[Cite as *Wyatt v. Wyatt*, 2013-Ohio-2603.]

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

Debra Wyatt	Court of Appeals No. L-12-1207
Appellee	Trial Court No. DR2010-1259
v.	
Charles Wyatt	**DECISION AND JUDGMENT**
Appellant	Decided: June 21, 2013

* * * * *

Dennis P. Strong, for appellee.

W. Alex Smith, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal brought by appellant, Charles Wyatt, from the judgment entry of divorce from the Lucas County Court of Common Pleas, Domestic Relations Division.

{¶ 2} Debra Wyatt and Charles Wyatt were married on October 7, 1972, in Toledo, Ohio. Four children, all of whom are now emancipated, were born of their marriage.

{¶ 3} Debra filed a complaint for divorce on December 3, 2010. Charles filed an answer on December 21, 2010. The case proceeded to trial on June 7 and 8, 2012. The domestic relations court entered its judgment entry of divorce on July 3, 2012. Charles filed a timely notice of appeal from the judgment entry.

{¶ 4} Charles sets forth three assignments of error:

> Assignment of Error 1:
>
> The trial court's award of spousal support was an abuse of discretion because the court based the award on an inaccurate calculation of appellant's yearly income.
>
> Assignment of Error 2:
>
> The trial court's award of 100% medical coverage was an abuse of discretion because the court based the award on a belief that defendant intentionally dropped coverage.
>
> Assignment of Error 3:
>
> The trial court's offset of $1,930 for taxes and penalties for an early withdrawal of the 401K is an abuse of discretion because the defendant must bear the penalties and taxes, not the plaintiff.

{¶ 5} An appellate court reviews a trial court's judgment awarding spousal support under an abuse of discretion standard. *Kunkle v. Kunkle,* 51 Ohio St.3d 64, 67, 554 N.E.2d 83 (1990). An abuse of discretion connotes that the trial court's judgment was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). When applying the abuse of discretion standard, this court may not substitute our judgment for that of the trial court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 614 N.E.2d 748 (1993).

{¶ 6} In appellant's first assignment of error, he argues that the trial court abused its discretion in its calculation of spousal support because it did not consider all of the factors set forth in R.C. 3105.18(C)(1). That section states:

> (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:
>
> (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;
>
> (b) The relative earning abilities of the parties;
>
> (c) The ages and the physical, mental, and emotional conditions of the parties;
>
> (d) The retirement benefits of the parties;

(e) The duration of the marriage;

(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;

(g) The standard of living of the parties established during the marriage;

(h) The relative extent of education of the parties;

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

(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;

(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 to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;

(l) The tax consequences, for each party, of an award of spousal support;

(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

(n) Any other factor that the court expressly finds to be relevant and equitable.

{¶ 7} Appellant specifically takes exception to the trial court's lack of consideration of the factors enumerated in R.C. 3105.18(C)(1)(b), (c) and (d). However, there is nothing in the record to support this contention. The court made specific findings concerning the length of the marriage and the relative earning abilities of the parties as well as any medical problems that were in evidence before the court. The court noted the ages of the parties at the time of final hearing. The record further establishes that appellant had increasing earnings from the period of 2007 through the date of his voluntary termination on December 23, 2010. His earnings for the tax year 2007 were $84,000. He made $87,000 in 2008. He earned $89,811 in 2009. The parties further stipulated that appellant had income in 2010 in the amount of $76,000 and that appellee had income in the amount of $24,000.

{¶ 8} Retirement benefits of the parties were stipulated. Appellee was receiving a pension in the amount of $15,249.26. Inexplicably, appellant was still not receiving any pension benefits at the time of the final hearing, despite being eligible. Appellant's own testimony was that nobody told him to retire despite his contention in this appeal that he has health problems.

{¶ 9} Appellant argues that the trial court should have taken into consideration that his retirement was imminent when considering the amount to award for spousal support. However, appellant fails to indicate what specifically the trial court was to take

into consideration given the undisputed fact that he had been voluntarily unemployed from December 23, 2010, until the date of the final hearing, June 8, 2012, and had still not begun to process his retirement papers.

{¶ 10} We find appellant's first assignment of error not well-taken.

{¶ 11} In his second assignment of error, appellant argues that the trial court's award of 100 percent medical coverage was an abuse of discretion because the court based the award on a belief that defendant intentionally dropped coverage.

{¶ 12} The undisputed testimony of appellant was that he voluntarily terminated his long-term employment with UPS as a commercial truck driver on December 23, 2010. He was served with the divorce complaint on December 11, 2010. Further, he testified that he was "semi-retired" but had not submitted the necessary paperwork to his employer to enable him to receive retirement benefits. As of the date of the final hearing, he still had not begun to process his retirement papers. The court found that since appellant voluntarily quit his employment, appellee lost medical benefits. Based upon these findings, we are unable to conclude that the trial court's award of 100 percent medical coverage to appellee was an abuse of discretion and find the second assignment of error not well-taken.

{¶ 13} In his third assignment of error, appellant argues that it was an abuse of discretion in splitting the taxes and penalties incurred as a result of appellant's early withdrawal of his 401K plan. He further contends that there is nothing in the record to indicate how this amount was arrived at by the trial court. To the contrary, the record

establishes that appellant's own 401K distribution statement itemizes the taxes and penalties in the amount of $3,859.28. The trial court equitably divided this expense. Again, we can find no abuse of discretion by the trial court in its division of the taxes and penalties incurred as a result of appellant's early withdrawal of his 401K plan. This assignment of error is found not well-taken.

{¶ 14} The judgment of the Lucas County County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay 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.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE