

[Cite as *Friedler v. Friedler*, 2009-Ohio-4719.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92402

DIANE FRIEDLER

PLAINTIFF-APPELLANT

vs.

ROBERT FRIEDLER

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. D-311711

BEFORE: Jones, J., Kilbane, P.J., and Sweeney, J.

RELEASED: September 10, 2009

**JOURNALIZED:
FOR APPELLANT**

Michele A. Kalapos
8649 Westfield Park Drive
Olmsted Township, Ohio 44138

ATTORNEYS FOR APPELLEE

Lawrence M. Bocci
20676 Southgate Park Blvd.
Suite 103
Maple Heights, Ohio 44137

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Appellant-plaintiff, Diane Friedler (“appellant”), appeals the decision of the lower court. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the lower court.

STATEMENT OF THE CASE AND THE FACTS

{¶ 2} Appellant filed her complaint for divorce on July 26, 2006. Robert Friedler (“Appellee”) filed his answer and counterclaim for divorce on September 11, 2006. On December 13, 2006, the trial court issued a temporary support order pursuant to Civ.R. 75(N), and a corrected temporary support order was subsequently issued on January 24, 2007.¹ The matter came for consideration before a trial court magistrate on two separate days of trial, commencing on April 24, 2008.

{¶ 3} The trial court magistrate issued his decision on July 15, 2008. On July 29, 2008, appellee filed his objections to the magistrate’s decision. Appellant filed her objections to the magistrate’s decision on August 7, 2008. Appellee filed supplemental objections on October 3, 2008. On October 9, 2008, the trial court issued a judgment entry, sustaining in part and overruling in part appellant’s objections, and overruling in part and sustaining in part appellee’s objections. The trial court subsequently modified the magistrate’s decision.

¹The trial court’s corrected order provided that appellee pay appellant the sum of \$450.00 per month for temporary spousal support. Appellee had an arrearage on the temporary spousal support order at the time of the final hearing. However, payments were made by appellee from May 2008 until at least November 10, 2008, thereby reducing appellee’s temporary spousal support arrearage.

{¶ 4} On November 10, 2008, appellant filed a notice of appeal of the trial court's October 9, 2008 judgment entry. Appellant subsequently filed a motion for relief from judgment pursuant to Civil Rule 60(B) in the trial court with respect to the preservation of spousal support arrearages. The trial court issued a judgment entry on January 28, 2009, granting appellant's motion.

{¶ 5} Appellant and appellee were married on May 4, 1990. There were no children born as issue of this marriage. The trial court specifically found that the duration of marriage, pursuant to R.C. 3105.17(A), was from the date of marriage, May 4, 1990 through the final date of trial, April 24, 2008. Appellant was born on February 24, 1966 and was 42 years old at the conclusion of trial. Appellant is employed by Cardiovascular Clinic, Inc. as an echo cardiographer and earns \$47,000 per year. Appellee was born on April 15, 1950 and was 58 years old at the conclusion of trial. Appellee is employed by Wilmington Iron and Metal and earns \$80,000 per year.

Assignments of Error

{¶ 6} Appellant assigns three assignments of error on appeal:

{¶ 7} “[1.] The trial court erred and abused its discretion by failing to award spousal support to the appellant.

{¶ 8} “[2.] The trial court erred and abused its discretion in ordering that appellee's interest in appellant's employee IRA stock account shall be offset by any temporary support arrearage owed by appellee.

{¶ 9} “[3.] The trial court erred and abused its discretion in ordering that appellee’s interest in appellant’s employee IRA stock account shall be offset by appellee’s obligation owed on the American Express Card.”

LEGAL ANALYSIS

Spousal Support Award

{¶ 10} Appellant argues in her first assignment of error that the trial court erred because it failed to award spousal support payments to her. In reviewing the equity of a division of property, one of the basic guidelines an appellate court is bound to follow is that the trial court’s judgment cannot be disturbed on appeal absent a showing that the common pleas court abused its discretion in formulating its division of the marital assets and liabilities of the parties. *Martin v. Martin* (1985), 18 Ohio St.3d 292.

{¶ 11} In making spousal support awards, R.C. 3105.18 requires the trial court to review the statutory factors in R.C. 3105.18(B) 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, 518 N.E.2d 1197, 1200-1202.

{¶ 12} R.C. 3105.18, Spousal support, subsection (C) provides the following:

“(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.”

{¶ 13} Appellant argues that the trial court did not provide its rationale as to the court's findings with regard to the factors set forth in the statute pertinent to spousal support, R.C. 3105.18(C)(1).

“In determining whether to grant spousal support and in determining the amount and duration of the payments, the trial court must consider the factors listed in R.C. 3105.18(C)(1)(a)-(n). *A trial court has broad discretion to examine all the evidence before it determines whether an award of spousal support is appropriate. A decision regarding spousal support will not be disturbed on appeal absent an abuse of that discretion.*” (Emphasis added.)

Cooper v. Cooper, Cuyahoga App. No. 86718, 2006-Ohio-4270, at ¶ 8.

{¶ 14} The trial court making a spousal-support award must review the statutory factors that support such an order and then indicate the basis for awarding support *in sufficient detail* to facilitate adequate appellate review. (Emphasis added.) *Stafinsky v. Stafinsky* (1996), 116 Ohio App.3d 781, 689 N.E.2d 112. In *Stafinsky* the appellate court stated that,

“The order in the present case is similar to the order in *Stychno*,² *except that this final order does not refer to even the parties' income levels.* Accordingly, as the order in this case clearly is inadequate because it does not provide reasons for the award of spousal support, appellant's first assignment is with merit, and this case must be remanded for the trial court to adequately reference the rationale for awarding spousal support.”³ (Emphasis added.)

²*Stychno v. Stychno* (Dec. 29, 1995), Trumbull App. No. 94-T-5306.

³*Stafinsky v. Stafinsky*, 16 Ohio App.3d 781, 784.

{¶ 15} The case at bar is distinguishable from *Stafinsky* and *Stychno*. The trial court in the case at bar *did* provide adequate justification for its decision. Here, the trial court stated in its journal entry that it considered plaintiff's objections, defendant's supplemental objections, the Magistrate's decision, and the evidence prior to making its decision:

"The Magistrate's Decision was issued on July 15, 2008. On July 29, 2008[,] Defendant's Objections to Magistrate's Decision were timely filed.⁴ On August 7, 2008, Plaintiff filed her Objection to Magistrate's Decision. Subsequently, Defendant filed a Motion for Extension of Time Within Which to File Objections to Magistrate's Decision, which was granted, giving Defendant until October 3, 2008 to file his supplemental objections. Defendant filed his supplemental objections on October 3, 2008.

*"After a review of the objections, the Magistrate's Decision and the evidence before the Magistrate, the Court finds that Defendant's objection should be overruled in part and sustained in part, that Plaintiff's objections should be sustained in part and overruled in part, and that consequently, the Magistrate's Decision should be modified and adopted as set forth below."*⁵ (Emphasis added.)

{¶ 16} In addition to considering the Magistrate's decision, the parties' objections to the Magistrate's decision, and the evidence before making its decision, the trial court also examined the plaintiff's IRA and the parties' credit cards before it denied spousal support. The trial court stated the following in its judgment entry:

⁴The text of Defendant's Objections to Magistrate's decision states simply that Defendant objects to the amount and duration of the spousal support without any support. However, it does request an extension of time to supplement Defendant's Objection to Magistrate's Decision.

⁵See, October 9, 2008, Domestic Relations Court, Judgment Entry, p.1.

“The Court finds that Plaintiff owns an employee IRA stock account containing approximately \$16,000.00. The Court finds this account to be a marital asset. Additionally, the Court finds that the parties have an American Express Credit Card with a balance of approximately \$5,737.00 and a Sears Credit Card with a balance of approximately \$662.00. The Court finds both of these credit cards to be marital debts. Finally, the Court finds that the Sears Credit Card was used to purchase a dryer which is in the possession of Plaintiff.”

