[Cite as *Miller v. Miller*, 2013-Ohio-5071.]

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

Mindy Miller

Appellant

v.

Richard Miller

Appellee

Court of Appeals No. S-12-035

Trial Court No. 09DR001004

DECISION AND JUDGMENT

Decided: November 15, 2013

* * * * *

Jon M. Ickes, for appellant.

Lisa M. Snyder, for appellee.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Mindy Miller, appeals the judgment of the Sandusky County Court of Common Pleas, Domestic Relations Division, granting her request for a divorce from appellee, Richard Miller. For the following reasons, we affirm.

A. Facts and Procedural Background

{¶ 2} The relevant facts are undisputed. Appellant and appellee married on May 11, 1996. They have two minor children together. Appellant teaches middle school science for the Fremont City Schools, a job which requires a college education. Appellant obtained the requisite education using several student loans, all of which were disbursed during appellant's marriage to appellee.

{¶ 3} In June 2009, appellant decided to separate from appellee. Consequently, she moved out of the marital home located in Fremont, Ohio. On August 26, 2009, she filed a complaint with the Sandusky County Court of Common Pleas, Domestic Relations Division, seeking a divorce from appellee on the ground that the couple was incompatible.

{¶ 4} Following court-ordered mediation, the parties were able to reach a partial agreement. The court then referred the matter to a magistrate for resolution of the contested issues. The magistrate held a hearing on October 19, 2011, in order to resolve the following issues: (1) appellee's claim of a premarital interest in a portion of the equity of the marital residence; (2) the allocation of appellant's student loans as well as student loans belonging to appellee's adult children from a prior marriage; and (3) the appropriate amount of child support.

{¶ 5} On October 20, 2011, the magistrate issued her decision in which she denied appellee's claim of premarital interest in the equity of the marital residence. In addition, she granted appellee a 20 percent deviation from the amount of child support set forth in

the child support worksheet. Finally, the magistrate determined that appellant was solely responsible for her student loan debt, and appellee was solely responsible for his children's student loan debt for which he was a cosigner.

{¶ 6} Shortly after receiving notice of the magistrate's decision, both parties filed timely objections. Specifically, appellant objected to the magistrate's decision to deviate from the child support worksheet. Appellee objected to the magistrate's determination that none of the equity in the marital residence was separate property to which he was entitled. Further, appellee took issue with the magistrate's allocation of student loan debt. Following briefing on the objections, the court affirmed the magistrate's decision with respect to the student loans and the child support. In addition, the court scheduled a hearing to determine the validity of appellee's claim concerning a portion of the equity in the marital residence. Following the hearing, the court issued its decision affirming the magistrate's decision and overruling appellee's objections.

{¶ 7} Ultimately, the trial court held a final hearing on the contested divorce on April 30, 2012. At the hearing, the court took further evidence on the issue of whether appellee was entitled to a portion of the equity in the marital residence. Upon consideration of the evidence produced at the hearing, as well as the written closing arguments filed by each party, the court issued its decision granting appellant's request for a divorce. In its decision, the court reconsidered its prior determination of appellee's interest in the equity of the marital residence. The court held that $30,000 of the down payment used to purchase the marital residence was separate property as it represented

the proceeds from the sale of a home purchased by appellee prior to the marriage. After accounting for depreciation in the value of the marital residence, the court reduced the amount to $26,034. The court also determined that an additional portion of the equity belonged to appellee as his separate property based on his use of an inheritance to pay down the mortgage.

{¶ 8} Unsatisfied with the court's reconsideration of the equity issue, appellant filed a request for findings of fact and conclusions of law pursuant to Civ.R. 52. Without providing the requested findings of fact and conclusions of law, the court issued its judgment entry of divorce on August 29, 2012. Appellant's timely appeal followed.

B. Assignments of Error

{¶ 9} On appeal, appellant raises the following assignments of error:

1. The Trial Court erred in failing to issue Findings of Facts and Conclusions of Law at Appellant's request after the issuance of the final Decision.

2. The Trial Court erred in changing its Decision regarding certain separate property issues after ruling on Objections to a Magistrate Decision and allowing Appellee to argue the issues at a subsequent hearing without notice of the matter being reconsidered by the Court.

3. The Trial Court abused its discretion in offsetting the parties' interests in STRS and Social Security and failing to award Appellant any share of the marital 401(k) property.

4. The Trial Court erred in granting the Appellee a pre-marital interest in real estate.

5. The Trial Court erred in deviating from the child support calculation worksheet.

6. The Trial Court abused its discretion in ordering the property distribution in a manner that was inconsistent with its decision and contrary to law.

