

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

CONSTANCE B. TREIBER	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. Julie A. Edwards, J.
Plaintiff-Appellant	:	Hon. John F. Boggins, J.
	:	
-vs-	:	
	:	Case No. 2002 CA 00052
BRUCE L. TREIBER	:	
	:	
Defendant-Appellee	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Civil appeal from Licking County Common Pleas Court, Domestic Relations Division, Case No. 00-DR-00147

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: 1/30/2003

APPEARANCES:

For Plaintiff-Appellant

J. MICHAEL KING  
2 North First Street  
P.O. Box 4010  
Newark, Ohio 43058

For Defendant-Appellee

A. TERRANCE TRENEFF  
33 West Main Street  
P.O. Box 4190  
Newark, Ohio 43058-4190

*Boggins, J.*

{¶1} This is an appeal from a decision by the Licking County Domestic Relations

Court.

## STATEMENT OF THE FACTS AND CASE

{¶2} On November 13, 1993, the parties were married, with one child issuing from said marriage: Brian Robert Treiber (D.O.B. 9/26/96).

{¶3} On February 10, 2000, Appellee-husband filed a Complaint for Divorce in the Licking County Court of Common Pleas, Domestic Relations Division.

{¶4} The contested divorce hearing commenced on January 18, 2001, and concluded on January 19, 2001.

{¶5} On June 11, 2001, the initial Magistrate's decision was filed.

{¶6} On July 5, 2001, Appellee-husband filed a motion pursuant to Civ. R. 60 (B) concerning values of Appellee-husband's pension plan.

{¶7} Both parties filed motions to extend time to file respective objections to the Magistrate's decision.

{¶8} On August 6, 2001, the trial court sua sponte remanded the matter to the Magistrate for clarification of the omission of \$34,000.00 in real estate equity and the reasoning for the inclusion of a certain tractor as marital property. The trial court also ordered the Magistrate to use the date of the final hearing as the valuation date for Appellee-husband's retirement plans.

{¶9} On October 29, 2001, the Magistrate filed his Decision on Remand.

{¶10} Both parties filed objections to the Magistrates's Decision on Remand.

{¶11} On March 21, 2002, the trial court filed its Opinion, affirming the valuation date of January 18, 2001, refusing to allow Appellant-wife the right to offset the value of said pension plans against Appellee-husband's interest in the marital residence and awarding the Ford 8-N tractor to Appellee-husband.

{¶12} On April 30, 2002, the Judgment Decree of Divorce was filed.

{¶13} It is from this decision that Appellant-wife has filed the instant appeal, assigning the following errors for review:

#### ASSIGNMENTS OF ERROR

##### I.

{¶14} “THE TRIAL COURT ERRED WHEN IT ORDERED THE MAGISTRATE TO ADOPT JANUARY 18, 2001, AS THE VALUATION DATE OF THE APPELLEE’S PENSION PLANS, AND WHEN IT AFFIRMED THE MAGISTRATE’S DECISION ON REMAND REGARDING THE VALUATION DATE OF THE APPELLEE’S PENSION PLANS.”

##### II.

{¶15} “THE TRIAL COURT ERRED IN FAILING TO ALLOW THE APPELLANT TO OFFSET HER INTEREST IN THE APPELLEE’S PENSION PLANS AGAINST HIS INTEREST IN THE MARITAL RESIDENCE.”

##### III.

{¶16} “THE TRIAL COURT ERRED IN AWARDING THE FORD 8-N TRACTOR TO THE APPELLEE.”

##### I., II., III.

{¶17} Appellant-wife, in her assignments of error, claims that the trial court erred in its decision on the division of the marital assets, more specifically in using the date of the final hearing as the valuation date for Appellee-husband’s pension plans, in not allowing her to offset her interest in said plans against Appellee-husband's interest in the marital residence and in awarding Appellee-husband the Ford 8-N tractor. We disagree.

