



*Delaney, J.*

{¶1} Plaintiff-Appellant James Paat appeals the February 25, 2015 judgment entry of the Delaware County Court of Common Pleas, Domestic Relations Division.

### **FACTS AND PROCEDURAL HISTORY**

{¶2} Plaintiff-Appellant James Paat and Defendant-Appellee Debra Jean Paat were married on May 11, 1996. One child was born as issue of the marriage: J.P., born on December 12, 1997.

{¶3} Husband filed a complaint for divorce on October 1, 2008. Wife filed her answer on November 17, 2008.

{¶4} On August 31, 2009, Wife was in a car accident and suffered serious injuries. Wife received a financial settlement for her personal injuries.

{¶5} On March 12, 2010, the parties entered into an agreed judgment entry decree of divorce. The Agreed Divorce Decree was filed on March 24, 2012.

#### **A. Terms of the Agreed Divorce Decree**

##### **1. Marital Home**

{¶6} At the time of the divorce, Wife was living in the marital home. Husband and Wife agreed to sell the martial home pursuant to the following terms:

\* \* \* This property shall be forthwith listed for sale and shall be sold at such a price, using such agents, in such manner and on such terms as the Parties may agree. The proceeds of the sale shall be paid as follows:

- (i) to the usual costs of sale;
- (ii) to the debts on the premises as set forth above;
- (iii) to the parties equally.

Until the house is sold, the Plaintiff/Husband shall have exclusive possession thereof effective March 31, 2010. The Plaintiff/Husband shall pay the mortgage payments, real estate taxes, association fees that are billed and due before closing, insurance, and general upkeep until sale and will pay and hold Defendant/Wife harmless from any liability thereon. Plaintiff/Husband will pay 60% and Defendant/Wife will pay 40% of any expenses associated with any maintenance or repairs determined by their Realtor or real estate agent or this Court as necessary to effectuate the sale as set forth above. The parties will discuss and mutually agree upon the best manner to effectuate such maintenance and repairs. If such maintenance and repair costs arise prior to the sale of the home and either party advances any amount for maintenance and repair for their completion, that party shall be reimbursed for such amounts upon the sale of the property, prior to the division of the net proceeds.

\* \* \*

## **2. Spousal Support**

{¶7} Wife did not work outside of the home after J.P.'s birth in 1997. Wife was unemployed for 10 years. In October 2007, Wife was employed by Destinations by Design as a corporate meeting and event planner. In 2010, she earned \$24,000.00.

{¶8} Husband is a serial entrepreneur. At the time of the divorce, Husband was employed by Sypherlink, Inc. as the President and Chief Executive Officer. Husband's income in 2010 was \$156,000.

{¶9} The parties agreed that effective April 1, 2010, Husband would pay spousal support to Wife in the amount of \$2,500.00 per month for a period of four years.

The trial court retained jurisdiction over spousal support as follows:

If either party is terminated from his or her employment not due to fault this Court shall retain jurisdiction to modify the amount but not duration of support. Except as set forth herein in this paragraph the Court does not retain jurisdiction to modify spousal support.

### **3. Agreed Shared Parenting Decree**

{¶10} The parties agreed to a shared parenting plan for J.P. Both parties were designated the residential parent of J.P. for school placement purposes so long as they both resided in the Olentangy School District. J.P. resided with Husband and Mother was granted parenting time under Local Rule 29.03.

{¶11} The parties agreed that neither party would pay child support. For J.P.'s expenses, Husband and Wife agreed to the following:

#### **7. FINANCIAL SUPPORT**

Extraordinary expenses for the special needs or requirements of the child shall be equally divided by the parents with Father paying 60% and Mother paying 40%. \* \* \* Extraordinary expenses shall include, but not limited to reasonably necessary expenses for, all school fees, necessary school supplies, school activities, required or recommended school trips, participation fees, costs for athletic participation, uniforms, equipment and related costs, school related or otherwise, and all other such matters. The parents shall similarly divide the costs of all reasonably-necessary and

agreed-upon extracurricular activities and discretionary school and related expenses. In the event the parents do not agree, the parent enrolling the child in the activity or electing the discretionary expenses shall pay the full cost thereof. No parent shall unreasonably withhold his or her agreement to such activity or expense. \* \* \*

\* \* \*

#### 11. EXTRACURRICULAR ACTIVITIES

The possessory parent shall be responsible for the child's transportation to and from any extracurricular activity. \* \* \*

Except for transportation as stated above, the parents shall divide the reasonably necessary costs of all agreed-upon extracurricular activities and discretionary school and related expenses 60% by Father and 40% by Mother. In the event the parents do not agree, the parent enrolling the child in the activity or electing the discretionary expense shall pay the full cost thereof.

\* \* \*

### **B. Post-Decree Circumstances and Motions**

#### **1. The Parties' Employment**

##### **a. Husband's Employment**

{¶12} In approximately 2009, Sypherlink, Inc. was acquired by a company named SAAMA. Husband remained with Sypherlink, Inc. as the chief executive officer. Husband alleges that on November 8, 2011, Sypherlink terminated his employment without cause. At the time of the post-decree hearing, Husband was pursuing a

wrongful termination action against SAAMA in the Franklin County Court of Common Pleas.

{¶13} On October 5, 2012, Husband signed an employment agreement with Integrity Health Partner, Inc. Husband was employed as the chief executive officer and president of the company. Husband submitted his resignation from the company on March 20, 2013 alleging he had not been paid per the terms of the employment agreement.

{¶14} Husband owns a consulting company named Paat Partners, LLC. In 2012, he earned approximately \$118,720.00 with Paat Partners, LLC.

{¶15} Husband started a company named InXite Health Systems. At the post-decree hearing, Husband testified the company was in the start-up phase and he was searching for investors. Husband claimed he earned no income in 2013 or 2014, but expected to earn \$200,000 from InXite.

#### **b. Wife's Employment**

{¶16} In 2012, Wife moved to Chicago, Illinois to work for McDonald's Corporation.

{¶17} Wife left her employment with McDonald's Corporation due to a position change. She moved to Cincinnati, Ohio in 2013 and found employment with Belltower Advertising. She earned \$35,000.00 per year in 2013.

#### **2. Sale of the Marital Home**

{¶18} Per the terms of the Agreed Divorce Decree, Husband moved into the marital home in 2010. The parties agreed a realtor would inspect the marital home to determine what repairs would be needed to get the home ready for sale.

{¶19} Husband stated three realtors and/or appraisers inspected the property in 2010 and found the property was not marketable. Wife stated the interior of the marital home had not been updated since the parties' originally purchased the home in 1996. Wife stated the home had suffered water and wind damage that was not addressed when the parties were married. The parties also had dogs in the home.

{¶20} Husband testified he completed the alleged repairs to the home to make it marketable for sale in the amount of \$41,915.45. Wife contributed money towards the replacement of the roof.

{¶21} Husband listed the home for sale on August 13, 2013. The home sold for \$390,000.00. The net sale proceeds were \$38,405.13. The funds were escrowed with the trial court.

### **3. Husband's New Home**

{¶22} On August 23, 2012, Husband received a loan in the amount of \$932,000.00 to build a new home in Powell, Ohio. The loan application reported his income to be \$26,250.00 per month. Husband also invested \$200,000 into the home, bringing the total cost of the home to \$1.1 million. The construction on the home was completed in November 2013. Husband's monthly mortgage is \$3,929.96 per month.

### **4. Husband Stops Paying Spousal Support**

{¶23} In March 2012, Husband stopped paying Wife spousal support. Husband did not file a motion with the trial court to modify spousal support. Husband testified at the hearing that he stopped paying spousal support to Wife based on the advice of his legal counsel.

## **5. The Parties' Post-Decree Motions**

{¶24} On March 13, 2013, Husband filed a Motion to Modify Orders and Motion to Cite in Contempt. Husband moved the trial court to modify spousal support because Husband was terminated from his employment not due to fault. He also moved the court to modify the agreed shared parenting plan because he alleged Wife did not visit with J.P. pursuant to the terms of the shared parenting plan. Finally, Husband moved the trial court to find Wife in contempt for her failure to pay her share of expenses as to the marital home and J.P.