{¶ 10} For ease of discussion, we will address appellant's assignments of error out of order.

II. Analysis

A. Separate Findings of Fact and Conclusions of Law Under Civ.R. 52

{¶ 11} In appellant's first assignment of error, she argues that the trial court erred in failing to respond to her request for findings of fact and conclusions of law following its June 26 decision. Citing Civ.R. 52 as support, appellant contends that the trial court was required to issue such findings of fact and conclusions of law. Appellee responds by arguing that the court's decision contained sufficient facts and legal authority. Consequently, appellee asserts that any further findings of fact and conclusions of law would have been redundant and unnecessary under Civ.R. 52.

{¶ 12} Civ.R. 52 provides, in relevant part:

When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties

in writing requests otherwise * * *, in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law.

* * *

An opinion or memorandum of decision filed in the action prior to judgment entry and containing findings of fact and conclusions of law stated separately *shall be sufficient to satisfy the requirements of this rule* and Rule 41(B)(2). (Emphasis added.)

{¶ 13} "The purpose of separately stated findings of fact and conclusions of law is to enable a reviewing court to determine the existence of assigned error." *Abney v. W. Res. Mut. Cas. Co.*, 76 Ohio App.3d 424, 431, 602 N.E.2d 348 (12th Dist.1991), citing *Davis v. Wilkerson*, 29 Ohio App.3d 100, 101, 503 N.E.2d 210 (9th Dist.1986). Failure to comply with the requirements of Civ.R. 52 constitutes reversible error. *In re Adoption of Gibson*, 23 Ohio St.3d 170, 172, 492 N.E.2d 146 (1986). However, the trial court complies with Civ.R. 52 where the record, along with the court's order, provides an adequate basis to dispose of all the claims presented. *Pickerel v. Pickerel*, 6th Dist. Sandusky No. S-98-012, 1999 WL 173678, *4 (Mar. 31, 1999), citing *Finn v. Krumroy Constr. Co.*, 68 Ohio App.3d 480, 487, 589 N.E.2d 58 (9th Dist.1990); *see also Abney* at 431, citing *Stone v. Davis*, 66 Ohio St.2d 74, 84-85, 419 N.E.2d 1094 (1981) ("If the court's ruling or opinion, together with other parts of the trial court's record, provides an

adequate basis upon which an appellate court can decide the legal issues presented, there is such substantial compliance with Civ.R. 52.").

{¶ 14} Here, we find that the trial court's decision complies with Civ.R. 52. Contrary to appellant's assertion, the trial court did not issue a "general" judgment. Rather, the court issued a detailed written decision that provided the relevant facts and reasoning of the court. As such, this court has an adequate basis upon which to decide appellant's assignments of error. Thus, under Civ.R. 52, the trial court was not required to issue separate findings of fact and conclusions of law.

{¶ 15} Accordingly, appellant's first assignment of error is not well-taken.

B. Reconsideration of Appellee's Equity in the Marital Residence

{¶ 16} In her second assignment of error, appellant argues that the trial court erred in reversing its prior decision concerning the classification of equity in the marital residence as marital property. Initially, the equity in the marital residence was classified as marital property by the trial court. However, upon reconsideration at the final hearing, the trial court determined that a portion of the equity would be credited to appellee as separate property because it was derived from the proceeds of the sale of appellee's previous residence, which he acquired prior to the marriage.

{¶ 17} Appellant specifically asserts that the trial court's reconsideration was barred by the doctrine of collateral estoppel. Appellee, on the other hand, argues that collateral estoppel does not apply because the trial court's reconsideration occurred as part of a single action.

{¶ 18} Collateral estoppel is a branch of the doctrine of res judicata. *Holzemer v. Urbanski*, 86 Ohio St.3d 129, 133, 712 N.E.2d 713 (1999). The issue of whether the doctrine of res judicata is applicable is a question of law, which we review de novo. *Sharp v. Brennan*, 6th Dist. Erie Nos. E-00-008, 92-DR-160, 2000 WL 1232394, *4 (Sept. 1, 2000), citing *Rohner Distribs. v. Pantona*, 8th Dist. Cuyahoga No. 75066, 1999 WL 195663 (Apr. 8, 1999). The doctrine of collateral estoppel bars parties in privity with the original party from relitigating identical issues in subsequent actions. The following four elements must be met before collateral estoppel will apply:

> (1) The party against whom estoppel is sought was a party or in privity with a party to the prior action; * * * (2) There was a final judgment on the merits in the previous case after a full and fair opportunity to litigate the issue; * * * (3) The issue must have been admitted or actually tried and decided and must be necessary to the final judgment; and * * * (4) The issue must have been identical to the issue involved in the prior suit. *Monahan v. Eagle Picher Indus., Inc.*, 21 Ohio App.3d 179, 180-181, 486 N.E.2d 1165 (1st Dist.1984).

