

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SUSAN WILLIAMS

Plaintiff-Appellant

-VS-

RAYMOND F. WILLIAMS, ET AL.

Defendants-Appellees

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 2014CA00160

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Common
Pleas Court, Domestic Relations Division
Case No. 2010-DR-1275

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

June 29, 2015

APPEARANCES:

For Plaintiff-Appellant

For Defendants-Appellees

STANLEY R. RUBIN
437 Market Avenue North
Canton, Ohio 44702

LAURA L. MILLS
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101 Central Plaza South
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Hoffman, P.J.

{¶1} Plaintiff-appellant Susan Williams (“Wife”) appeals the August 14, 2014 Judgment Entry Addendum to Decree of Divorce entered by the Stark County Court of Common Pleas, Domestic Relations Division. Defendant-appellee is Raymond F. Williams (“Husband”).

STATEMENT OF THE FACTS AND CASE

{¶2} The parties were married in 1991. Wife filed her complaint for divorce in October, 2010, requesting, in part, temporary and permanent spousal support. Pursuant to agreement of the parties, Husband was ordered to pay Wife \$4,200.00 per week as temporary support, pending a full hearing. The full hearing began in November, 2010, and was completed in January, 2011. Via Judgment Entry Temporary Orders filed March 14, 2011, the trial court ordered Husband to pay Wife \$50,000.00 per month as temporary spousal support.

{¶3} Husband filed a motion to reconsider two days later, which the trial court denied. Because of the retirement of the original trial court judge, a new judge was assigned to the case. Prior to the assignment of the new judge, Husband requested the trial court vacate its March 14, 2011 temporary orders. Such request was denied, but the new judge, sua sponte, vacated the original trial court judge's denial of Husband's motion to reconsider the March 14, 2011 Order, and set the matter for further hearing. On December 19, 2011, the trial court retroactively lowered Husband's temporary spousal support obligation from \$50,000.00 per month to \$4,750.00 per month for 2011, and to \$3,800.00 per month for 2012.

{¶4} On March 28, 2011, Husband filed an answer and counterclaim for divorce. Wife filed her answer the next day. Wife did not request spousal support in her answer. On April 4, 2011, Wife filed her amended complaint, repeating her request for temporary and permanent spousal support.

{¶5} Trial commenced on January 7, 2013, and concluded on January 11, 2013. Immediately prior to the start of trial, Wife dismissed her complaint and amended complaint. The case proceeded solely on Husband's counterclaim. Husband argued the trial court lacked jurisdiction to award permanent spousal support because Wife did not request such award in writing. Via judgment entry filed February 4, 2013, the trial court denied Wife's request for spousal support, finding Wife's testimonial request for permanent spousal support was insufficient to invoke the trial court's jurisdiction to order it pursuant to R.C. 3105.18(B). The trial court filed its Judgment Entry Decree of Divorce on May 21, 2013. The trial court issued its Findings of Fact and Conclusions of Law on June 17, 2013. Wife appealed.

{¶6} This Court reversed the trial court's determination it did not have jurisdiction to make an award of permanent spousal support. *Williams v. Williams*, Stark App. No. 2013AC00107, 2013-Ohio-1044. Specifically, we found R.C. 3105.18 did not require a request for spousal support be made in writing, and Wife's verbal request was sufficient to trigger the trial court's jurisdiction to award spousal support especially since spousal support had been an issue during the pendency of the matter.

{¶7} Upon remand, Wife requested the trial court conduct a hearing on the issue of spousal support and allow further discovery to prepare for the hearing.

Husband objected to any additional hearing or discovery. The trial court ordered the parties to submit briefs on the issue.

{¶8} Via Judgment Entry Addendum to Decree of Divorce filed August 14, 2014, the trial court denied Wife's request for an evidentiary hearing, finding she "was provided a full opportunity to present evidence with respect to the factors to be considered and, for whatever reason, elected not to offer or to proffer any evidence related to the issue of spousal support." *Id.* at 2, unpaginated. The trial court determined it was "precluded from holding an additional evidentiary hearing on the issue of spousal support and is limited to applying the evidence received during the final hearing to the fourteen factors found in ORC 3105.18(C)(1) to determine if spousal support is appropriate and reasonable in this case." *Id.* at 3. The trial court acknowledged there was evidence presented with respect to two of the fourteen factors, but found Wife "presented little or no evidence for the Court to consider what would be an appropriate and reasonable nature, amount or duration of any spousal support award", adding, "[w]ith so little evidence, any spousal support award would be pure conjecture or speculation." The trial court concluded the evidence did not support an award of spousal support.

{¶9} It is from the August 14, 2014 Judgment Entry Addendum to Decree of Divorce Wife appeals, raising as error:

{¶10} "I. THE TRIAL COURT'S FACTUAL FINDINGS REGARDING THE STATUTORY SPOUSAL SUPPORT FACTORS WERE CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶11} "II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO AWARD SPOUSAL SUPPORT TO SUSAN FOLLOWING THEIR TWENTY-TWO YEAR MARRIAGE, DURING WHICH SHE STAYED HOME TO RAISE THE PARTIES' CHILDREN."

