

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Dian L. Liber

Court of Appeals No. L-08-1329

Appellee/Cross-Appellant

Trial Court No. DR2006-1426

v.

Joseph A. Liber, et al.

DECISION AND JUDGMENT

Appellant/Cross-Appellee

Decided: March 19, 2010

* * * * *

Martin J. Holmes, Sr., for appellee/cross-appellant.

Jude T. Aubry, for appellant/cross-appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal and cross-appeal from a judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, which entered a final judgment entry of divorce regarding the parties. For the reasons set forth more fully below, this court affirms the judgment of the trial court.

{¶ 2} On December 27, 2006, appellee, Dian Liber, filed a complaint for divorce against appellant, Joseph Liber. Appellant filed his answer and counterclaim on January 17, 2007. Prior to trial, the parties filed stipulations. The matter was tried on March 5, April 4, and May 14, 2008. After the parties submitted their closing arguments, the trial court rendered its decision on June 27, 2008. The court filed a final judgment entry of divorce on August 28, 2008. Appellant filed a notice of appeal on September 17, 2008. Appellee countered with a notice of cross-appeal on September 29, 2008.

{¶ 3} On appeal, appellant sets forth the following sole assignment of error:

{¶ 4} "The trial court erred in its valuation and distribution of the marital estate."

{¶ 5} On cross-appeal, appellee sets forth the following two assignments of error:

{¶ 6} "The court erred in not stating a basis for failing to set a reasonable rate of interest for Mr. Liber's use of money during the next 3 years while he makes payments to Mrs. Liber for her portion of Woodville Auto Parts.

{¶ 7} "The court erred in not awarding Mrs. Liber *any* of her litigation expenses."

{¶ 8} As a preliminary matter, we note that the underlying premise of each of these assignments of error is that the court abused its discretion, and in doing so rendered an inequitable property distribution judgment to the parties. That contention is the root of this case.

{¶ 9} The undisputed facts relevant to the issues on appeal are as follows. The parties were married on October 16, 1970, in Sylvania, Ohio. Three children, now emancipated, were born of the marriage. Appellant operates Automotive Core Source,

Inc., d/b/a Woodville Auto Parts ("WAP"). This business is a used automotive parts supplier and automobile salvage yard. During the marriage, appellee was primarily a stay-at-home mother, but occasionally worked in the office at WAP. More recently, appellee has worked in real estate sales. Appellee filed for divorce on December 27, 2006.

{¶ 10} Prior to trial, the parties agreed on issues pertaining to the marital home. The parties stipulated to a retroactive date for spousal support and the valuation dates for their ownership interests in WAP and another business venture, H.L.L., Inc. ("HLL"). The parties likewise agreed on the values of the various checking and savings accounts, life insurance policies, and retirement accounts. The trial court adopted these stipulations, finding them to be fair and reasonable.

{¶ 11} The parties accumulated substantial marital assets over the course of the marriage. The assets include a marital home, numerous checking/savings accounts valued at \$1,363,555, life insurance policies with cash surrender values of \$453,147, and retirement accounts valued at \$543,259, for an aggregate total of \$2,359,961.

{¶ 12} The parties owned a combined 80 percent interest in WAP and 65.8 percent interest in HLL. WAP is a phone order and internet-based automotive parts supplier and also owns a salvage yard in Toledo, Ohio. HLL owns commercial property in Northwood, Ohio.

{¶ 13} During trial, each party's expert testified as to the value of the parties' interests in these business ventures. The experts also provided testimony regarding the

valuation methods employed in reaching their conclusions. After due consideration of these methods, the court adopted the valuation of appellee's experts. The court found that the methods used by these experts were better tailored to the nature of the business and properties involved in the dispute.

{¶ 14} Accordingly, the parties' interest in WAP was valued at \$863,000. Their interest in HLL was valued at \$309,260. The combined value of these interests was \$1,172,260. The trial court awarded half of this amount (\$586,130) to each party. The court ordered that appellant make annual payments to appellee until the value of her ownership interest in WAP and HLL had been met. Appellant was ordered to pay \$133,130 within 90 days of the filing of the judgment entry, and \$150,000 each year thereafter until appellee had been compensated fully. The trial court waived interest on these payments on the condition that appellant paid them timely.