{¶ 19} In this case, we conclude that the doctrine of collateral estoppel does not preclude the trial court from reconsidering its prior ruling. As appellee indicates in his appellate brief, collateral estoppel operates as a bar to litigating claims that were already decided in a *prior action*. Here, appellant seeks to expand this concept by applying it to subsequent decisions made in the *same action*. In so doing, appellant overlooks the fact

that a prior final judgment on the merits is required in order to bar subsequent litigation of a particular issue. *Id.* Since no such final judgment was rendered in this case prior to the final hearing, the doctrine of collateral estoppel did not bar the court's reconsideration of the equity issue. Such reconsideration is expressly provided for in Civ.R. 54(B), which states that "any order * * * which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties * * * is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

{¶ 20} Accordingly, appellant's second assignment of error is not well-taken.

C. Classification of the Equity in the Marital Residence

{¶ 21} In her fourth assignment of error, appellant argues that the trial court's classification of the equity in the marital residence was against the manifest weight of the evidence.

{¶ 22} On appeal, a trial court's classification of property as marital or separate is reviewed under a manifest weight standard. *Calvert v. Calvert*, 6th Dist. Ottawa No. OT-12-024, 2013-Ohio-4421, ¶ 32, citing *Steward v. Steward*, 6th Dist. Wood No. WD-01-058, 2002-Ohio-3700, ¶ 31. The standard of review for manifest weight is the same in a civil case as in a criminal case. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 17. Under the manifest weight standard of review, we are "guided by a presumption" that the fact-finder's findings are correct. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 79-80, 461 N.E .2d 1273 (1984). When reviewing a civil

manifest weight claim, we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses to determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed. *Eastley* at ¶ 20.

{¶ 23} R.C. 3105.171(A)(3)(a)(i) provides that marital property includes "[a]ll real and personal property that currently is owned by either or both of the spouses, * * * and that was acquired by either or both of the spouses during the marriage." Citing this statute, appellant argues that the marital residence is clearly marital property "because it was bought by the parties during the marriage." The record confirms that the marital residence was indeed acquired by the parties during the marriage. However, appellee testified at the February 13 hearing that the equity in the marital residence was comprised of both marital and separate property.

{¶ 24} In situations such as this where marital property and separate property are mixed together, R.C. 3105.171(A)(6)(b) provides: "The commingling of separate property with other property of any type does not destroy the identity of the separate property as separate property, except when the separate property is not traceable." Thus, the issue here is whether the separate property is traceable.

{¶ 25} In this case, appellee clearly traced his separate property. At the hearing, he testified that the first $30,000 of the down payment used to purchase the marital residence came from the proceeds of the sale of his prior residence, which he acquired before the marriage. Additionally, appellee testified that he used an inheritance he

received to pay $41,201 toward the mortgage on the marital residence. Pursuant to R.C. 3105.171(A)(6)(a), appellee's real property acquired before the marriage, as well as his inheritance, are properly considered separate property. Therefore, the trial court's classification of the property as separate property was not against the manifest weight of the evidence.

{¶ 26} Accordingly, appellant's fourth assignment of error is not well-taken.

D. Trial Court's Division of Retirement Accounts

{¶ 27} In her third assignment of error, appellant argues that the trial court abused its discretion in offsetting the parties' interests in their pensions and in "failing to award [her] any share of the marital 401(k) property."

{¶ 28} Absent an abuse of discretion, an appellate court will not reverse a trial court's property award. *Cherry v. Cherry*, 66 Ohio St.2d 348, 355, 421 N.E.2d 1293 (1981). 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).

{¶ 29} In divorce proceedings, the trial court must divide marital property equitably between the spouses. R.C. 3105.171(B). Such marital property includes retirement benefits that were acquired during the marriage. R.C. 3105.171(A)(3)(a)(ii). In order to equitably divide retirement benefits in a divorce, "the trial court must apply its discretion based upon the circumstances of the case, the status of the parties, the nature, terms and conditions of the pension or retirement plan, and the reasonableness of the

result." *Hoyt v. Hoyt*, 53 Ohio St.3d 177, 559 N.E.2d 1292 (1990), paragraph one of the syllabus.