I

{¶12} In her first assignment of error, Wife contends the trial court's findings regarding the statutory spousal support factors were contrary to the manifest weight of the evidence. We agree.

{¶13} A trial court's decision concerning spousal support may be altered only if it constitutes an abuse of discretion. See *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67, 554 N.E.2d 83. 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*, 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶14} R.C. 3105.18(C)(1)(a) through (n) provides the factors that a trial court is to review in determining whether spousal support is appropriate and reasonable and in determining the nature, amount, terms of payment, and duration of spousal support:

{¶15} "(C)(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:

{¶16} "(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;

{¶17} “(b) The relative earning abilities of the parties;

{¶18} “(c) The ages and the physical, mental, and emotional conditions of the parties;

{¶19} “(d) The retirement benefits of the parties;

{¶20} “(e) The duration of the marriage;

{¶21} “(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;

{¶22} “(g) The standard of living of the parties established during the marriage;

{¶23} “(h) The relative extent of education of the parties;

{¶24} “(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

{¶25} “(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;

{¶26} “(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;

{¶27} “(l) The tax consequences, for each party, of an award of spousal support;

{¶28} “(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.”

{¶29} In its August 14, 2014 Judgment Entry Addendum to Decree of Divorce, the trial court determined the evidence did not support an award of spousal support to Wife. The trial court specifically found Wife “presented little or no evidence for the Court to consider what would be an appropriate and reasonable nature, amount or duration of any spousal support award,” noting there was evidence presented with respect to only two of the fourteen factors, and “any spousal support award would be pure conjecture or speculative.” *Id.* at 4, unpaginated. A review of the transcript of the final divorce hearing belies the trial court’s finding.

{¶30} Regarding factors (a), (b), (k), (h) and (m), the record reveals Wife graduated from high school in 1981, and earned an associate’s degree in interior design from the Art Institute of Pittsburgh. Wife subsequently earned on-line bachelor’s and master’s degrees. Wife quit working after the parties married and started their family. Due to Husband’s long work hours, Wife was primarily responsible for raising the parties’ children.

{¶31} Although Wife sent out about 30 resumes in 2012, she had a difficult time finding employment due to her lack of skills and knowledge of computer software. Wife eventually found part-time employment as a bookkeeper, earning \$10/hour, working approximately 15 hours/week. Wife also tutors at Stark State, earning \$13/hour, working approximately 20 hours/week. Wife plans to go back to school as her on-line degrees have not been useful in helping her secure employment.

{¶32} On the other hand, Husband has a bachelor’s degree in business, and earns \$186,000/year. During the marriage, Husband earned even more. Husband’s businesses were worth millions of dollars.

{¶33} Regarding factor (c), the evidence revealed Wife was 50 years old and in good health, while Husband was 65 and also in good health. The evidence also showed the parties were married for 22 years, factor (e), and the children were emancipated and not living at home, factor (f).

{¶34} With respect to the retirement benefits of the parties, factor (d), the testimony established Wife cashed in her IRA during the divorce proceedings in order to pay expenses. Husband had two IRA/Retirement Accounts which had no current cash value.

{¶35} The record is replete with evidence relative to factor (g), the standard of living established during the marriage. The parties enjoyed a lavish lifestyle. Their home, which was 10,000 square feet, sat on 10 acres of land and had an indoor swimming pool and an indoor basketball court as well as a separate guest house. The home was valued at close to \$500,000. The parties took numerous, international vacations each year. They also took periodic weekend trips to Las Vegas, traveling on one of the several corporate planes owned by Husband's businesses. Husband and Wife were members at Brookside Country Club. They purchased new vehicles every two years. Wife drove a Lincoln MKX and Husband drove a Corvette. They purchased a boat for \$52,000. Wife's wedding ring was worth \$100,000. The parties donated approximately \$100,000 to charity to each year.

{¶36} Regarding factor (i), the parties had extensive assets as well as extensive liabilities. Wife had credit card debt totaling over \$40,000, and student loan debt of \$60,000.

{¶37} With respect to factor (j), the testimony indicated Wife played a vital role in Husband's professional success. She entertained business clients, including hosting several parties each year. Wife also accompanied Husband on business trips with clients.

{¶38} Based upon the foregoing, we find the trial court's finding it "had little or no evidence to review the remaining pertinent factors" to consider what would be an appropriate and reasonable award of spousal support is contrary to the evidence in the record. We further find there is ample evidence in this record to evaluate an award of spousal support.

{¶39} Wife's first assignment of error is sustained.

II

{¶40} In light of our disposition of Wife's first assignment of error, we find her second assignment of error to be premature.

{¶41} The judgment of the Stark County Court of Common Pleas, Domestic Relations Division is reversed and the matter remanded for further proceedings consistent with this Opinion and the law.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur