

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

Christine Smith

Court of Appeals No. S-10-021

Appellee

Trial Court No. 02 DR 617

v.

Joel Smith

DECISION AND JUDGMENT

Appellant

Decided: January 14, 2011

* * * * *

John A. Coble and Joseph F. Albrechta, for appellee.

Lisa M. Snyder, for appellant.

* * * * *

COSME, J.

{¶ 1} This appeal is from a post-divorce judgment ordering appellant to pay interest for his delay in meeting an obligation in regard to divided property that was never imposed upon him. The parties in this case, plaintiff-appellee Christine Smith and

defendant-appellant Joel Smith, were divorced on February 7, 2007. The judgment entry of divorce ordered a set-off of \$38,436.01 from appellant's IRA account for appellee's benefit, but specifically provided that appellee "shall be responsible for coordinating and preparing any documentation necessary to accomplish the set-off." Thereafter, appellee at least twice presented appellant with an application form from TD Ameritrade to transfer the funds into her IRA account. Appellant did not complete the application because use of that form would have resulted in tax consequences to appellant. Appellant also tried unsuccessfully to obtain an appropriate form from TD Ameritrade that would avoid any tax consequences. Appellee filed a motion to compel the transfer on January 29, 2010, and the matter proceeded to hearing on April 6, 2010.

{¶ 2} On April 7, 2010, the trial court filed its judgment entry in which it ordered appellant to cooperate in the transfer by executing a recently acquired IRA application form specifically drafted by TD Ameritrade for the transfer of funds due to divorce. It also ordered appellant to pay interest in the amount of \$2,537.60 for the three-year plus delay in effecting the transfer, which it calculated by applying the statutory interest rate of four percent per annum and dividing that amount by half. In so doing, the trial court acknowledged that the judgment of divorce "placed the responsibility for effectuating the transfer upon Plaintiff," but found that "Plaintiff was not represented by counsel at the time, and * * * that cooperation was required from Defendant which was not freely provided."

{¶ 3} Appellant now appeals this judgment, asserting a single assignment of error:

{¶ 4} "The trial court abused its discretion in finding that appellee is entitled to an arbitrary increase in value, less an arbitrary 50% penalty, on the original award of appellant's IRA"

{¶ 5} Resolution of the determinative issue is unusually simple in this case. Appellant challenges only the trial court's decision as to the assessment of interest. The pertinent question is not whether the trial court erred in calculating or reducing the amount of awarded interest, but whether it erred in awarding interest in the first place. Both parties agree, and appropriately so, that our review is governed by the abuse of discretion standard and all it entails. See *Grosnickle v. Grosnickle*, 12th Dist. No. CA2006-03-037, 2007-Ohio-3613, ¶ 3.

{¶ 6} The original decree in this case placed the responsibility on appellee to supply the appropriate documentation to effectuate the transfer of the awarded IRA funds. Appellee did not do that, but instead presented appellant with the wrong form, which would have resulted in unnecessary tax consequences. It is manifestly unreasonable, arbitrary, and unconscionable for the trial court to now charge appellant for the delay on grounds that it might appear wiser in retrospect to have initially imposed the burden of effectuating the transfer on appellant. While the trial court additionally found that appellant had failed to cooperate in the transfer, there is nothing in the record that

suggests appellant ever resisted or impeded a proper transfer of the funds, withheld pertinent information, or failed or refused to execute an appropriate transfer form or Qualified Domestic Relations Order. Instead, it is clear from the record that this finding emanates from the trial court's belief that appellant should have made greater efforts to obtain or assist appellee in obtaining the appropriate transfer form. That, however, was not his responsibility.

{¶ 7} Accordingly, appellant's sole assignment of error is well-taken. The judgment of the Sandusky County Court of Common Pleas is reversed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

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:
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