

[Cite as *Krankovich v. Krankovich*, 2016-Ohio-8215.]

STATE OF OHIO, HARRISON COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

DANIEL KRANKOVICH,)	
)	
PLAINTIFF-APPELLEE,)	
)	CASE NO. 16 HA 0001
V.)	
)	OPINION
KETURAH KRANKOVICH,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas, Domestic Relations Division of Harrison County, Ohio Case No. DRB-2015-0013
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JUDGMENT:	Affirmed in part Reversed in part and Remanded
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APPEARANCES: For Plaintiff-Appellee	Attorney Elgine Heceta McArdle 2139 Market Street Wheeling, WV 26003
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For Defendant-Appellant	Attorney Francesca T. Carinci Suite 904-911, Sinclair Building 100 North Fourth Street Steubenville, Ohio 43952
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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: December 14, 2016

[Cite as *Krankovich v. Krankovich*, 2016-Ohio-8215.]
DONOFRIO, P.J.

{¶1} Defendant-appellant, Keturah Krankovich, appeals from a Harrison County Common Pleas Court judgment granting a divorce to her and plaintiff-appellee, Daniel Krankovich.

{¶2} The parties were married on May 13, 2004. No children were born as issue of the marriage.

{¶3} Appellee filed for divorce on February 12, 2015. Appellant filed a counterclaim for divorce. The matter proceeded to a hearing.

{¶4} The trial court listened to testimony from both parties. The court subsequently granted the divorce. The court divided the parties' personal property, appellee's 401(K), appellant's pension, and their other assets. The court also imputed income to appellant and awarded her spousal support of \$2,000 per month for a period of 36 months.

{¶5} Appellant filed a timely notice of appeal on January 12, 2016. She now raises three assignments of error.

{¶6} Appellant's first assignment of error states:

THE COURT ERRED BY NOT CONSIDERING THE FACTORS
UNDER OHIO REVISED CODE 3105.18(C).

{¶7} At the hearing, appellant proposed a spousal support award of \$4,200 per month for six years. Appellee proposed spousal support of \$600 per month for four years. The trial court ordered spousal support of \$2,000 per month for three years.

{¶8} Appellant asserts the trial court failed to properly consider the statutory spousal support factors. She claims the court made an arbitrary support award without citing any factors or providing any reasoning. She also claims the court erred in imputing income to her at her nurse's salary because she lost her nursing job due to unproven criminal charges and severe health issues.

{¶9} We review matters surrounding spousal support decisions for an abuse of discretion. *Pariano v. Pariano*, 7th Dist. No. 15 CA 904, 2016-Ohio-560, ¶ 40.

Abuse of discretion connotes more than an error in judgment; it implies that the trial court's judgment is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶10} In determining whether a spousal support award is appropriate and reasonable and in fashioning that award, the trial court shall consider:

- (a) The income of the parties, from all sources, * * *;
- (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.

R.C. 3105.18(C)(1).

{¶11} In reviewing a spousal support award, an appellate court examines the record to determine whether the trial court considered the relevant statutory factors. *Long v. Long*, 176 Ohio App.3d 621, 893 N.E.2d 217, 2008-Ohio-3006 (2nd Dist.), at ¶ 28. The trial court need not have expressly commented on each factor. *Id.* However, the court must set forth 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, 518 N.E.2d 1197 (1988), at paragraph two of the syllabus. The court must, at the least, state the “underlying basis for the award.” *Schneider v. Schneider*, 110 Ohio App.3d 487, 494, 674 N.E.2d 769 (11th Dist. 1996). An appellate court should not speculate regarding the deliberative process of the trial court used in awarding spousal support. *Gray v. Gray*, 8th Dist. No. 78419 (June 28, 2001).

{¶12} In rendering its spousal support award, the trial court made very few findings, despite evidence going to most of the statutory factors. The court’s only findings were the following. Appellee earns approximately \$120,000 per year as a pharmacist. His take-home pay is approximately \$7,000 per month. Appellant earned \$46,000 as a registered nurse in 2014. Appellant is currently unemployed after having been arrested in February 2015. The court imputed \$46,000 in yearly income to appellant based on her education, experience, and recent work history. Thus, her imputed income was approximately \$3,000 per month. The court entered its spousal award of \$2,000 per month for 36 months based on these findings.

{¶13} The court made no mention of any of the statutory spousal support factors other than the income of the parties (R.C. 3105.18(C)(1)(a)). This was

despite testimony and evidence going to many of the other statutory factors including the relative earning abilities of the parties (R.C. 3105.18(C)(1)(b)); the ages and the physical, mental, and emotional conditions of the parties (R.C. 3105.18(C)(1)(c)); the retirement benefits of the parties (R.C. 3105.18(C)(1)(d)); the duration of the marriage (R.C. 3105.18(C)(1)(e)); the parties' standard of living during the marriage (R.C. 3105.18(C)(1)(g)); and the relative assets and liabilities of the parties (R.C. 3105.18(C)(1)(i)).

{¶14} Moreover, the court did not provide the underlying basis for how it arrived at its award. It appears as though the court may have used a figure that was approximately in the middle of the \$600 per month appellee felt was appropriate and the \$4,200 per month that appellant requested. But this court will not engage in such speculation.

{¶15} This matter must be remanded to the trial court so that it can make findings sufficient for this court to review the appropriateness of the spousal support award.

{¶16} Accordingly, appellant's first assignment of error has merit and is sustained.

{¶17} Appellant's second assignment of error states:

THE COURT USED INCONSISTENT DATES FOR PURPOSES
OF DIVIDING THE 401(K) PLAN WHICH WAS EARNED BY THE
APPELLEE AND SUBJECT TO DIVISION AS A MARITAL ASSET.

{¶18} In dividing appellee's 401(K), the trial court recognized that a portion of the 401(K) was premarital property. The parties were married on May 13, 2004. But the trial court used December 31, 2004, as the beginning date the 401(K) became marital property.

{¶19} Here appellant contends the court gave no reason for choosing a date other than the date of the marriage for determining the premarital and marital portions of appellee's 401(K). She claims this was reversible error.

{¶20} The time period of “during the marriage” is the period of time from the date of the marriage through the date of the final divorce hearing unless the trial court determines that the use of either or both of these dates would be inequitable. R.C. 3105.171(A)(2)(a)(b). If the court finds that the use of either or both of the specified dates would be inequitable, the court may select dates that it considers equitable in determining marital property. R.C. 3105.171(A)(2)(b).

{¶21} It is within the trial court’s discretion to choose the appropriate marriage start and termination dates and we will not disturb its decision on appeal absent an abuse of that discretion. *Berish v. Berish*, 69 Ohio St.2d 318, 321, 432 N.E.2d 183 (1982).

{¶22} The parties were married on May 13, 2004. Appellee testified that on December 31, 2004, the value of his 401(K) was approximately \$31,532.00 (Tr. 49). He testified that on the date of the divorce hearing, December 2, 2015, it was worth approximately \$299,000.00. (Tr. 51). The trial court then subtracted \$31,532.85 (what it found to be the premarital portion) from \$299,000.00 (the value as of the date of the final divorce hearing), which equaled \$267,467.15. The court ordered the parties to equally split this amount that it found to be marital property.

{¶23} Appellee’s statement that he provided the court with the value of his 401(K) on the date of the marriage is incorrect. Appellee submitted two exhibits for his 401(K). Exhibit 7 is a 401(K) statement dated April 23, 2015. So it does not help establish the value as of the date of the marriage. Exhibit 6 is a 401(K) statement for the period of October 1, 2004 to December 31, 2004. It shows a beginning balance of \$26,933.11 (on October 1, 2004) and an ending balance of \$31,532.85 (on December 31, 2004) with a total increase during this period of \$4,100.25.