{¶ 30} As a state teacher, appellant participates in the State Teachers Retirement System (STRS). Appellant's STRS account has a stipulated value of $106,807. Because she does not contribute to Social Security, she is not expected to qualify for such benefits when she retires. Appellee, on the other hand, is privately employed and will be entitled to Social Security benefits. The stipulated value of such benefits is $142,380. In addition, appellee has several smaller retirement accounts, including a Fidelity Kingsway Pension Plan valued at $29,089.37.

{¶ 31} Under federal law, "a state court has no authority to divide interests in Social Security benefits." *Dickinson v. Dickinson*, 6th Dist. Wood No. WD-01-015, 2001 WL 1518044, *3 (Nov. 30, 2001), citing 42 U.S.C. 407(a). Nonetheless, Social Security benefits must be considered when allocating marital retirement benefits. *Eickelberger v. Eickelberger*, 93 Ohio App.3d 221, 227, 638 N.E.2d 130 (12th Dist.1994); *see also* R.C. 3105.171(F)(9) (requiring consideration of Social Security benefits when "relevant for purposes of dividing a public pension"). In distributing retirement benefits in a divorce, a court should first determine the extent to which those benefits vested during the marriage, and are thus subject to equitable distribution. *Bauer v. Bauer*, 6th Dist. Lucas No. L-99-1051, 2000 WL 281718, *2 (Mar. 17, 2000). Next, the court must determine the monthly benefit pertaining to each of the relevant retirement benefits. *Id.* Finally, the

court should, to the best of its ability, equalize the monthly benefit received by each party. *Id.*, citing *Eickelberger* at 228.

{¶ 32} Here, the trial court stated the following with respect to the division of the parties' retirement assets:

> How should the retirement benefits of the parties be divided taking into account all the benefits including STRS and Social Security? It is to be noted that the retirement accounts were evaluated by Pension Evaluators. The defendant makes his argument citing the *Eickelberger* case * * * that stood for the proposition that using Social Security benefits as a cash benefit to be divided is not appropriate. Rather, such benefits should be treated as an offset against the other party's public pension. Using a monthly benefit comparison between the parties is the most equitable way to offset and equalize their retirement. The Court finds this argument persuasive. Therefore, the defendant's Fidelity Kingsway Hourly Pension Plan should be divided equally between the parties by a [qualified domestic relations order] and the plaintiff keep her STRS and defendant keep his Social Security benefits.

{¶ 33} In reaching its conclusion, the trial court was assisted by a Pension Evaluators report that provided the portion of each fund that vested during the marriage, as well as a total monthly benefit amount. Specifically, the report provided the following monthly benefit amounts: (1) $1,094.18 for appellant's STRS benefit, all of which vested

during the marriage; (2) $614.25 for appellee's Fidelity Kingsway Pension benefit, 53.2503 percent of which vested during the marriage; and (3) $1,781.00 for appellee's Social Security benefit, 60.1639 percent of which vested during the marriage.

{¶ 34} Ignoring the distinction between retirement benefits that vested prior to the marriage and those that vested during the marriage, appellant compares the *entire* monthly benefit amounts in support of her argument that the trial court's distribution was inequitable. However, as provided by appellee's exhibit submitted at trial, after deducting the non-marital portion of the retirement benefits and dividing appellee's Fidelity Kingsway Pension benefit equally between the parties, appellee and appellant are left with roughly the same monthly benefit ($1,235.07 and $1,227.55, respectively). Given the equivalent monthly benefit received by the parties, we conclude that the trial court's division of the retirement accounts did not constitute an abuse of discretion.

{¶ 35} Accordingly, appellant's third assignment of error is not well-taken.

E. Deviation from the Child Support Worksheet

{¶ 36} In her fifth assignment of error, appellant argues that the trial court erred in deviating from the standard child support worksheet and guidelines. As noted above, the trial court awarded appellant child support in an amount equivalent to 80 percent of the amount provided by the child support worksheet. Appellant contends that the deviation was not warranted in this case and was "simply arbitrary."

{¶ 37} The trial court's decision on whether to deviate from the statutory support schedule and child support worksheet calculations will not be disturbed absent an abuse

of discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989); *Ontko v. Ontko*, 6th Dist. Erie No. E-03-050, 2004-Ohio-3805. The amount of child support calculated using the child support guidelines and worksheet is rebuttably presumed to be the correct amount of child support. R.C. 3119.03. However, when a shared parenting plan is utilized, such as in this case, R.C. 3119.24(A) grants the trial court the discretion to deviate from the worksheet amount if the guideline amount would be "unjust or inappropriate to the children or either parent and would not be in the best interest of the child because of the extraordinary circumstances of the parents or because of any other factors or criteria set forth in section 3119.23 of the Revised Code* * *." Further, we have previously held that, under a shared parenting plan, "a trial court does not abuse its discretion by deviating from the guidelines when it calculates child support by equitably giving parents credit for the time they have physical custody of the child." *Ontko* at ¶ 28.

{¶ 38} In this case, the trial court's judgment entry states in relevant part: "The child support obligation incorporates a deviation to the guideline amount of 20% as a credit to Defendant for additional parenting time which is appropriate and just and not against the best interest of the minor children pursuant to Magistrate's Decision previously issued herein." In addition, the court's entry reflects that the deviation is justified "based upon the timeshare and in kind contribution of the [appellee] to the needs of the children during his [parenting] time." Such factors were more thoroughly discussed in the magistrate's decision, which provides in relevant part:

> The court refers to R.C. 3119.23, which states the factors that may be considered for such a deviation, and Section D is the relevant provision, which provides for a deviation based on extended parenting time. In this matter, the parties have already agreed to a parenting schedule [that] is essentially alternating weekends and father has three mid-week visitations from 3:00 to 7:00 as opposed to one mid-week visitation per the standard parenting schedule. In addition, both parties make reference to additional in-kind expenses for the minor children's care, food, clothing and activities which they must incur for the benefit of their children while the children are in their possession.
>
> Therefore, the court finds that defendant shall be entitled to a deviation in the child support calculation for a credit of 20%. The court further finds that said deviation is [not] unjust and is appropriate and not against the best interest of the minor children.

{¶ 39} In light of the foregoing, we disagree with appellant's claim that the trial court acted arbitrarily in ordering the 20 percent deviation. Indeed, R.C. 3119.23 expressly provides for deviation from the guidelines on account of extended parenting time and significant in-kind contributions, both of which were present in this case. *See also* R.C. 3119.24(B)(1) and (3). Thus, the trial court did not abuse its discretion in deviating from the child support guidelines and worksheet.

{¶ 40} Accordingly, appellant's fifth assignment of error is not well-taken.

F. Treatment of Assets and Obligations in the Final Distribution

{¶ 41} In her sixth and final assignment of error, appellant argues that the trial court erred in excluding appellee's personal savings plan and 401(k) account when making the final property distribution. Additionally, appellant contends that the trial court erroneously determined that she should be solely responsible for the entire amount of her student loan obligation.

{¶ 42} As to appellee's personal savings plan and 401(k) account, appellant asserts that the trial court failed to identify the property as marital property. Our review of the record reveals the opposite: the trial court did identify the personal savings plan and 401(k) account as marital property. While it is true that the trial court awarded the personal savings plan and 401(k) account to appellee, the trial court also ordered appellee to pay $16,262.02 to appellant as a lump sum payment to equalize the distribution of the marital assets. After taking the payment into consideration, appellee's share of the marital property was the same as appellant's share.

{¶ 43} Appellant also argues that the trial court erred in determining that she should be solely responsible for the student loan debt she incurred during the marriage. She contends that her student loans, which were classified as marital property by the court, should have been split evenly between the parties.

{¶ 44} "Student loans obtained by one spouse during the marriage may be categorized as marital debt subject to equitable distribution of the court." *Daniel v. Daniel*, 3d Dist. Mercer No. 10-11-09, 2012-Ohio-5129, ¶ 20. However, despite its

classification as marital property, we have previously held that student loan debt incurred during the marriage may properly be allocated to the party who incurs the debt and receives the benefit. *See Ahmad v. Ahmad*, 6th Dist. Lucas No. L-00-1391, 2001 WL 1518116, *8 (Nov. 30, 2001), citing *Webb v. Webb*, 12th Dist. Butler No. CA97-09-167, 1998 WL 820838, *4 (Nov. 30, 1998) ("Including student loans in the marital estate in no way forecloses the ability of the trial court to award all of the loans to the spouse who took out the loans.").

{¶ 45} Here, the trial court determined that appellant's student loans were used solely for school expenses, and "were not utilized for the family expenses." In addition, the court found that appellant will continue to benefit from her education well into the future. Under analogous circumstances, our sister court has held that a trial court acts within its discretion when it determines that the party receiving the education should be solely responsible for its costs. *Webb* at *4. We reach the same conclusion in this case.

{¶ 46} Accordingly, appellant's sixth assignment of error is not well-taken.

III. Conclusion

{¶ 47} Based on the foregoing, the judgment of the Sandusky County Court of Common Pleas, Domestic Relations Division, is affirmed. Costs are hereby assessed to appellant in accordance with 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.

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
JUDGE

James D. Jensen, J.
CONCUR. _____
JUDGE