{¶25} Wife was served with the motion on August 8, 2013.

{¶26} Wife filed a motion for contempt on September 17, 2013. Wife moved the trial court to find Husband in contempt for his failure to pay spousal support and his failure to pay his share of the parties' timeshare condominium in Arizona per the terms of the Agreed Divorce Decree.

{¶27} Husband filed a motion to compel Wife to approve the sale of the marital home on December 3, 2013. The trial court granted the motion on December 18, 2013.

## **C. Trial Court's Judgment**

{¶28} A hearing was held before the magistrate on the parties' post-decree motions.

### **1. Magistrate's Decision**

{¶29} The magistrate issued a decision on April 1, 2014. Relevant to this appeal, the magistrate held the following:



**a. Spousal Support**

{¶30} The trial court found Husband had not made any spousal support payments since April 15, 2013. He determined Husband was voluntarily unemployed. As of January 31, 2014, Husband was in arrears in the amount of \$24,040. As of March 31, 2014, Husband was in arrears in the amount of \$29,040.

**b. Wife's Portion of Expenses**

{¶31} Husband provided the trial court with an itemized list of items expenses for the marital home and J.P. that Wife was allegedly financially responsible. As to J.P., Husband argued that Wife was 40% responsible for expenses related to J.P.'s travel lacrosse team. Wife testified, and Husband agreed, that Wife did not agree to J.P. playing on a travel lacrosse team. Wife agreed that J.P. should play on the high school lacrosse team. The magistrate found that pursuant to the terms of the agreed shared parenting plan, the expenses for the travel lacrosse team were not reasonable or agreed upon by the parties. The trial court ordered Wife to pay \$1,643.88 in other expenses for J.P.

{¶32} The magistrate found Wife owed \$3,318.69 in home repair costs that were expended to get the marital home ready for sale.

**c. Proceeds of the Sale of the Marital Home**

{¶33} The parties agreed the proceeds of the sale of the marital home were \$38,405.13. Pursuant to the terms of the agreed divorce decree, Husband and Wife were entitled to one-half of the proceeds in the amount of \$19,202.56.

{¶34} The magistrate determined Husband owed Wife \$29,040 in spousal support arrears. Wife owed Husband \$4,962.57 in expenses. The magistrate subtracted Wife's expenses and found Husband owed Wife \$24,077.43.

{¶35} The magistrate awarded Wife the total amount of the proceeds of the sale of the marital home. He ordered Husband to pay the remaining \$4,874.87 to Wife.

#### **d. Child Support**

{¶36} The magistrate ordered Wife to pay child support to Husband starting April 1, 2014.

### **2. Trial Court Overrules Husband's Objections and Adopts Decision**

{¶37} Husband objected to the magistrate's decision. By judgment entries on February 23, 2015 and February 25, 2015, the trial court overruled Husband's objections and adopted the magistrate's decision.

{¶38} It is from this decision Husband now appeals.

### **ASSIGNMENTS OF ERROR**

{¶39} Husband raises nine Assignments of Error:

{¶40} "I. THE COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT AND ABUSED ITS DISCRETION BY IN CONCLUDING THAT THE SHARED PARENTING PLAN AGREED TO BY THE PARTIES SHOULD CONTINUE INSTEAD OF REALLOCATING PARENTAL RIGHTS AND RESPONSIBILITIES PRIMARY TO THE PLAINTIFF-APPELLANT.

{¶41} "II. THE COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT AND ABUSED ITS DISCRETION IN ITS DISTRIBUTION OF THE PROCEEDS FROM THE SALE OF THE FORMER MARITAL RESIDENCE.

{¶42} “III. THE COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT AND ABUSED ITS DISCRETION IN CONCLUDING THAT THE PLAINTIFF-APPELLANT WAS VOLUNTARILY UNDEREMPLOYED AND THEREFOR NOT UNDERTAKING THE REQUIRED REVIEW OF THE PRIOR SPOUSAL SUPPORT PROVISIONS OF THE AGREED JUDGMENT ENTRY – DECREE OF DIVORCE.

{¶43} “IV. THE COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT AND ABUSED ITS DISCRETION IN CONCLUDING THAT THE DEFENDANT-APPELLEE INCOME WAS \$35,000.00.

{¶44} “V. THE COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT AND ABUSED ITS DISCRETION IN FAILING TO FIND THAT THERE HAD BEEN COMPLIANCE WITH THE WARRANTED FULL DISCLOSURE IN THIS MATTER IN LIGHT OF THE PERSONAL INJURY SETTLEMENT RECEIVED BY THE DEFENDANT-APPELLEE.

{¶45} “VI. THE COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT AND ABUSED ITS DISCRETION IN CONCLUDING THAT THE DEFENDANT-APPELLEE HAD MET HER OBLIGATION TO SHARE EXPENSES FOR THE MINOR CHILD OF THE PARTIES.

{¶46} “VII. THE COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT AND ABUSED ITS DISCRETION IN CONCLUDING THAT THE DEFENDANT-APPELLEE DID NOT OWE ANY COMPENSATION TO THE PLAINTIFF-APPELLANT FOR TANGIBLE PERSONAL PROPERTY THAT SHE DESTROYED AND/OR DAMAGED.

{¶47} “VIII. THE COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT AND ABUSED ITS DISCRETION IN CONCLUDING THAT THE PLAINTIFF-APPELLANT SHOULD PAY THE DEFENDANT-APPELLEE SPOUSAL SUPPORT FROM THE PROCEEDS FROM THE MARITAL RESIDENCE.

{¶48} “IX. THE COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT AND ABUSED ITS DISCRETION CONCLUDING THAT THE DEFENDANT-APPELLEE DID NOT OWE CHILD SUPPORT FOR THE PERIOD BEFORE APRIL 1, 2014.”

## ANALYSIS

### I. Termination of the Agreed Shared Parenting Plan

{¶49} Husband argues in his first Assignment of Error that the trial court erred in denying his motion to terminate the agreed shared parenting plan and award custody of J.P. to Husband.

{¶50} The trial court found the evidence presented at the hearing did not support Husband’s motion to terminate the agreed shared parenting plan. Utilizing the best interest standard pursuant to R.C. 3109.04, the trial court found no evidence in the record that it would be in J.P.’s best interest to award custody of J.P. to Husband.

{¶51} Custody issues are some of the most difficult decisions a trial judge must make. When reviewing a ruling pertaining to the allocation of parental rights, the trial court is to be afforded great deference. *Tipton v. Tipton*, 5th Dist. Fairfield No. 13-CA-19, 2013-Ohio-4901, ¶ 19 citing *Miller v. Miller*, 37 Ohio St.3d 71, 523 N.E.2d 846 (1988). Thus, we will not reverse a child custody decision that is supported by a

substantial amount of competent, credible evidence absent an abuse of discretion. *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 550 N.E.2d 178 (1990), syllabus.

{¶52} The record before this court supports the trial court's conclusion that at the time of the motion, there was no evidentiary support to terminate the shared parenting plan. Further, J.P. was born on December 12, 1997. J.P. turned 18 on December 12, 2015. Based on J.P.'s age at the date of this opinion, we find the issue of the shared parenting plan to be moot.

{¶53} Husband's first Assignment of Error is overruled.

## **II. Expenses for Repairs to Marital Home**

{¶54} Husband argues in his second Assignment of Error that the trial court erred in its determination as to the expenses owed by Husband and Wife for the repairs to the marital home prior to the sale of the home. We disagree, in part.

{¶55} Husband contends the evidence presented at the hearing supported Husband's argument that he spent in excess of \$41,000.00 to ready the marital home for sale. He states such expenditures were necessary to prevent the marital home from being sold at a loss. At trial, the parties reviewed the expenditures presented by Husband.

{¶56} The terms of the Agreed Divorce Decree state as follows:

\* \* \* Plaintiff/Husband will pay 60% and Defendant/Wife will pay 40% of any expenses associated with any maintenance or repairs determined by their Realtor or real estate agent or this Court as necessary to effectuate the sale as set forth above. The parties will discuss and mutually agree upon the best manner to effectuate such maintenance and repairs. If such

maintenance and repair costs arise prior to the sale of the home and either party advances any amount for maintenance and repair for their completion, that party shall be reimbursed for such amounts upon the sale of the property, prior to the division of the net proceeds.

