

[Cite as *Taylor v. Taylor*, 2006-Ohio-1925.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86331

TIMOTHY N. TAYLOR,

Plaintiff-Appellee

v.

KAREN S. TAYLOR,

Defendant-Appellant

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JOURNAL ENTRY

AND

OPINION

DATE OF ANNOUNCEMENT
OF DECISION:

APRIL 20, 2006

CHARACTER OF PROCEEDING:

Civil Appeal from
Common Pleas Court,
Domestic Relations Division,
Case No. D-287474.

JUDGMENT:

AFFIRMED IN PART; REVERSED AND
REMANDED IN PART.

DATE OF JOURNALIZATION:

APPEARANCES:

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CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Karen S. Taylor ("Wife"), appeals the judgment of the Common Pleas Court, Domestic Relations Division, that granted her and plaintiff-appellee, Timothy N. Taylor ("Husband"), mutual divorces, divided the couple's marital property, ordered that Husband pay spousal support, and awarded custody of the parties' minor child, Darby, to Husband "for the school year beginning August, 2004 and ending June, 2005." We affirm that part of the entry granting the parties' mutual divorces, but reverse the remainder of the entry and remand for a new trial.

{¶ 2} The record reveals that the Taylors were married on October 25, 1980 and have four daughters. Two daughters were emancipated at the time of the divorce, although both lived intermittently with Wife; another daughter, Mackenzie, 16 years of age when the complaint for divorce was filed, lived full-time at a residential facility for severely handicapped persons and visited Wife one weekend per month; the fourth daughter, Darby, was 14 years of age at the time of the divorce and lived with Wife.

{¶ 3} The parties met during college. Wife graduated with a Bachelor of Arts in communications; Husband obtained a Bachelor of Science degree and subsequently graduated from the College of Osteopathic Medicine. The parties married when Husband was a resident at the Cleveland Clinic. After completing his medical residency and two years as a fellow, Husband joined Ohio Chest

Physicians in 1985 as a pulmonologist and critical care specialist.

Pursuant to the parties' agreement, Wife was the primary caretaker of the children and did not work outside the home throughout the marriage.

{¶ 4} Husband testified that his "kids and our family lived a privileged life. We had money, we had expensive trips, we had good schools, good clothes." Husband testified that he thinks he is a "good father," although he admitted working over 100 hours per week and being on call 24/7.

{¶ 5} Husband testified that the national average yearly income for a pulmonologist is \$180,000. His income from Ohio Chest Physicians well exceeded the national average every year he worked there, although his income was reduced from a high of \$283,888 in 2000 to \$264,008 in 2001 and \$181,018 in 2002. Husband attributed this reduction in income to increased malpractice premiums and a reduction in Medicare payments. Husband testified that his income was further reduced because several outside jobs he had held were no longer available to him and because the pay formula at Ohio Chest Physicians had changed.

{¶ 6} Husband began working at Premier Physicians in January 2003. He earned \$129,000 that year, but testified that he hoped to earn at least \$180,000 in 2004, and substantially more in the coming years, due to the pay structure at Premier. Husband testified that he was working harder at Premier than he had in the

past and doing more procedures and patient consultations. He acknowledged that, in light of his work schedule, he would need help caring for Darby if he were designated the residential parent.

{¶ 7} Husband testified that in 1986 he began suspecting that Wife had a substance abuse problem. Initially, Wife had begun taking medication to deal with chronic monthly pain issues, but Husband subsequently became aware that Wife was taking the medication more regularly. According to Husband, Wife's personality "eroded" over the past 10 years; she became argumentative and confrontational and would not acknowledge that she had a substance abuse problem. Husband testified further, however, that despite her substance abuse issue, Wife was "a good mother and able to maintain what she did at home." Husband testified that although he thought it best that he be designated the residential parent until Wife resolved her substance abuse issue, he would not object if Wife resumed custody later.

{¶ 8} Husband left the marital home in January 2002 and filed his complaint for divorce on July 11, 2002. On August 23, 2002, Wife filed a motion for support pendente lite; in December 2002, she filed a supplement to her motion for support. On December 17, 2002, the trial court issued a temporary support order in which it ordered Husband to pay \$1,293.53 for support of the minor child, and \$7,000 per month spousal support.

{¶ 9} On January 2, 2003, Husband filed a motion requesting a hearing regarding the issue of temporary support. On January 24, 2003, Wife filed a motion to show cause regarding Husband's nonpayment and for emergency relief.

{¶ 10} The pending motions were set for hearing on May 14, 2003, but before the motions were heard, on March 24, 2003, Husband filed a motion to vacate the court's previous order of temporary support.