{¶24} From the testimony and exhibits, we cannot determine what the value of appellee’s 401(K) was on the date of the marriage (May 13, 2004). But it is evident that the premarital portion of the 401(K) was less than what the trial court determined it to be. The trial court used the value of the 401(K) on December 31, 2004. The court gave no explanation for using the value as of this date. Therefore,

we must remand this matter so that the trial court can determine the value of the 401(K) on the date of the marriage. After doing so, the court can equally divide the marital portion of the 401(K) unless it finds that doing so would be inequitable.

{¶25} Accordingly, appellant's second assignment of error has merit and is sustained.

{¶26} Appellant's third assignment of error states:

THE COURT INCORRECTLY LISTED PERSONAL PROPERTY ASSETS WHICH WERE INCONSISTENT WITH THE EXHIBITS FILED AND THE DIVISION OF ASSETS THAT WERE REFERRED TO IN EVIDENCE.

{¶27} In her final assignment of error, appellant argues the trial court erred in dividing the parties' personal property. She asserts the parties each submitted a list of personal property. Appellant claims that although the court stated that it divided the personal property "by agreement of the parties," there was no agreement between her and appellee. Moreover, she claims the court did not follow the lists the parties submitted.

{¶28} Appellee agrees with appellant that the parties did not stipulate or agree to any division of personal property. He points out the record reflects that the parties agreed as to the division of some of the personal property and disagreed as to the division of some of the other personal property.

{¶29} In the section of the judgment entry titled "Personal Items," the court stated "By agreement of the parties, the Plaintiff [appellee] shall receive the following items." The trial court then listed 25 items. The court stated that appellant shall receive all personal items presently in her possession with the exception of "All items listed on Plaintiff's Exhibits 3 and 4 that have not been disposed of by agreement and listed above." Finally, the court stated that all remaining items would be sold at auction.

{¶30} At the hearing, appellant testified that she and appellee did not have an

agreement as to how many of the household items were to be divided. (Tr. 16). She submitted a list of items that were in her possession that she wished to keep. (Tr. 17; Exhibit 2). She also stated that she was willing to give some of the items to appellee. (Tr. 17-18). She stated that the items she was willing to give appellee were different than the items he was requesting on his list. (Tr. 18). The list includes many household items such as beds, mattresses, lawn mowers, tools, tables, and chairs. Appellee also submitted a list of items that he wished to be awarded. (Exhibit 4). Appellant agreed that appellee could have many of the items on his list (for example, a bike, Tempurpedic mattress, chair and ottoman), but not all of them (for example, Gladiator tool chest, laptop computer, ski tote).

{¶31} Appellee also testified that he and appellant did not have an agreement as to how to divide the household items. (Tr. 46). The parties seemed to acquiesce in holding an auction to sell most of the items, but neither of them appeared to agree wholeheartedly. (Tr. 39-42, 47-48).

{¶32} The parties agree here that they did not stipulate to the division of personal property. The trial court's reference to property that the parties agreed to divide is not correct. That being said, there were items on appellee's list of personal property that appellant "agreed" appellee could have. But there was never actually an agreement between the parties as to many of the household items. Both parties submitted lists of the property they wanted. The court did not address many of the items. And the court's order that appellant was to receive all items in her possession "that have not been disposed of by agreement" does not adequately inform the parties of who gets what. It may be the case that many items are to go to auction because there was no agreement. But, so there is no confusion, the court's order should be more precise as to exactly which items are awarded to appellant, which items are awarded to appellee, and which items are to go to auction.

{¶33} Accordingly, appellant's third assignment of error has merit and is sustained.

{¶34} For the reasons stated above, the trial court's judgment is hereby

reversed as to the spousal support award, the division of the 401(K), and the division of personal property. and the matter is remanded. On remand, the trial court shall enter specific findings as to its award of spousal support. Additionally, the court shall determine the value of the 401(K) on the date of the marriage and divide the marital portion of the 401(K) equally unless it finds that an equal division would be inequitable. Finally, the court shall make a specific award of each of the items of personal property included on each party's submitted list to include which items are awarded to appellant, which items are awarded to appellee, and which items are to go to auction. The balance of the trial court's judgment is affirmed.

Waite, J., concurs.

Robb, J., concurs.