

[Cite as *Abbas v. Abbas*, 2002-Ohio-2366.]

IN THE COURT OF APPEALS OF WOOD COUNTY

Mary J. F. Abbas

Court of Appeals No. WD-01-045

Appellee

Trial Court No. 99-DR-019

v.

Andrew Abbas
(f/k/a Abdulghani)

DECISION AND JUDGMENT ENTRY

Appellant

Decided: May 17, 2002

* * * * *

Frederic E. Matthews, for appellee.

Michael D. Portnoy, for appellant.

* * * * *

PIETRYKOWSKI, P.J.

{¶1} This case is before the court on appeal from the Wood County Court of Common Pleas, Domestic Relations Division, which granted the parties a divorce, divided the marital property, and awarded spousal support and child support. For the reasons that follow, we affirm in part, reverse in part, and remand.

{¶2} Appellee Mary J.F. Abbas and appellant Andrew Abbas were married in 1985, and three children were born as issue of the marriage: Jason (born in 1986), Brian (born in 1987), and Diana (born in 1993). Appellee filed a complaint for divorce in early 1999. Following a final hearing in 2000, the trial court filed two judgment entries -- one dealing with custody of and visitation with the minor children, and the other dealing with division of property, spousal support, and child support. Subsequently, appellant moved for a new trial, and when his motion was denied,

he appealed to this court. He presents the following four assignments of error for our review:

{¶3} "I. THE TRIAL COURT ERRED IN FAILING TO AWARD APPELLANT HALF OF THE EQUITY IN THE VALUE OF THE HOME AND FAILED TO GIVE APPELLANT THE FIRST RIGHT TO PURCHASE THE HOME AFTER THE CHILDREN GRADUATED FROM HIGH SCHOOL.

{¶4} "II. THE TRIAL COURT ERRED IN MISCALCULATING APPELLANT'S PROFIT SHARING PLAN AS PART OF A CHILD SUPPORT CALCULATION AND ALIMONY SUPPORT AFTER APPELLEE RECEIVED HALF OF APPELLANT'S PROFIT SHARING PLAN AT THE BEGINNING OF EACH YEAR.

{¶5} "III. THE TRIAL COURT ERRED IN REFUSING TO DIVIDE THE MARITAL DEBT EQUALLY BETWEEN THE PARTIES.

{¶6} "IV. THE TRIAL COURT ERRED IN AWARDING APPELLEE \$900.00 A MONTH ALIMONY FOR FIVE YEARS."

{¶7} Appellant complains in his first and third assignments of error about the division of property. A trial court has broad discretion in dividing property in domestic relations cases. *Berish v. Berish* (1982), 69 Ohio St.2d 318, 319. Therefore, we may only reverse if we find that the trial court abused its discretion. See *id.* The Supreme Court of Ohio has stated that "[t]he term '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, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶8} R.C. 3105.171(F) provides that a trial court must consider certain factors in determining how to divide marital property. According to that section:

{¶9} "(F) In making a division of marital property and in determining whether to make and

the amount of any distributive award under this section, the court shall consider all of the following factors:

{¶10} "(1) The duration of the marriage;

{¶11} "(2) The assets and liabilities of the spouses;

{¶12} "(3) The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage;

{¶13} "(4) The liquidity of the property to be distributed;

{¶14} "(5) The economic desirability of retaining intact an asset or an interest in an asset;

{¶15} "(6) The tax consequences of the property division upon the respective awards to be made to each spouse;

{¶16} "(7) The costs of sale, if it is necessary that an asset be sold to effectuate an equitable distribution of property;

{¶17} "(8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses;

{¶18} "(9) Any other factor that the court expressly finds to be relevant and equitable."

{¶19} In addition, a trial court must make certain findings in a judgment entry dividing marital property. According to R.C. 3105.171(G):

{¶20} "(G) In any order for the division or disbursement of property or a distributive award made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided and shall specify the dates it used in determining the meaning of 'during the marriage.'"

{¶21} In this case, in the June 8, 2000 judgment entry, the trial court divided the property as follows:

{¶22} Appellant

{¶23}	all interest in his 401K plan	valued at \$14,922.07
{¶24}	household goods	valued at \$1,664.50
{¶25}	debts owed to parties	valued at \$22,000
{¶26}	profit sharing	no value found
{¶27}	Chrysler stock	no value found
{¶28}	bank accounts and stock in own name	no value found
{¶29}	debt owed to appellant's brother Sher Koh	(\$10,000)
{¶30}	debts owed to other family members	(no value found)
{¶31}	credit card and other debts in appellant's name	(no value found)

{¶32}	\$28,586.57
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{¶33} Appellee

{¶34}	equity in marital home	\$57,782
{¶35}	household goods	\$477.50
{¶36}	bank accounts and stock in own name	no value found
{¶37}	debts on certain credit cards	(no value found)
{¶38}	other debts in own name	(no value found)
{¶39}	Mary Kay business	no value found

\$58,259.50

{¶40} In addition, appellant was awarded the '92 Probe automobile and appellee the '91

Escort, which the court found had roughly equal value. Similarly, appellant was awarded the '99 Jeep and appellee the '94 Grand Voyager, both of which the court found had no equity. To justify granting all of the equity in the marital home to appellee, the trial court stated in its judgment entry, "The Court considered any premarital assets which Plaintiff [appellee] brought into the marriage when Plaintiff was awarded the entire equity in the marital residence." However, nowhere in the judgment entry did the trial court identify which items it deemed premarital and what the value of those items were.

{¶41} We have previously held that it is error for a trial court to neglect to find values for property subject to division. *Hurst v. Hurst* (Dec. 18, 1998), Wood App. No. WD-97-120; *Stacey v. Stacey* (Apr. 6, 2001), Lucas App. No. L-00-1079. This is true even if a party does not object to a lack of specific findings. *Id.* In addition to findings on value, a

{¶42} court must also make findings to support its determination that the property was equitably divided. *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, paragraph two of the syllabus; *Mays v. Mays* (Oct. 12, 2001), Miami App. No. 2000-CA-54; *Matic v. Matic* (July 27, 2001), Geauga App. No. 2000-G-2266; *Szerlip v. Szerlip* (1998), 129 Ohio App.3d 506, 512; discretionary appeal not allowed (1998), 84 Ohio St.3d 1447.

{¶43} Because the court did not make findings in accordance with R.C. 3105.171(G), we find it impossible to review the trial court's award of marital property to determine if it is equitable. Accordingly, appellant's first and third assignments of error are well-taken to the extent that the trial court failed to make specific findings in accordance with R.C. 3105.171(G).

{¶44} In his fourth assignment of error, appellant contends that the trial court erred in granting appellee spousal support in the amount of \$900 per month. R.C. 3105.18(C)(1) sets forth the factors the court shall consider in determining whether, and in what amount, spousal support is

appropriate. That section provides:

{¶45} "(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:

{¶46} "(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;

{¶47} "(b) The relative earning abilities of the parties;

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

{¶49} "(d) The retirement benefits of the parties;

{¶50} "(e) The duration of the marriage;

{¶51} "(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;

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

{¶53} "(h) The relative extent of education of the parties;

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

{¶55} "(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;

{¶56} "(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

{¶57} to obtain appropriate employment, provided the education, training, or job experience,

and employment is, in fact, sought;

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

{¶59} "(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

{¶60} "(n) Any other factor that the court expressly finds to be relevant and equitable."

{¶61} While a court is not required to make specific findings on spousal support as it is on property division, see R.C. 3105.171(G), a court is still required to consider the factors for spousal support set out in R.C. 3105.18(C)(1). See R.C. 3105.18(C)(1) (the court "shall" consider all of the factors). In this case, there is nothing in the judgment entry to suggest that the trial court considered any of these factors. Moreover, one of the factors to be considered in (i) is the relative assets and liabilities of the parties. Since we must remand this case to the trial court for further findings on property division, the property division and the spousal support become inextricably related. Therefore, it is impossible for us at this point in time to determine whether the amount of spousal support ordered by the trial court is appropriate. Therefore, appellant's fourth assignment of error is not ripe for review.

{¶62} In his second assignment of error, appellant contends that the trial court erred in considering his profit sharing as part of his gross income for child support purposes since: (1) profit sharing is not considered "gross income" for

{¶63} purposes of calculating child support; and (2) appellant gave appellee one-half of his profit sharing, so the entire amount should not have been considered gross income for calculating child support.ⁱ We begin by noting that a trial court has broad discretion in deciding child support matters. See *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144.

{¶64} Former R.C. 3113.215 defined gross income as follows:

{¶65} "'Gross income' means, except as excluded in this division, the total of all earned income from all sources during one calendar year, whether or not the income is taxable, and includes, but is not limited to, income from salaries, wages, overtime pay and bonuses to the extent described in division (B)(5)(d) of this section, commissions, royalties, tips, rents, dividends, severance pay, pensions, interest, trust income, annuities, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, benefits received by and in the possession of the veteran who is the beneficiary for any service-connected disability under a program or law administered by the United States department of veterans' affairs or veterans' administration, spousal support actually received from a person not a party to the support proceeding for which actual gross income is being determined, and all other sources of income[.]***.

{¶66} "***."

{¶67} However, "gross income" does not include certain public assistance benefits, certain veterans' benefits, child support for children not born or adopted in the current marriage, certain mandatory pay deductions, and "nonrecurring or unsustainable" sources of income. See former R.C. 3113.215(2)(a) - (e).

{¶68} Since there was no evidence that appellant's profit sharing income was nonrecurring or unsustainable, it was not an abuse of discretion for the trial court to consider these payments in calculation of appellant's gross income. Nevertheless, appellant contends that since he gave appellee one-half of his profit sharing, the full amount of the profit sharing should not have been included as gross income. There is evidence in the record that the parties had some agreement in 1999 to split the profit sharing for at least that year. When the parties alluded to this agreement at the final hearing, the trial court stated, "I don't -- let's put it this way: I don't care what any past agreements were. I'm the guy that's going to split up the pot now, not what any past agreement was." When the

court later divided the property, it awarded all of appellant's interest in the profit sharing to appellant.

Therefore, we cannot say that the court abused its discretion in finding that appellant's gross income included the amount of profit sharing he received in 1999. Appellant's second assignment of error is found not well-taken.

{¶69} Upon consideration whereof, we find that substantial justice was not done the party complaining, and the Wood County Court of Common Pleas, Domestic Relations Division, is affirmed in part, reversed in part, and remanded. The

{¶70} judgment is affirmed as to appellant's second assignment of error (relating to the calculation of "gross income" for purposes of child support) and reversed as to appellant's first and third assignments of error. It is ordered that this case is remanded for the trial court to consider the factors set out in R.C. 3105.171(F), make the findings set out in R.C. 3105.171(G), and divide the marital property in accordance with those sections. It is further ordered that the trial court consider the factors set out in R.C. 3105.18(C)(1) and determine whether, and in what amount, spousal support is appropriate. Appellee is ordered to pay the court costs of this appeal.

JUDGMENT AFFIRMED IN PART
AND REVERSED IN PART.

Melvin L. Resnick, J.

JUDGE

Mark L. Pietrykowski, P.J.

JUDGE

George M. Glasser, J.

CONCUR.

JUDGE

Judge George M. Glasser, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

¹{¶a}Appellant contends in his statement of the second assignment of error that his profit sharing should not have been

included for purposes of child support or "alimony." However, in his brief he only provides argument for why his profit sharing should not have been used for purposes of calculating child support. Therefore, we only address the child support issue. In any event, this case is being remanded for the trial court to fully consider whether, and in what amount, spousal support is appropriate.