[Cite as *Noland v. Noland*, 2015-Ohio-2074.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LORI ANN NOLAND	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
CARL W. NOLAND	:	Case No. CT2014-0050
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Muskingum County Court of Common Pleas, Domestic Relations Division, Case No. DB (G) 2011-0426
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	May 27, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
LORI ANN NOLAND, pro se 558 Harding Road Zanesville, OH 43701	CHARLES M. ELSEA SANDRA W. DAVIS Stebelton, Aranda & Snider, LPA 109 N. Broad Street, Ste. 200 P.O. Box 130 Lancaster, OH 43130-3738

Baldwin, J.

{¶1}. Defendant-appellant Carl Noland appeals from the November 21, 2014 Decision and Judgment Entry of the Muskingum County Court of Common Pleas, Domestic Relations Division, denying his Motion to Terminate Spousal Support.

STATEMENT OF THE FACTS AND CASE

{¶2}. Appellant Carl Noland and appellee Lori Ann Noland were married on July 31, 1982. On May 4, 2011, appellee filed a complaint for divorce against appellee. Appellant filed an answer and counterclaim on June 21, 2011.

{¶3}. An Agreed Judgment Entry/Decree of Divorce was filed on December 7, 2011 that incorporated the parties' Separation Agreement. The Separation Agreement provided that appellant would pay spousal support to appellee in the amount of $800.00 a month for 8 years, but that support would terminate if appellee remarried or cohabitated with an unrelated adult or appellee or appellant died.

{¶4}. On May 14, 2014, appellant filed a Motion to Terminate Spousal Support. Appellant, in his motion, alleged that appellee was cohabitating with an unrelated adult. A hearing on such motion was held on October 15, 2014.

{¶5}. At the hearing, appellee was first questioned on cross-examination. She testified that she was living at an address in Zanesville, Ohio with her daughter, son-in-law and two grandsons and that she had moved there on August 23, 2014. She testified that in June of 2012, she had started living in a condominium with Robert Ferguson. Appellee testified that the two, who had started dating in December of 2011, (CHECK) signed a yearlong lease for the same and that the rent was $825.00 a month. According to appellee, the rent was split between appellee and Ferguson and appellee

paid $415.00 a month. Appellee testified that while she paid the gas and auto insurance for her car and Ferguson's truck, Ferguson paid for the electric. The gas and the electric bills were not always equal. Appellee also testified that Ferguson paid for DIRECTTV.

{¶6}. When asked, appellee agreed that she had started dating Ferguson prior to moving in with him and that they had vacationed together prior to moving in together. The two took at trip to Florida in February of 2012, attended a gala together in March of 2012, and took vacations together in February of 2013 and 2014. Appellee took Ferguson with her to her daughter's wedding on August 17, 2013. When asked about their vacation to Florida in 2012, appellee testified that they stayed in the same room, but had double beds.

{¶7}. Appellee testified that she still had contact with Ferguson and talked to him because he was her friend.

{¶8}. On direct examination, appellee testified that at the time of the parties' divorce, she had filed an exhibit with the court indicating that her projected monthly expenses were $2,252.00 to $2,500.00. Appellee testified that she moved out of the martial residence the end of November of 2011 and then rented an apartment in Zanesville, Ohio. At the time, she was living alone. Appellee lived at that address for eight months. When asked about her monthly expenses, she testified that her total expenses were approximately $2,000.00 or $2,100.00 a month. According to appellee, while she was residing in the apartment in Zanesville, her health began to deteriorate because appellant was harassing and stalking her.

{¶9}. Appellee testified that she met Ferguson around the time she moved into her apartment and that they became friends and dated for six or seven months. She testified that she knew it was six or seven months because at that time, she was getting ready to move in to the condominium and that the two had ceased dating. Appellee stated that she wanted to get out of Zanesville and that Ferguson suggested that she rent the condo with him. The following is an excerpt from appellee's testimony:

{¶10}. Q: Why did she stop - - why did you stop dating?

{¶11}. A: In addition to my trust issues, Robert is surrounded by women all the time. He's a very touchy, huggy person. And lots of women would hug him and kiss him on the cheek. And this, in turn, I had issues with it. And we could see that that wasn't going to work out.

{¶12}. However, we were great friends. We could discuss anything, talk about anything in length. And so that's why we chose to just make it a living arrangement as roommates.

{¶13}. Transcript at 54-55. Prior to moving in together, the two agreed to split the bills.