{¶ 15} The trial court subsequently ordered its division and distribution of the above-mentioned marital assets, namely the checking/savings accounts, life insurance policies, and retirement accounts. Appellant was awarded \$1,179,976, which consisted of 43.6 percent from checking/savings accounts, 36.4 percent from life insurance policies, and 20 percent from retirement accounts. In contrast, appellee was awarded \$1,179,985, which consisted of 71.9 percent from checking/savings accounts, 2 percent from life insurance policies, and 26.1 percent from retirement accounts.

{¶ 16} Further, pursuant to the factors enumerated in R.C. 3105.18, the trial court awarded appellee spousal support in the amount of \$1,750 per month until appellee's

death, remarriage or co-habitation with another as if married, or further order of the court. The trial court also ordered appellant to pay \$4,000 of appellee's reasonable and necessary attorney's fees. The court declined to award compensation for appellee's expert's fees, citing appellee's failure to present evidence as to the reasonableness of those fees.

{¶ 17} In his sole assignment of error, appellant claims that the trial court improperly valued and distributed the marital estate. Appellant specifically argues that the uneven distribution of the liquid and non-liquid marital assets by percentage was inequitable. Appellant further argues that the trial court committed error by adopting appellee's expert's valuations of WAP and HLL.

{¶ 18} The guiding legal framework in undertaking this analysis is whether the trial court abused its discretion in the valuation and distribution of marital assets and property. It is well-settled Ohio law that a trial court must be given broad discretion in divorce proceedings. The different facts and circumstances which each divorce case presents to a trial court requires that a trial judge be vested with wide latitude in dividing property between the parties. *Koegel v. Koegel* (1982), 69 Ohio St.2d 355, 357. A disputed marital asset distribution judgment will not be disturbed absent an abuse of discretion. In order to establish abuse of discretion, it must be shown the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 19} This court has carefully reviewed and considered the record. We note that the trial court specifically highlighted an "absence of evidence as to the relative value between liquid and fixed assets." We also paid particular attention to the trial court's consideration of the competing expert evidence presented at trial. The record contains no evidence that the trial court's preference for the methodology and conclusions of appellee's experts breached the boundaries of its discretion. Similarly, the record is devoid of any indication that the trial court's asset distribution determinations were unreasonable, arbitrary or unconscionable. On the contrary, the record shows that the trial court acted well within its discretion and in conformity with Ohio law. As such, appellant's assignment of error is found not well-taken.

{¶ 20} In her first assignment of error on cross-appeal, appellee argues that the trial court erred by failing to state a basis for not setting a reasonable interest rate on appellant's use of money over the three years allotted for the buyout of appellee's ownership interest in WAP and HLL. Based upon our conclusion in the analysis of appellant's assignment of error that the trial court acted properly in its asset valuation and distribution judgments, we similarly can find no abuse of discretion on cross-appeal in connection to its handling of appellant's buyout terms for appellee's portions of WAP and HLL. The trial court did not err in declining to set an interest rate during the buyout period. Appellee's first assignment of error on cross-appeal is found not well-taken.

{¶ 21} Appellee's final assignment of error on cross-appeal claims that the trial court improperly declined to award any of appellee's litigation expenses. It is well-settled

law in Ohio that it is within the sound discretion of the trial court to award necessary and reasonable fees in a divorce action. A decision to not award fees may not be reversed absent a clear abuse of discretion. *Birath v. Birath* (1988), 53 Ohio App.3d 31.

{¶ 22} In support of its decision, the trial judge unambiguously stated that "no evidence was presented as to the reasonableness of the fees charged by Mr. Fall or Mr. Kucik for their services." The court went on to say that, "without evidence, or even a detailed fee statement, the Court cannot determine the reasonableness of those fees." We concur in this assessment and find no evidence of an abuse of discretion. Appellee's final assignment of error on cross-appeal is found not well-taken.

{¶ 23} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant and appellee are each ordered to pay one-half of the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.