The trial court found Wife owed Husband \$3,318.69 in expenses for the marital home.

{¶57} As an appellate court, we are not the trier of fact; instead, our role is to determine whether there is relevant, competent, and credible evidence upon which the factfinder could base his or her judgment. *Cooper v. Cooper*, 5th Dist. Licking No. 14 CA 100, 2015-Ohio-4048, ¶ 23 citing *Tennant v. Martin–Auer*, 188 Ohio App.3d 768, 2010–Ohio–3489, 936 N.E.2d 1013 (5th Dist.), ¶ 16, citing *Cross Truck v. Jeffries*, 5th Dist. Stark No. CA–5758, 1982 WL 2911 (Feb. 10, 1982).

{¶58} Based on our review of the record, we find the trial court did not err in determining Wife owed \$3,318.69 in expenses for the repairs done to the marital home prior to sale. There was competent credible evidence in the record to find some of the alleged repairs to the home could be considered general maintenance while Husband had possession of the home from 2010 to 2013. Further, the evidence supports Wife's contention that Husband did not follow the terms of the Agreed Divorce Decree in that he failed to discuss and mutually agree upon the best manner to effectuate such maintenance and repairs.

{¶59} Husband also argues within his second Assignment of Error that the trial court erred in the manner of distributing the net proceeds of the sale of the home. The trial court ordered that Wife's portion of the home expenses be deducted from the amount of spousal support Husband owed to Wife. The trial court then awarded Wife

the total net proceeds of the sale of the home. The Agreed Divorce Decree stated, “If such maintenance and repair costs arise prior to the sale of the home and either party advances any amount for maintenance and repair for their completion, that party shall be reimbursed for such amounts upon the sale of the property, prior to the division of the net proceeds.” Pursuant to the terms of the Agreed Divorce Decree, Wife must reimburse Husband for maintenance and repair costs prior to the division of the net proceeds.

{¶60} As to the remainder of Husband’s argument regarding spousal support and the proceeds of the home sale, we will address this issue in Husband’s eighth Assignment of Error.

{¶61} Husband’s second Assignment of Error is overruled in part and sustained in part.

### **III. Modification of Spousal Support**

{¶62} The Agreed Divorce Decree stated the trial court did not retain jurisdiction to modify spousal support unless either party was terminated from his or her employment not due to fault. If a party was terminated from his or her employment not due to fault, the trial court retained jurisdiction to modify the amount, but not the duration of support. On March 13, 2013, Husband filed a Motion to Modify Orders and Motion to Cite in Contempt. Husband moved the trial court to modify spousal support because Husband was terminated from his employment not due to fault.

{¶63} The trial court determined Husband was voluntarily underemployed and denied his motion to modify his spousal support obligation. Husband contends on

appeal that there was no argument at the hearing that Husband was voluntarily underemployed.

{¶64} Modifications of spousal support are reviewable under an abuse of discretion standard. *Kunkle v. Kunkle*, 51 Ohio St.3d 64, 554 N.E.2d 83 (1990). In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983). The trial court reviewed Husband's employment history and reported income since 2010. We find the trial court did not abuse its discretion when it denied Husband's motion to modify spousal support. The Agreed Divorce Decree limited the trial court's consideration of the modification of the amount of spousal support to whether Husband or Wife was terminated from his or her employment not due to fault. In this case, the evidence showed that Husband resigned from his employment in 2013. Husband also operated a consulting company for which he received income and he was starting up a new company as a serial entrepreneur. There was no evidence presented that Husband was terminated from his most recent employment.

{¶65} Husband's third Assignment of Error is overruled.

