \* \*.” R.C. 3105.18(C)(1) provides that in determining whether spousal support is appropriate and reasonable the court shall consider in part “(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 \* \* \* (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties.” Property division is a factor the trial court must

consider in deciding whether to award spousal support and we have already held that the trial court did not make the necessary findings to enable a meaningful review of its distribution. Because we have sustained Scott's assignments of error dealing with the distribution of property, the trial court in this case must re-evaluate and clarify its property distribution on remand. After doing so, the court must then revisit its decision on the issue of spousal support. To this extent, we sustain Scott's ninth assignment of error.

#### D. Tax Dependency Exemption

{¶44} In her seventh assignment of error Scott claims that the trial court erred by failing to credit her for two years of the tax dependency exemption for their minor children. The trial court initially awarded the tax dependency exemption to King, who is the non-residential parent. However, we reversed the court's decision and ordered the court to consider whether awarding King the dependency tax exemption was in the children's best interests in accordance with R.C. 3119.82. On remand the court found that "[b]ased on the record and Revised Code 3119.82, [Scott] shall claim the children as dependents for tax purposes." Accordingly, Scott now claims the trial court should have credited her for the two years after the original divorce decree that King was able to claim the dependency tax exemption for the children. King counters that in the original divorce decree, the court allowed Scott to claim the children for purposes of the earned income credit and this credit benefited her more than the dependency tax exemption would have, i.e. she was not prejudiced by the court's decision. King points to the parties' 2011 federal tax returns as evidence that Scott and the minor children benefited from the court's original order. Nevertheless, "[a] reviewing court cannot add

matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter.” *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus. Thus, because the 2011 tax returns were not introduced into the record we cannot consider them on appeal.

{¶45} As we have stated the decision of a reviewing court remains the law of that case on the legal questions involved for all subsequent proceedings. *Nolan*, 11 Ohio St.3d at 3, 462 N.E.2d 410 (1984). “Absent extraordinary circumstances, such as an intervening decision by the Supreme Court, an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case.” *Id.* at paragraph one of the syllabus. Rather, “[u]pon remand from an appellate court, the lower court is required to proceed from the point at which the error occurred.” *State, ex rel. Stevenson v. Murray*, 69 Ohio St.2d 112, 113, 431 N.E.2d 324 (1982).

{¶46} Accordingly, under the law of the case doctrine the trial court in this case had to proceed from the point where the error occurred, i.e. the original divorce decree. Thus, we sustain Scott’s seventh assignment of error. On remand the trial court shall consider whether to credit Scott for the two years of tax dependency exemption she was unable to claim and whether she was prejudiced by the inability to do so.

## V. CONCLUSION

{¶47} In conclusion, we sustain Scott’s eighth, and in limited part her first, third and ninth assignments of error. We remand the case so that the trial court can determine whether the Mercedes Benz, two \$2500 certificates of deposit, Dodge Neon and Nissan van that Scott claims King improperly disposed of were marital property. If the court finds these assets were marital property, it must assign each item a value,

reconsider its findings regarding King's potential financial misconduct and thereafter equitably divide the property. We also remand the matter to the trial court to determine the value of the Harley Davidson motorcycle based on the evidence, reconsider the property distribution based on this value, and revisit the issue of spousal support. In addition, we sustain Scott's seventh assignment of error and remand the case so the trial court can consider whether to credit Scott for the two years of tax dependency exemption that she was unable to claim. We overrule Scott's second, fourth, fifth, and sixth assignments of error.

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

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED IN PART AND REVERSED IN PART and that the CAUSE IS REMANDED. Appellant and Appellee shall split the 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 Jackson 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.

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

For the Court

BY: \_\_\_\_\_  
William H. Harsha, 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.**