{¶ 17} Prior to denying spousal support, the trial Judge also considered: (1) The length of the marriage, “the duration of the marriage is from May 4, 1990 until April 24, 2008”; (2) The potential equity in the home, “The real property is to be sold and any resulting profit or deficiency is to be divided equally between the parties”; (3) The expenses involved with the living arrangements, “While Plaintiff continues to reside in the marital home she shall be responsible for the payment of the mortgage, insurance and property taxes.”⁶

{¶ 18} After providing the above rational behind its ruling, the court again reiterated that it reviewed all of the factors set forth in R.C. 3105.18(C) before it found that an award of spousal support in this case would not be equitable: *“After a review of all of the factors set forth in O.R.C. _3105.18(C) and the foregoing modification of the Magistrate’s Decision, the court finds that an award of spousal support would not be equitable.”*⁷ (Emphasis added.)

{¶ 19} Upon review of the magistrate’s decision and the trial court’s subsequent modification denying the award, we find the trial court satisfied the

⁶See, October 9, 2008, Judgment Entry, p.2.

⁷See, October 9, 2008, Judgment Entry, p. 3.

requirements to provide its facts and reasons for determining spousal support as it did. Despite appellant's claims to the contrary, our examination of the record and evidence reveals that in reviewing the magistrate's recommendation, and all of the remaining evidence, the trial court addressed the pertinent statutory factors in R.C. 3105.18(C)(1) and acted properly. We find no abuse of discretion.

{¶ 20} Accordingly, appellant's first assignment of error is overruled.

Individual Retirement Account (IRA)

{¶ 21} Appellant argues in her second and third assignments of error that the court erred in ordering her IRA to be offset by any temporary support arrearages and obligations on the American Express Card.

{¶ 22} Appellant argues that she has restrictions with respect to taking funds from her employee IRA and she is only able to borrow funds and would be limited to only a portion of her contributions. However, a review of the record demonstrates that appellant did not present any testimony at the hearing before the magistrate regarding any purported restrictions concerning her IRA.

{¶ 23} "A reviewing court cannot add matter to the record before it, which was not part of the trial court's proceedings, and then decide the appeal on the basis of the new matter." *State v. Ishmail* (1978), 54 Ohio St.2d 402, paragraph 1.

{¶ 24} Appellant argues that she is in need of liquid funds and while a set-off against any temporary support owed by appellee would benefit her financially, it would not help her with her current liquidity problems. Unfortunately for appellant,

the trial court is not legally obligated to ensure her liquidity. The trial court is only obligated to make sure that it does not act in an unreasonable, arbitrary or unconscionable manner and in this case the court has not acted unreasonably, arbitrarily or unconscionable. We find the trial court's actions concerning the temporary support offset in this matter to be proper.

{¶ 25} Appellant claims in her final assignment of error that the trial court erred in its American Express credit card debt allocation. A review of the October 9, 2008 journal entry indicates that the trial court only expects appellant to pay for one-half of the American Express debt: "Defendant shall be entitled to one-half of Plaintiff's IRA stock account *less one half of the obligation owed on the American Express Card*. Plaintiff shall assume all responsibility for the payment of the American Express Card." (Emphasis added.)

{¶ 26} The court states that appellant must assume all responsibility for the payment of the American Express Card; however, this is only after the offset against appellee. In this third assignment of error, appellant again argues that she has liquidity problems and would prefer that appellee pay American Express outright instead of having the court apply the offset. However, as previously stated, appellee's liquidity preferences are not legal obligations that the court must modify to appellant's satisfaction.

{¶ 27} A review of the evidence demonstrates that the trial court supported its denial of spousal support to appellant in sufficient detail. Moreover, we find no

abuse of discretion on the part of the lower court. The trial court's decision is clearly supported by competent, credible evidence.

{¶ 28} Accordingly, appellant's second and third assignments of error are overruled.

{¶ 29} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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.

LARRY A. JONES, JUDGE

MARY EILEEN KILBANE, P.J., and
JAMES J. SWEENEY, J., CONCUR