{¶14}. Appellee testified that she never intended to make her residency in Thornville (CLARIFY) permanent, but that she moved there to focus on her health. She voiced concerns that she did not want to lose her job because of her health problems. At the hearing, appellee testified that she had been looking to purchase a home and had contacted the mortgage company, a bank and a realtor. She had a loan approved and signed paper in July to purchase a home, but the sellers backed out. Appellee testified that she had looked at least 14 or 15 homes and that appellant knew that she

was doing so. When asked, she stated that she had told him that her living arrangement in Thornville was temporary. She testified that the lease required the lessee to pay rent in the form of one personal check, and that Ferguson wrote her a check for his half of the rent and that she deposited the same into her account. At some point, Ferguson told appellee that he was married. To her knowledge, he was still married as of the time of the hearing.

{¶15}. Appellee was questioned about the trips that she took with Ferguson. She testified that when they went on vacation prior to moving into the condo, Ferguson did not pay for any of her expenses and she did not pay any of his expenses. She testified that they slept in separate beds. Appellee also testified that prior to moving into the condo, if they went out to eat, they would split the bill and that the splitting continued after they moved into the condo.

{¶16}. On direct examination, appellee testified that she moved back to Zanesville in August of 2014 because she could not afford to meet her expenses as a result of the costs associated with appellant's Motion to Terminate Spousal Support. She further testified that she never paid Ferguson's share of the rent and that he had never paid her share. She testified that the condo that they resided in had two bedrooms and two bathrooms. The two never bought each other groceries or other incidentals and did not cook for each other. Appellee testified that they never did each other's laundry, never drove each other's vehicles, never paid each other's medical bills and never provided health insurance _____. The following testimony was adduced when appellee was asked about car insurance:

{¶17}. Q: At - - at the time that you moved into the condo, did both you and Mr. Ferguson have separate car insurance?

{¶18}. A: Yes.

{¶19}. Q: And during that - - at some point did you combine that insurance on one policy?

{¶20}. A: Yes.

{¶21}. Q: Did you receive a discount in doing so?

{¶22}. A: By - - yes. By both of us being on there, yes.

{¶23}. Q: Okay. And - - and is it your understanding that if you did that, if an emergency would arise and you had to drive the other's car, you would be covered?

{¶24}. A: Yes.

{¶25}. Q: And what, if anything, did you or Mr. Ferguson do to address the fact that you were technically paying his car insurance in order to receive that discount and covering each other in case of an emergency?

{¶26}. A: That's why he paid the cable and the internet, to make up for the difference of what I was paying on the auto insurance.

{¶27}. Q: Okay, So you paid the insurance and the gas; is that correct?

{¶28}. A: Yes.

{¶29}. Q: And about how much was that per month?

{¶30}. A: $243.

{¶31}. Q: Okay. And Robert paid the electric, cable, and internet?

{¶32}. A: Um-huh.

{¶33}. Q: And how much did that all toll?

{¶34}. A: $293.

{¶35}. Transcript at 72-73.

{¶36}. Appellee also testified that she and Ferguson did not commingle funds, buy anything jointly, or incur any joint debt. According to her, while they resided at the same address, Ferguson never reduced her financial needs and she never supported him in any way. Appellee testified that when she lived with Ferguson, her monthly expenses were approximately $2,074.00 and that her expenses "have pretty much maintained exactly the same from Millennium (CLARIFY) to Thornville…and during the – the time since the divorce." Transcript at 78. She testified that she had been able to meet her own expenses without any financial assistance from Ferguson and vice versa.

{¶37}. On cross-examination, appellee admitted that while the electric and gas bills fluctuated, she did not keep track and make adjustments for the fluctuations. She also admitted that she was still dating Ferguson for a short period of time when the two rented the condo. (ADD)

{¶38}. As memorialized in a Decision and Judgment Entry filed on November 21, 2014, the trial court denied appellant's Motion to Terminate Spousal Support.

{¶39}. Appellant now appeals from the trial court's November 21, 2014 Decision and Judgment Entry. Appellant raises the following assignment of error on appeal:

{¶40}. THE TRIAL COURT ERRED IN FINDING THAT APPELLEE DID NOT COHABITATE WITH AN UNRELATED ADULT.

I

{¶41}. Appellant, in his sole assignment of error, argues that the trial court erred in finding that appellee did not cohabitate with an unrelated adult.