In his motion, Husband argued that because he had changed employers as of January 2003, his income was reduced. He acknowledged that he had not paid all of the child support obligation owing to Wife, but complained that Wife's action in calling the Child Support Enforcement Agency, and its subsequent action in suspending his driver's license, was unfair and would impact on his ability to earn a living. The court granted Husband's motion ex parte the same day.

{¶ 11} As part of its order, the trial court ordered that:

{¶ 12} "The amount of child and spousal support owing to Defendant from the Plaintiff shall be determined pursuant to a Rule 75 oral hearing, and that whatever child and spousal support order the Court deems to be just and equitable will be backdated from the date of the order to December 18, 2002, provided, however, that the Plaintiff will receive credit against said order for all funds that he can prove that he has paid to the Defendant from December 19, 2002, to the date of the order."

{¶ 13} Before the court held a Rule 75 hearing, on July 7, 2003, Wife filed a motion to release funds from escrow, in which she asked the court to release to her the net proceeds from the pending sale of the marital home, which was to close on August 12, 2003. Wife asserted that she needed the money to secure a mortgage for a new house for her and the children.

{¶ 14} On April 15, 2004, the court ordered that \$11,000 be released to Husband's attorney from the escrow account established with the proceeds from the sale of the marital home and that rent for both Husband and Wife was to be paid monthly from the escrow account and credited against their later distribution from the account. The trial court also ordered that Husband pay Wife, as temporary support, \$3,000 per month commencing April 1, 2004. The court also ordered that if Wife were to seek additional funds pendente lite for time preceding the order, Husband would be given credit for funds he had paid to Wife directly, expenses paid for the children, and payments made upon marital debt "wrongfully incurred" by Wife. At trial, Husband agreed that from August 27, 2002 to July 15, 2004, he paid \$64,482.32 in child and spousal support. He acknowledged, however, that he provided no funds to Wife from December 2002 through April 2003, and further, that he made only six mortgage payments on the marital residence between August 27, 2002 and August 12, 2003, resulting in foreclosure notices and the lapse of homeowners' insurance. He further

acknowledged that although he began paying Wife \$3,000 per month in April 2004 pursuant to court order, that amount was inadequate to pay the monthly mortgage of \$2,800 and other monthly expenses. He admitted further that in 2003, he filed a joint income tax return without Wife's knowledge, had the \$9,497 refund check sent directly to him, and then spent the money to pay off his credit cards, which he had used to buy furnishings for his new condominium and equipment for his new boat.

{¶ 15} Wife testified that she was "forced to live on credit cards" because Husband did not provide enough support during the pendency of the divorce. As of trial, Wife owed personal debts to friends and relatives in the amount of \$12,600 and credit card debt in the amount of \$57,163.96.

{¶ 16} Wife admitted that shortly after Husband filed for divorce she transferred \$48,000 from a joint home equity line of credit to her personal account, but testified that much of this money was spent renovating the marital residence for sale. Husband agreed that Wife's home improvements resulted in a significant return on the investment when the house was sold on August 12, 2003.

{¶ 17} Proceeds from the sale of the marital residence in the amount of \$182,787.20 were placed into an escrow account and Husband and Wife took various disbursements from the account during the pendency of the divorce proceedings.

{¶ 18} Husband testified that Wife's substance abuse problem culminated in her arrest and conviction in the Spring of 2003 for illegal processing of drug documents. She was again arrested and indicted in July 2004, during the divorce trial, on other charges related to writing false prescriptions.

{¶ 19} Wife acknowledged that she attempted suicide in May 2004. She testified that as a result of the divorce, she had lost her home of 18 years, neighbors, and support system. During the pendency of the divorce, she had four surgeries, one daughter had an emergency tonsillectomy, and the parties' disabled daughter had blacked out, fallen and broke her arm. In addition, Husband refused to help Wife with any issues relating to the children during the pendency of the divorce and was inconsistent with child and spousal support. Wife testified that she "broke" because she "just couldn't take it anymore."

{¶ 20} Wife testified that she went to a six-week rehabilitation program in California that specializes in chronic pain issues where she "did a lot of work" and "it just changed everything for me." Wife testified that, as of the time of trial, her mental condition was much improved and very different from what it had been only six months prior. She admitted, however, that after she returned from the rehabilitation program, she obtained a legitimate prescription for Percocet. She insisted that she did not take any

of the pills but threw them out as an attempt to indicate that "you can't hurt me anymore."

{¶ 21} The trial court entered its judgment entry of divorce on September 15, 2004. It subsequently adopted Husband's proposed findings of fact and conclusions of law.

{¶ 22} Wife's seven assignments of error are set forth in the appendix to this opinion. We are unable to review her assignments of error, however, in light of various omissions in the journal entry, inconsistencies between the journal entry of divorce and the findings of fact adopted by the court, and inconsistencies within the journal entry itself.

{¶ 23} With respect to designating Husband as the residential parent and custodian of Darby, the judgment entry of divorce states:

{¶ 24} "It is further ordered, adjudged and decreed that parental rights and responsibilities for the minor child, Darby, are allocated to Plaintiff, Timothy N. Taylor, *for the school year beginning August, 2004 and ending June, 2005.* The Plaintiff, Timothy Taylor, is hereby designated the Residential Parent and Legal Custodian of the minor child, Darby Taylor, *for the present school year* with the matter of visitation to be reassessed prior to next school year, beginning August, 2005. The Defendant, Karen S. Taylor, shall be granted visitation in accordance with this

Honorable Court's Standard Visitation Guidelines." (Emphasis added.)

{¶ 25} R.C. 3105.21(A) requires that "upon satisfactory proof of the causes in a complaint for divorce *** the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with section 3109.04 of the Revised Code."

{¶ 26} The journal entry fails to make any order for the "disposition, care, and maintenance" of Darby after the end of the 2004-2005 school year. Although the findings of fact adopted by the court state that "the court finds that it is in the best interest of the minor child that the Plaintiff be named residential parent and legal custodian," without specifying a time period, this finding is inconsistent with the limited order entered by the court. Because the entry of divorce did not provide for the care, custody, and maintenance of Darby after the 2004-2005 school year, the case must be remanded for a new trial regarding child custody.

See, e.g., *Whitecotton v. Whitecotton* (1955), 103 Ohio App. 149, 155.

{¶ 27} There also is no *Castle* order regarding the parties' disabled child, Mackenzie, in the record. In *Castle v. Castle* (1984), 15 Ohio St.3d 279, the Ohio Supreme Court set forth the standard for a trial court's indefinite extension of jurisdiction

over parties to a divorce regarding support for a disabled child. The court stated:

{¶ 28} "The common law duty imposed on parents to support their minor children may be found by a court of domestic relations having jurisdiction of the matter to continue beyond the age of majority if the children are unable to support themselves because of mental or physical disabilities which existed before attaining the age of majority." *Id.*, paragraph one of syllabus.

{¶ 29} Therefore, in order to support a *Castle* finding, a trial court must find that a child is unable to support herself and that inability to be self-sufficient is the result of her mental or physical disabilities. *Ulery v. Ulery* (1993), 86 Ohio App.3d 290.

{¶ 30} The record does not indicate that such findings were made in this case, although there is an order that Husband "shall fully support" Mackenzie "until further order of this Honorable Court." Moreover, although Wife asserts that the parties stipulated that Mackenzie is a disabled child pursuant to *Castle* and that support for her should therefore continue until further order of the court, we find no such stipulation in the record.

{¶ 31} Accordingly, the case must be remanded for a determination of whether sufficient facts exist to support a *Castle* order regarding Mackenzie.

{¶ 32} We also find no child support computation worksheet pursuant to R.C. 3119.022 for either Darby or Mackenzie in the

record. Contrary to Husband's argument, the trial court did, in fact, issue a child support order in that it ordered Husband to obtain health insurance coverage for Darby and ordered that Husband be responsible for the first \$100 of uncovered medical expenses for Darby each year but remaining expenses be divided equally between Husband and Wife. See R.C. 3119.02 (explaining that contents of support order must include, inter alia, designation of who is to pay co-payment or deductible costs under the health insurance plan that covers the minor child). Pursuant to *Marker v. Grimm* (1992), 65 Ohio St.3d 139, a child support computation worksheet must be completed when any child support order is made. Because the record does not contain a worksheet, the case must be remanded for a new evidentiary hearing and completion of a child support computation worksheet.

{¶ 33} With respect to spousal support, R.C. 3105.18 requires the trial court to review the statutory factors in R.C. 3105.18(C)(1) that support such an order, and then indicate the basis for awarding spousal support in sufficient detail to facilitate adequate appellate review. *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 96-97. A trial court does not satisfy the holding in *Kaechele* by merely stating that it considered the factors enumerated in R.C. 3105.18. *Stychno v. Stychno* (Dec. 29, 1995), Trumbull App. No. 94-T-5036, citing *Killing v. Killing* (Sept. 30, 1994), Portage App. No. 93-P-0096.

{¶ 34} Here, the judgment entry of divorce does not mention the R.C. 3105.18(C)(1) factors in connection with its award of spousal support, although it orders that Husband pay Wife \$2,000 per month as spousal support until Husband retires. Regrettably, we find the statement in the findings of fact that "the court has taken into account all of the elements of ORC 3109.05 (sic) in making its order of spousal support" insufficient to permit adequate review of the court's spousal support order.