#### **IV. Wife's Income**

{¶66} Husband argues in his fourth Assignment of Error that the trial court erred when it found Wife earned \$35,000.00 in 2013. The trial court utilized this income to calculate Wife's child support obligation. In *Booth v. Booth*, 44 Ohio St.3d 142, 541 N.E.2d 1028 (1989), the Ohio Supreme Court determined that the abuse-of-discretion standard is the appropriate standard of review in matters concerning child support. In



order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary, or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Furthermore, as an appellate court, we are not the trier of fact. Our role is to determine whether there is relevant, competent, and credible evidence upon which the factfinder could base his or her judgment. *Tennant v. Martin–Auer*, 188 Ohio App.3d 768, 2010–Ohio–3489, 936 N.E.2d 1013, ¶ 16 (5th Dist.), citing *Cross Truck v. Jeffries*, 5th Dist. No. CA–5758, 1982 WL 2911 (Feb. 10, 1982).

{¶67} Wife's income in 2013 is supported by the testimony and evidence presented. Husband does not argue in this Assignment of Error that the trial court erred as to the calculation of child support.

{¶68} Husband's fourth Assignment of Error is overruled.

#### **V. Wife's Personal Injury Settlement**

{¶69} Husband argues in his fifth Assignment of Error that the trial court erred when it found that Wife disclosed her personal injury settlement at the time of the Agreed Divorce Decree.

{¶70} Husband filed a complaint for divorce on October 1, 2008. Wife filed her answer on November 17, 2008.

{¶71} On August 31, 2009, Wife was in a car accident and suffered serious injuries. Wife received a financial settlement for her personal injuries. The record is silent as to the date Wife received the settlement.

{¶72} On March 12, 2010, the parties entered into an Agreed Divorce Decree. The Agreed Divorce Decree was filed on March 24, 2012. In the Agreed Divorce

Decree, the parties represented, “there are no other existing joint assets and no other marital assets of any nature, be they intangible, contingent, or otherwise, except as expressly mentioned in this Agreed Judgment Entry – Decree of Divorce, excepting tangible personal property.”

{¶73} At the hearing, Wife testified Husband knew about Wife’s accident and he knew about the possible settlement. (Tr. 414). Wife did not discuss it with Husband personally, but the personal injury settlement was part of the divorce negotiations in 2010. (Tr. 414). Wife stated the discussions were between her attorney and counsel for Husband. Husband was interested in a portion of the settlement, but Wife’s counsel explained it was a non-marital asset. No part of Wife’s personal injury claim was for lost wages. (Tr. 414). Wife’s claim for personal injury was for medical bills, attorney’s fees, and car replacement. (Tr. 415). There was no testimony presented as to when Wife received the settlement.

{¶74} The trial court determined Husband was aware of the possible personal injury settlement and the matter was not addressed in the Agreed Divorce Decree. The trial court further found Wife’s personal injury settlement would be considered separate property pursuant to R.C. 3105.171.

{¶75} R.C. 3105.171(6)(a) defines “separate property” as “all real and personal property and any interest in real or personal property that is found by the court to be any of the following \* \* \* (vi) Compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets.”

{¶76} “The concept of marital property is derived from the premise that marriage is a voluntary partnership of co-equal partners with a division of duties and labor that entitles each partner to a one-half interest in the assets accumulated from the fruits of the partnership activity while the marriage is functioning.” *Pancake v. Pancake*, 5th Dist. Ashland No. 12-COA-038, 2013-Ohio-2294, ¶ 45 quoting *Tomlin v. Tomlin* (March 16, 1987), Montgomery App. No. 10094, citing *Wolfe v. Wolfe*, 46 Ohio St.2d 399, 350 N.E.2d 413 (1976). An appellate court generally reviews the overall appropriateness of the trial court's property division in divorce proceedings under an abuse of discretion standard. *Cherry v. Cherry*, 66 Ohio St.2d 348, 421 N.E.2d 1293 (1981). In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore*, supra.

{¶77} The record in this case supports Wife's argument that Husband knew of Wife's accident and the possibility of settlement. Further, under these specific facts, Husband would not be entitled to Wife's personal injury settlement as the accident and settlement occurred after Husband filed for divorce and was therefore separate property.

{¶78} Husband's fifth Assignment of Error is overruled.

## **VI. Expenses for J.P.**

{¶79} Husband contends in his sixth Assignment of Error that the trial court erred when it failed to order Wife pay a greater share of J.P.'s expenses. We disagree.

