

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

Mary A. Keckler

Court of Appeals No. OT-11-027

Appellee

Trial Court No. 10-DR-066 B

v.

Scott D. Keckler

DECISION AND JUDGMENT

Appellant

Decided: August 31, 2012

* * * * *

James L. Reinheimer, for appellant.

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PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Scott Keckler, appeals the August 1, 2011 judgment of the Ottawa County Court of Common Pleas, Domestic Relations Division, which granted appellant, and plaintiff-appellee, Mary Keckler, a divorce and divided the parties' marital property and debt. Because we find that the court did not abuse its discretion, we affirm.

{¶ 2} A brief history of this case is as follows. The parties married in November 2007. No children were born issue of the marriage. On April 6, 2010, appellee filed a complaint for divorce. The final hearing on the complaint was held on December 7, 2010. The parties testified and evidence was submitted.

{¶ 3} On February 11, 2011, the magistrate issued his findings of fact and conclusions of law. Relevant to this appeal, the magistrate found that there were various credit cards that were appellee's prior to the marriage, that there was no evidence as to the balance of the cards, that both parties used the cards during the marriage and payments were made from a joint account, and that since the parties separated, appellee borrowed \$24,000 from her father to pay the balances on the credit cards. The court determined that the total marital debt paid with the use of borrowed funds was \$18,605.92. The court then ordered appellant to pay one-half of the debt to appellee.

{¶ 4} On April 15, 2011, appellant filed objections to the magistrate's decision. Specifically, appellant argued that appellee failed to meet her burden of proving that the credit card debt was marital. On June 27, 2011, the trial court rejected this argument finding that appellee failed to meet his burden of establishing that the debt was separate. The court then issued its judgment entry of divorce and this appeal followed.

{¶ 5} Appellant raises the following assignment of error for our review:

I. The magistrate erred in finding that the credit card debt of the plaintiff is marital debt.

{¶ 6} The factual findings of the trial court relating to its classification of property as marital or separate are reviewed under a manifest weight standard. *Barkley v. Barkley*, 119 Ohio App.3d 155, 159, 694 N.E.2d 989 (4th Dist.1997). Thus, an appellate court may not independently weigh the evidence but should presume that the trial court's findings are correct where they are supported by some competent and credible evidence. *Myers v. Garson*, 66 Ohio St.3d 610, 614, 614 N.E.2d 742 (1993); *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988).

{¶ 7} One of the factors to consider in dividing marital property is the assets and liabilities of the spouse. R.C. 3105.171(F)(2). Marital debt has been defined as any debt incurred during the marriage for the joint benefit of the parties or for a valid marital purpose. *Ketchum v. Ketchum*, 7th Dist. No. 2001 CO60, 2003-Ohio-2559, ¶ 47. Debts incurred during the marriage are presumed to be marital unless it can be proved that they are not. *Kehoe v. Kehoe*, 8th Dist. No. 97357, 2012-Ohio-3357, ¶ 14, citing *Vergitz v. Vergitz*, 7th Dist. No. 05JE52, 2007-Ohio-1395, ¶ 12. The party seeking to establish a debt is separate rather than marital bears the burden of proving this to the trial court. *Hurte v. Hurte*, 164 Ohio App.3d 446, 2005-Ohio-5967, 842 N.E.2d 1058, ¶ 21 (4th Dist.).

{¶ 8} During the December 7, 2010 hearing, appellee testified regarding a composite exhibit evidencing marital debt. Appellee testified that the various credit card accounts were used by both parties during the marriage. Appellee admitted that she had most of the accounts prior to the marriage and that they had balances. Appellee stated

that she did not know the premarital balances. Appellee testified that she borrowed money from her father to pay the balances on the accounts. Appellant admitted to making credit card payments from the parties' joint account.

{¶ 9} Based on foregoing, we find that competent evidence supports the trial court's finding that the credit card debt was marital. Appellant's assignment of error is not well-taken.

{¶ 10} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Ottawa County Court of Common Pleas, Domestic Relations Division, is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.

CONCUR.

JUDGE

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| <p>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.</p> |
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