

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

Michelle M. Samson

Court of Appeals No. WD-12-013

Appellee

Trial Court No. 2009-DR-181

v.

Wayne G. Samson

DECISION AND JUDGMENT

Appellant

Decided: February 8, 2013

* * * * *

Joseph V. McNamara, for appellee.

Frederic E. Matthews, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Wayne Samson, appeals the judgment of the Wood County Court of Common Pleas, Domestic Relations Division, awarding spousal support and child support to appellee, Michelle Samson. We affirm, in part, and reverse, in part.

A. Facts and Procedural Background

{¶ 2} In this divorce action, the parties stipulated to most of the terms of their divorce, leaving only the issues of spousal support and child support to be decided by the magistrate. The magistrate determined that appellant shall pay to appellee \$700 per month for 60 months as spousal support, and \$765.25 per month in child support.

{¶ 3} Appellee filed objections to the magistrate's decision, arguing that the magistrate failed to use the updated income/expense listings, thereby resulting in a lower calculation of appellee's monthly expenses, and a higher calculation of appellant's monthly expenses. Appellee further contended that these miscalculations led to an inaccurate and insufficient spousal support award. Appellant filed a response to appellee's objections, in which he argued that the magistrate correctly considered all of the factors in determining a spousal support award.

{¶ 4} The trial court agreed that the magistrate miscalculated the parties' monthly expenses. The court found that appellee's monthly expenses were \$4,510, which included \$1,200 per month for appellee's educational expenses. The court also found that appellant's monthly expenses were \$2,673 plus his child support obligation. With these updated figures, the trial court ordered appellant to pay spousal support as follows: \$1,400 per month for the first 24 months, then \$1,050 per month for the second 24 months, then \$700 per month for the final 12 months.

{¶ 5} The court, thereafter, affirmed the remainder of the magistrate's decision, including the child support award of \$765.25 per month.

B. Assignments of Error

{¶ 6} Appellant has timely appealed the judgment entry of divorce, raising two assignments of error:

I. The trial court's judgment which orders Appellant to pay spousal support of \$1,400.00 per month, double that which the Magistrate decided, was an abuse of discretion for the following reasons:

1. It was based, at least in part, upon facts not put in evidence and not before the Court;

2. It was not based on a required consideration of all factors set forth in O.R.C. § 3105.18.

II. The trial court's judgment as to the child support amount was in error as it failed to follow the mandates of O.R.C. § 3119.01 et. seq.

II. Analysis

A. Spousal Support

{¶ 7} 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).

{¶ 8} Appellant presents two arguments in support of his assignment of error. First, he argues that the trial court abused its discretion because it considered facts not

entered into evidence. Specifically, appellant contends that there was no testimony presented that appellee was going to college, and no evidence to justify the \$1,200 monthly expense. However, appellee's updated income/expenses listings, which appellant stipulated to, included an expense for tuition for herself in the amount of \$1,200. Therefore, we find appellant's first argument to be without merit.

{¶ 9} Appellant's second argument is that the trial court abused its discretion because it did not consider all of the factors set forth in R.C. 3105.18(C)(1). Again, we find his argument to be without merit.

{¶ 10} "Even though a trial court has broad discretion in awarding spousal support, its determination of whether spousal support is 'appropriate and reasonable' and the nature, amount, duration and terms of payment of spousal support is controlled by the factors in R.C. 3105.18(C)(1)." *Crites v. Crites*, 6th Dist. Nos. WD-04-034, WD-04-042, 2004-Ohio-6162, ¶ 26-27, citing *Schultz v. Schultz*, 110 Ohio App.3d 715, 724, 675 N.E.2d 55 (10th Dist.1996).

{¶ 11} R.C. 3105.18(C)(1) provides,

(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 made 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.

{¶ 12} When awarding spousal support, “the trial court must indicate the basis for its award in sufficient detail to enable a reviewing court to determine that the award is fair, equitable and in accordance with the law.” *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 97, 518 N.E.2d 1197 (1988). Notably, a trial court need not enumerate each R.C. 3105.18(C)(1) factor. *Stockman v. Stockman*, 6th Dist. No. L-00-1053, 2000 WL 1838937 (Dec. 15, 2000), citing *Rowe v. Rowe*, 69 Ohio App.3d 607, 615, 591 N.E.2d 716 (6th Dist.1990).

{¶ 13} Here, the trial court identified that R.C. 3105.18(C)(1) provided the list of factors it should consider. Further, it considered the parties' respective incomes, the duration of the marriage, appellee's pursuit of education to become a teacher, and the fact that appellee is retaining the marital residence together with the mortgage obligation. Finally, the court recognized that the parties did not present evidence regarding many of the remaining factors. Therefore, we conclude that the trial court considered all of the

relevant factors, and indicated the basis for its award in sufficient detail. Accordingly, we hold that the trial court's award of spousal support to appellee did not constitute an abuse of discretion.

{¶ 14} Appellant's first assignment of error is not well-taken.

B. Child Support

{¶ 15} Like awards of spousal support, awards of child support are reviewed under an abuse of discretion standard. *Lanham v. Mierzwiak*, 197 Ohio App.3d 426, 2011-Ohio-6190, 967 N.E.2d 1256, ¶ 16 (6th Dist.), citing *Dunbar v. Dunbar*, 68 Ohio St.3d 369, 371, 627 N.E.2d 532 (1994).

{¶ 16} Appellant argues that the trial court erred when it computed the child support award without using the parties' updated incomes resulting from the modified spousal support award. *See* R.C. 3119.05(B) and 3119.01(C)(7) (requiring the court to consider spousal support when determining the parents' gross incomes for the purpose of awarding child support). Appellant calculates that the modified spousal support award increased appellee's income, and correspondingly decreased appellant's income, by \$8,400 per year, and correspondingly decreased appellant's income by the same amount. Nevertheless, the trial court did not change the amount of child support awarded by the magistrate.

{¶ 17} Appellee, for her part, concedes this was error, but notes that the trial court is permitted to deviate from the basic child support schedule and applicable worksheet upon consideration of the factors in R.C. 3119.23. However, she further notes that,

[i]f it deviates, the court must enter in the journal the amount of child support calculated pursuant to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, its determination that that amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting that determination. R.C. 3119.22.

No determination that the amount would be unjust, inappropriate, and not in the best interest of the children was made in this case.

{¶ 18} Accordingly, we hold that the trial court abused its discretion when it failed to consider the modified spousal support award in its computation of the child support award.

{¶ 19} Appellant's second assignment of error is well-taken.

III. Conclusion

{¶ 20} For the foregoing reasons, the judgment of the Wood County Court of Common Pleas, Domestic Relations Division, is affirmed, in part, and reversed, in part. The cause is remanded to the trial court for determination of child support based on the parties' modified incomes. Costs are to be split evenly between the parties pursuant to App.R. 24.

Judgment affirmed, in part,
and reversed, in part.

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

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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