{¶80} The parties agreed that neither party would pay child support. For J.P.'s expenses, Husband and Wife agreed to the following in the Agreed Shared Parenting Plan:

#### 7. FINANCIAL SUPPORT

Extraordinary expenses for the special needs or requirements of the child shall be equally divided by the parents with Father paying 60% and Mother paying 40%. \* \* \* Extraordinary expenses shall include, but not limited to reasonably necessary expenses for, all school fees, necessary school supplies, school activities, required or recommended school trips, participation fees, costs for athletic participation, uniforms, equipment and related costs, school related or otherwise, and all other such matters. The parents shall similarly divide the costs of all reasonably-necessary and agreed-upon extracurricular activities and discretionary school and related expenses. In the event the parents do not agree, the parent enrolling the child in the activity or electing the discretionary expenses shall pay the full cost thereof. No parent shall unreasonably withhold his or her agreement to such activity or expense. \* \* \*

\* \* \*

#### 11. EXTRACURRICULAR ACTIVITIES

The possessory parent shall be responsible for the child's transportation to and from any extracurricular activity. \* \* \*

Except for transportation as stated above, the parents shall divide the reasonably necessary costs of all agreed-upon extracurricular activities

and discretionary school and related expenses 60% by Father and 40% by Mother. In the event the parents do not agree, the parent enrolling the child in the activity or electing the discretionary expense shall pay the full cost thereof.

{¶81} The main issue of contention in this case is the expenses related to J.P.'s participation on a travel lacrosse team. At the time of the parties' divorce, J.P. was involved in soccer. The Agreed Shared Parenting Plan specifically referred to J.P.'s participation in soccer. Husband and Wife noted in the Agreed Shared Parenting Plan that they expressly agreed to J.P.'s participation in soccer and the parents would divide the reasonably necessary costs associated with soccer.

{¶82} While J.P. was in eighth grade or a freshman in high school, Husband testified that J.P.'s interests moved from soccer to lacrosse. (Tr. 48, 128). Husband communicated this information to Wife. Husband agreed at trial that Wife did not agree to J.P. participating in a travel lacrosse team. (Tr. 129). Wife expressed to Husband that she could not afford to support J.P. on the travel lacrosse team, but would support J.P.'s participation on a high school lacrosse team. (Tr. 252). Husband enrolled J.P. on the travel lacrosse team and billed Wife for the lacrosse fees even though she did not agree. (Tr. 129).

{¶83} Pursuant to the terms of the Agreed Shared Parenting Plan, in the event the parents do not agree, the parent enrolling the child in the activity shall pay the full cost thereof. There is no factual dispute that Wife did not agree to J.P.'s participation on the travel lacrosse team. We find no error for the trial court to find that Wife was not responsible for the expenses of the travel lacrosse team.

{¶84} The trial court then found Wife responsible for other expenses related to J.P. in the amount of \$1,643.88. In his appellate brief, Husband does not point to record or state the specific expenses for which he argues Wife should have been responsible. We find the trial court's decision, as the fact finder, is supported by relevant, competent, and credible evidence.

{¶85} Husband's sixth Assignment of Error is overruled.

### **VII. Damage to Husband's Tangible Personal Property**

{¶86} Husband argues the trial court erred when it concluded Wife did not owe Husband compensation for alleged damages to his tangible personal property. At trial, Husband presented Exhibit 12, which showed photographs of marital furniture belonging to Husband. (Tr. 25). The personal property was located in the garage of the marital home. Husband alleged Wife violated the Agreed Divorce Decree by damaging his personal property when she placed it in the garage.

{¶87} The trial court found Husband failed to present evidence of the value of the personal property allegedly damaged by Wife. Husband refers this court to Exhibit 12 to demonstrate the value of the personal property. Exhibit 12 consists of photographs of the property in the garage. There is no testimony in the record as to the value of the tangible personal property alleged to have been destroyed by Wife.

{¶88} Husband's seventh Assignment of Error is overruled.

### **VIII. Satisfaction of Spousal Support Arrearages**

{¶89} Husband argues in his eighth Assignment of Error that the trial court abused its discretion when it ordered the proceeds of the marital home sale be used to satisfy the spousal support arrearage. We agree.