{¶42}. A trial court's decision concerning spousal support may only be altered if it constitutes an abuse of discretion. *See Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67, 554 N.E.2d 83. An appellate court likewise reviews a trial court's decision regarding the termination of spousal support under an abuse of discretion standard of review. *Hartman v. Hartman,* 9th Dist. Summit No. 22303, 2005–Ohio–4663, ¶ 13. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶43}. Where an obligor's motion to terminate spousal support is based on the occurrence of a condition subsequent, expressly identified in the decree, a trial court has jurisdiction to terminate the spousal support obligation if it determines that the obligee was cohabiting with another person in a relationship that was comparable to marriage. *See Guggenbiller v. Guggenbiller,* 9th Dist. Lorain No. 10CA009871, 2011–Ohio–3622, ¶ 6. “Whether or not a particular living arrangement rises to the level of lifestyle known as ‘cohabitation’ is a factual question to be initially determined by the trial court.” *Moell v. Moell* (1994), 98 Ohio App.3d 748, 752, 649 N.E.2d 880, citing *Dickerson v. Dickerson* (1993), 87 Ohio App.3d 848, 851, 623 N.E.2d 237, 239. “ ‘[C]ohabitation’ describes an issue of lifestyle, not a housing arrangement.” *Id.,* citing *Dickerson, supra,* at 850, 623 N.E.2d at 239. When considering this issue, a trial court should look to three principal factors: “(1) [A]n actual living together; (2) of a sustained duration; and (3) with shared expenses with respect to financing and day-to-day incidental expenses.” *Moell*, supra (additional citations and internal quotations omitted).

See, also, Yarnell v. Yarnell, 5th Dist. Delaware No. 05 CAF 0064, 2006–Ohio–3929, ¶ 43.

{¶44}. Recently, in *Sage v. Gallagher,* 5th Dist. Richland No. 13 CA 64, 2014–Ohio–1598, ¶ 15, we cautioned against strict application of the *Moell* test, which includes consideration of the factor of a couple's sharing of financing and day-to-day incidental expenses. We expressed our determination that " * * * the overarching principle in such cases is that '[c]ohabitation contemplates a relationship that approximates, or is the functional equivalent of, a marriage.' " *Id.,* citing *Keeley v. Keeley,* 12th Dist. Clermont Nos. CA99–07–075, CA99–080–080, 2000 WL 431362, citing *Piscione v. Piscione,* 85 Ohio App.3d 273, 275, 619 N.E.2d 1030 (9th Dist.1992).

{¶45}. Based on the testimony adduced at the hearing, we find that the trial court did not abuse its discretion in finding that appellee did not cohabitate with an unrelated adult and in denying appellant's Motion to Terminate Spousal Support. As noted by the trial court, there was no sharing of day to day and incidental expenses or commingling of funds. There was testimony that appellee and Ferguson each paid their own individual expenses (food, car loans, credit card debts, etc.) and that neither depended on the other for financial assistance. With respect to joint expenses (i.e. rent and utilities), there was testimony that such expenses were divided more or less equally. While appellee resided with Ferguson, she was not liable for his half of the rent nor was he responsible for hers. As noted by the trial court:

{¶46}. In addition, Robert Ferguson paid for the Internet and cable and the Court finds that both parties received the benefit from these utilities. The Court finds that if Lori Noland and Robert Ferguson dined out together they would either divide the bill

between them or each received a separate bill. Neither provided services to the other in form of laundry or cooking nor did they purchase or own anything jointly, owe anything jointly except for the rent and car insurance. The car insurance was necessitated apparently by the terms of the insurance policy and Robert Ferguson reimbursed Lori Noland for his portion. Neither Lori Noland nor Robert Ferguson drove the other's vehicle nor paid for the other's cell phone and each party met their respective expenses without financial assistance from the other. The Court finds nothing in the record to indicate that this relationship between Lori Noland and Robert Ferguson reduced the financial needs of either of them. No evidence was produced that Robert Ferguson ever paid to Lori Noland sums other than for rent and car insurance reimbursement and for his share of vacations.

{¶47}. The trial court, in its Decision, found that although the relationship between appellant and Ferguson was initially a romantic relationship, appellee "presented credible evidence that the relationship had changed by the time the two of them began living together in June 2012." We note that appellee, at the hearing, admitted that the two dated until August of 2012. However, the trial court, as trier of fact, was in the best position to assess appellee's credibility. Cleary, the trial court believed her testimony that _____, the two were just friends and that appellee _____.

{¶48}. Appellant's sole assignment of error is, therefore, overruled.

{¶49}. Accordingly, the judgment of the Muskingum County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Baldwin, J.

Farmer, P.J. and

Wise, J. concur.