{¶ 35} With respect to the division of marital property, we note that a court is required to equitably divide and distribute the parties' marital property, including assets and liabilities. R.C. 3105.171; *Kaechele*, supra. Thus, "as a practical matter, for an appellate court to review a trial court's division of property, *** findings of value must be made so that equality of value may be examined." *Eisler v. Eisler* (1985), 24 Ohio App.3d 151, 152.

{¶ 36} We are unable to discern from this record what value the trial court assigned to the various items it distributed. Among the items awarded to Husband were "the property located at 213 W. Marina Parkway, Lorain, Ohio 44052," "his leased 2003 Ford Thunderbird vehicle," "the furniture and furnishings in his possession," "the bank accounts in his individual name," and "his own clothing, jewelry, accounts, annuities, and personal property."

Among the items awarded to Wife were "the property located at 2739 Wyndgate Court, Westlake, Ohio 44145," "the furniture and

furnishings in her possession," "the leased Ford Explorer vehicle," "the bank accounts in her individual name," and "her own clothing, jewelry, accounts, annuities, and personal property." The record does not reflect a value for the items.

{¶ 37} We also note several inconsistencies within the journal entry with respect to the division of marital liabilities. At one point, the entry states that "both parties shall be responsible for the credit card debt of the marriage equally. Said credit card debt includes the CitiBank, Quicken/Mastercard and Chase Visa debt in the amount of \$28,688.00." Later in the journal entry, however, the order states that Husband is "solely responsible" for payment of "the debt owing to CitiBank Quicken Credit Card" and "the debt owing to Chase Visa." The findings of fact, however, conclude that Wife engaged in "economic misconduct" for which she should reimburse Husband "\$28,688.00 for the Citibank/Quicken credit card." The findings of fact further conclude that Wife should pay Husband \$5,439 for her share of windows purchased for the marital home, yet the journal entry of divorce does not order her to pay Husband any money. In light of these inconsistencies, the record is not clear as to who was responsible for paying what.

{¶ 38} The termination date of the marriage is also unclear. The journal entry finds that the termination date of the marriage was July 11, 2002, the date Husband filed his complaint for

divorce, but then divides property and liabilities acquired after this date.

{¶ 39} It is also unclear as to how the trial court wished to evaluate the parties' Social Security benefits. The journal entry of divorce finds that "the Social Security benefits of the parties cannot be divided as a marital asset" because "the future retirement benefits are too speculative at this juncture to consider them as an equitable factor in this case." However, this order is inconsistent with the trial court's order entered July 29, 2004, during trial, that "Wm. Napoli shall immediately complete a present value calculation of the Social Security benefits of plaintiff and defendant" for the court and further ordering that Mr. Napoli would be paid for his valuation from the escrow account established with the proceeds of the sale of the marital home.

{¶ 40} Finally, with respect to temporary support, the record fails to indicate the amount of child and spousal support paid by Husband, although the journal entry states that Husband "is discharged of any arrearage in support payments" claimed by Wife. Without any determination of what amount Husband paid during what time period, this court is unable to review Wife's assignment of error that the trial court erred in not determining an arrearage in temporary support. Moreover, although the findings of fact state that Husband paid \$167,042.60 to Wife and their adult and minor children between December 2, 2001 and July 15, 2004, we note that

any payments made by Husband to the adult children are irrelevant to any child/spousal support order. Furthermore, we note that this finding appears to be inconsistent with Husband's admission at trial that from August 27, 2002 to July 15, 2004, he paid \$65,482.32 in child and spousal support.

{¶ 41} In light of several omissions from the record, and various inconsistencies between the journal entry and the findings of fact and within the journal entry itself, adequate appellate review of this matter is simply not feasible. Accordingly, we affirm that part of the trial court's journal entry granting the parties mutual divorces, but reverse the remainder of the entry and remand for further proceedings consistent with the law and this opinion.

{¶ 42} Affirmed in part; reversed and remanded in part.

[Cite as *Taylor v. Taylor*, 2006-Ohio-1925.]

This cause is remanded for further proceedings consistent with the opinion herein.

It is, therefore, ordered that the parties share equally the costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE
JUDGE

JAMES J. SWEENEY, P.J., AND

SEAN C. GALLAGHER, J., CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

APPENDIX

APPELLANT'S ASSIGNMENTS OF ERROR

- I. The trial court erred and abused its discretion in designating appellee residential parent and legal custodian of the parties' minor child, Darby.
- II. The trial court erred and abused its discretion in failing to make a temporary support order and not determining an arrearage.
- III. The trial court erred and abused its discretion in its award of spousal support.
- IV. The trial court erred and abused its discretion in the division of marital property.
- V. The trial court erred and abused its discretion in not awarding appellant her attorney fees and costs.
- VI. The trial court erred and abused its discretion in adopting appellee's findings of fact and conclusions of law.
- VII. The trial court erred and abused its discretion in not incorporating a child support guidelines worksheet calculation in its judgment entry.