{¶90} The parties agreed the proceeds of the sale of the marital home were \$38,405.13. Pursuant to the terms of the agreed divorce decree, Husband and Wife were entitled to one-half of the proceeds in the amount of \$19,202.56.

{¶91} The magistrate determined Husband owed Wife \$29,040 in spousal support arrears. Wife owed Husband \$4,962.57 in expenses. The trial court subtracted Wife's expenses and found Husband owed Wife \$24,077.43.

{¶92} The magistrate awarded Wife the total amount of the proceeds of the sale of the marital home. He ordered Husband to pay the remaining \$4,874.87 to Wife.

{¶93} This Court has recently examined whether the trial court can satisfy a spousal support arrearages with a property division. Under R.C. 3105.171(I), "a division or disbursement of property or a distributive award made under this section is not subject to future modification by the court except upon the express written consent or agreement to the modification by both spouses." In *Bittner v. Bittner*, 5th Dist. Delaware No. 15 CAF 03 0024, 2015-Ohio-4707, -- N.E.3d --, we found the terms of an agreed judgment entry decree of divorce gave the trial court jurisdiction to use a property distribution to satisfy a spousal support arrearage. *Id.* at ¶ 14. The agreed judgment entry decree of divorce stated, "This Court shall reserve and retain jurisdiction over Edward's interest in the said Ariel Corporation Profit Sharing Plan to allocate (or re-allocate) all or part of such interest to Dolores for payment of spousal support herein and, or, to satisfy any unpaid spousal-support obligation of Edward to Dolores. This Court further retains jurisdiction to modify or terminate these restraining orders, for reasons the Court determines, are just and equitable upon motion filed by Edward." *Id.* at ¶ 13.

{¶94} In this case, the Agreed Divorce Decree stated the proceeds of the sale of the marital home would be distributed as follows: (i) to the usual costs of sale; (ii) to the debts on the premises as set forth above; and (iii) to the parties equally. The trial court retained jurisdiction over the sale of the marital home as follows: “It is the intent of this provision to effectuate a sale that is fair to both parties in sale price, terms, and the time of the sale. This court shall retain jurisdiction over the manner and terms of the sale including, but not limited to, the price.” The spousal support provision of the Agreed Divorce Decree does not contain any language giving the trial court jurisdiction to satisfy any unpaid spousal support obligation with a property division.

{¶95} In Husband’s third Assignment of Error, we found the trial court did not abuse its discretion when it denied Husband’s motion to modify spousal support. We find, however, the trial court was without jurisdiction to award Wife the total amount of the proceeds from the sale of the home in order to satisfy Husband’s spousal support arrearage. We vacate the trial court’s decision on this issue and remand the matter to the trial court for further proceedings consistent with this opinion and law.

{¶96} Husband’s eighth Assignment of Error is sustained.

## **IX. Child Support**

{¶97} Husband argues in his final Assignment of Error that the trial court abused its discretion when it ordered Wife to pay child support beginning April 1, 2014. We disagree.

{¶98} In *Booth v. Booth*, 44 Ohio St.3d 142, 541 N.E.2d 1028 (1989), the Ohio Supreme Court determined that the abuse-of-discretion standard is the appropriate standard of review in matters concerning child support. In order to find an abuse of



discretion, we must determine that the trial court's decision was unreasonable, arbitrary, or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Furthermore, as an appellate court, we are not the trier of fact. Our role is to determine whether there is relevant, competent, and credible evidence upon which the factfinder could base his or her judgment. *Tennant v. Martin–Auer*, 188 Ohio App.3d 768, 936 N.E.2d 1013, 2010–Ohio–3489, ¶ 16 (5th Dist.), citing *Cross Truck v. Jeffries*, 5th Dist. Stark No. CA–5758, 1982 WL 2911 (Feb. 10, 1982).

{¶99} Upon this record, we cannot find the trial court abused its discretion in determining that Wife's child support obligation would begin on April 1, 2014.

{¶100} Husband's ninth Assignment of Error is overruled.

**CONCLUSION**

{¶101} The judgment of the Delaware County Court of Common Pleas, Domestic Relations is affirmed in part and reversed and remanded in part.

By: Delaney, J.,

Gwin, P.J. and

Baldwin, J., concur.