{¶18} Upon the granting of a divorce, the trial court is required to divide and distribute the marital estate between the parties in an equitable manner. R.C. §3105.171(B). Pension and other retirement benefits acquired by either spouse during the

marriage are marital property subject to equitable division upon the divorce. R.C. §3105.171(A)(3)(a)(i). See, also, *Erb v. Erb* (1996), 75 Ohio St.3d 18, 20; *Hoyt v. Hoyt* (1990), 53 Ohio St.3d 177, 178; *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, syllabus. When distributing such benefits, the trial court must consider "the circumstances of the case, the status of the parties, the nature, terms and conditions of the pension or retirement plan, and the reasonableness of the result." *Erb*, 75 Ohio St.3d at 20, citing *Hoyt*, 53 Ohio St.3d at 179.

{¶19} The trial court is necessarily vested with wide discretion in formulating an equitable distribution of marital property. *Berish v. Berish* (1982), 69 Ohio St.2d 318, 319. The judgment of the trial court in dividing marital property will not be disturbed on appeal unless the court abused its discretion. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144; *Martin v. Martin* (1985), 18 Ohio St.3d 292, 294. An abuse of discretion connotes more than a mere error of law or judgment; rather, it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Middendorf v. Middendorf* (1998), 82 Ohio St.3d 397, 401; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶20} In the case *sub judice*, the trial court was under an obligation to divide the marital property equitably between Appellant-wife and Appellee-husband. This marital property consisted of all real and personal property owned by either Appellant-wife or Appellee-husband, including Appellee-husband's retirement plans, that was acquired by either or both of them during the marriage. R.C. §3105.171(A)(3)(a).

{¶21} The phrase "during the marriage" is statutorily presumed to run from the date of the marriage through the date of the final divorce hearing. R.C. §3105.171(A)(2)(a). If, however, the trial court determines that the use of either or both of these dates would be inequitable, then "the court may select dates that it considers equitable in determining marital property." R.C. §3105.171(A)(2)(b).

{¶22} Pursuant to R.C. §3105.017(C)(1), the trial court is to divide marital property in an equitable manner, but not a penny for penny equal manner. *Briganti v. Briganti* (1984), 9 Ohio St.3d 220.

{¶23} We must consider “whether the trial court’s disposition of these items resulted in a property division, which, viewed in its entirety, was an abuse of discretion.

#### PENSION PLAN VALUATION DATE

{¶24} In the case sub judice, the trial court set the valuation date as the date of the final hearing. The trial court also ordered that a QDRO issue to resolve and equalize any increases or decreases in valuation. The use of the coverture fraction in the QDRO to specify a spouse's share is the only fair way to divide a defined benefit pension. The numerator of the coverture fraction is appellee's years of service under the plan that were earned during the marriage, and the denominator is appellee's total number of years of service under the plan as of appellee's date of retirement. We find that in so doing, the trial court did not abuse its discretion.

{¶25} In the future, the trial court can avoid this confusion by setting forth the division of the pension by stating that each party is to get a certain percentage of the marital portion of the pension as that portion is determined by use of the coverture fraction.

#### OFFSET OF INTEREST IN PENSION AGAINST INTEREST IN MARITAL RESIDENCE

{¶26} As stated previously, the trial court ordered a QDRO in this matter. In so doing, the trial court solved the issue of asset valuation and any need to offset one asset based on the rise or fall of the value of another asset post-hearing.

{¶27} We do not find the trial court's decision to be an abuse of discretion.

#### FORD 8-N TRACTOR

{¶28} The subject tractor in this matter was purchased during their marriage from Appellant-wife’s father at a sale of farm implements for \$500.00. Said tractor had been in

Appellant-wife's family since approximately 1951.

{¶29} The parties stipulated that the value of the tractor was \$2,000.00 at the time of trial.

{¶30} Appellee-husband testified that he purchased said tractor with the intention to restore same, that being one of his hobbies. (T. at 40).

{¶31} The trial court also heard testimony that Appellant-wife did not know how to operate the tractor and had never ridden same.

{¶32} We find that the decision of the trial court to give Appellee-husband the Ford 8-N tractor was not unreasonable, arbitrary, or unconscionable.

{¶33} Appellant-wife's Assignments of Error I, II and III are overruled.

{¶34} The decision of the Licking County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Boggins, J.

Farmer, P.J. and

Edwards, J. concur.

Topic: Division of Marital Property