

[Cite as *Hloska v. Hloska*, 2015-Ohio-2153.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101690

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**CHARLETTE HLOSKA**

PLAINTIFF-APPELLANT

vs.

**ROBERT HLOSKA**

DEFENDANT-APPELLEE

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**JUDGMENT:**  
**AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Domestic Relations Division  
Case No. DR-13-347786

**BEFORE:** Boyle, J., Kilbane, P.J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** June 4, 2015

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MARY J. BOYLE, J.:

{¶1} Plaintiff-appellant, Charlette Hloska (“Charlette”), appeals the trial court’s decision awarding defendant-appellee, Robert Hloska (“Robert”), spousal support and attorney fees. Finding no merit to the appeal, we affirm.

Procedural History and Facts

{¶2} The parties were married on August 19, 1998. They have no children together from the marriage. In July 2013, Charlette filed a complaint for divorce, alleging that the parties were incompatible and seeking an equitable distribution of the parties’ property. Robert subsequently answered and counterclaimed, also alleging that the parties were incompatible and seeking an equitable distribution of their property as well as spousal support.

{¶3} The parties reached an agreement as to the division of their property. They, however, could not reach a resolution as to the issue of spousal support. Robert maintained that he was entitled to some spousal support from Charlette, who earned considerably more income than him (approximately \$60,000 more). Conversely, Charlette maintained that he was entitled to none.

{¶4} In April 2014, the matter proceeded to trial before a magistrate on the issues of spousal support and attorney fees. Six witnesses testified at the hearing: (1) the parties testified as to their income and expenses, (2) three witnesses offered by Charlette testified as to Robert’s business activities, and (3) Robert’s attorney testified as to her fees incurred and work performed in seeking spousal support.

{¶5} The evidence established that Charlette, who was 52 years of age at the time of trial, works as a settlement supervisor for Kaplan Trucking Company, where she has been employed for 22 years. In 2012, Charlette reported earning \$70,237, approximately \$3,000 more than the previous year, and approximately \$10,000 more than in 2010. Charlette also receives health insurance through her employment and makes a voluntary contribution of approximately \$470 per month into her 401K retirement plan. Charlette's retirement benefits include social security and a 401K through her employer valued at approximately \$70,000.

{¶6} Robert, who was 62 years of age at the time of trial and one month shy of his 63rd birthday, is self-employed as a mechanic. He has been self-employed for almost the entire 22 years that the parties have lived together. Robert earns significantly less income than Charlette, reporting income of \$9,328 in 2012, \$11,018 in 2011, and \$11,329 in 2010. Robert does not receive any health insurance as a benefit of his employment and does not make any voluntary contributions to any retirement plan. His retirement benefits include social security and a 401K valued at approximately \$3,300. Robert testified that he is eligible for Medicare health insurance coverage in two years when he attains the age of 65. Robert further testified that the monthly cost for COBRA premiums through Charlette's health insurance plan maintained through her employer is \$543 per month.

{¶7} The trial court ultimately concluded that Robert was entitled to spousal support and attorney fees. Specifically, the magistrate awarded Robert \$600 per month

in spousal support for a period of two years, beginning on May 1, 2014 and ending on May 1, 2016, subject to either parties' death or Robert's remarriage or cohabitation with an unrelated adult. The magistrate further awarded \$3,000 in attorney fees — the amount of fees that Robert incurred in connection with his attorney's trial preparation and trial time on the issue of spousal support.

{¶8} Charlette objected to the magistrate's decision. The trial court, however, overruled the objections and adopted the decision of the magistrate. From that decision, Charlette appeals, raising the following three assignments of error:

I. The trial court abused its discretion and erred as a matter of law when awarding appellee spousal support when virtually all of the statutory factors weigh in favor of appellant and against an award of spousal support.

II. The trial court abused its discretion and erred as a matter of law when failing to determine appellant's net disposable income and incorrectly adding up her living expenses, not properly considering the fact her expenses increased after the separation as appellee no longer contributed \$1,000 to the household and/or in not considering the refinance/equity line payment of about \$500 per month incurred by appellant to finance the property division to appellee and in considering an unguaranteed, undetermined annual bonus into her income resulting in an award of spousal support that appellant cannot afford to pay and that is inappropriate and unreasonable.

III. The trial court abused its discretion and erred as a matter of law when ordering appellant to pay as additional spousal support appellee's attorney's fees in the sum of \$3,000 when it failed to find that such award was equitable or warranted on the facts of the instant case and in finding that appellant acted in bad faith by not agreeing to offer an amount for spousal support despite that the parties did, in fact, negotiate every other

issue and specifically agreed as evidenced in joint exhibit 2 that the issue of spousal support would be decided by the court if they continued to disagree.

### Spousal Support

{¶9} In her first assignment of error, Charlette argues that the trial court abused its discretion and erred in ordering her to pay \$600 per month in spousal support until May 1, 2016. She further argues in her second assignment of error that the trial court failed to properly consider her income and expenses when calculating the amount of the spousal support. We disagree.

{¶10} 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). *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 518 N.E.2d 1197 (1988), paragraph one of the syllabus. The factors are as follows:

- (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.

R.C. 3105.18(C)(a)-(n).

{¶11} The goal of spousal support is to reach an equitable result. *Kaechele* at 96.

And while there is no set mathematical formula to reach this goal, the Ohio Supreme Court requires the trial court to consider all 14 factors of R.C. 3105.18(C) and “not base its determination upon any one of those factors taken in isolation.” *Id.*

{¶12} The award of spousal support lies within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Holcomb v. Holcomb*, 44 Ohio St.3d 128, 130, 541 N.E.2d 597 (1989); *see also Moore v. Moore*, 83 Ohio App.3d 75, 78, 613 N.E.2d 1097 (9th Dist.1992).

{¶13} The magistrate issued a detailed opinion, specifically addressing all of the factors that applied to the parties. Charlette contends, however, that the magistrate wrongly applied the factors and that the factors “virtually all weigh heavily in support of [her] and against an award of spousal support.” The thrust of Charlette’s argument is that her higher income should not matter when Robert chooses to work significantly less than she does. She further contends that Robert received \$50,000 as part of the parties’ property division, which should have alleviated the need for any spousal support, and that the trial court placed too much emphasis on Robert’s increased health insurance costs. We disagree.

{¶14} Here, the record reflects that the parties have been married for 16 years and have enjoyed an average standard of living. Charlette’s reported income in 2012 was seven times higher than Robert’s. And while Charlette clearly believes that Robert has a higher earning potential and that the court should have imputed him a higher income than minimum wage, we find that the evidence in the record belies this claim. Robert testified that he bills \$50 an hour but explained the difficulty in obtaining work at this rate. He further testified that, although he may perform a number of hours for a client, he does not bill for all those hours if he does not fix the problem causing the client to seek his services. Aside from Charlette’s own conjecture, she offered no evidence of 40 hours of work available to Robert at his \$50 an hour rate. Further, as noted by the trial court, the three witnesses Charlette called to testify as to Robert’s business did not establish any discernible income or specific lack of reporting of income by Robert.



{¶15} The record therefore clearly establishes that Robert’s income is measurably less than Charlette’s, and Charlette has much greater earning ability. Second, while Charlette places great emphasis on the \$50,000 that Robert is entitled to under the parties’ division of property, we note that Charlette specifically negotiated this amount in exchange for other assets that she kept, such as the marital residence and her retirement account. She therefore cannot now reasonably attack the property division as grounds for preventing a spousal support award. Indeed, there was no stipulation that the division of property was contingent on a no spousal support award.<sup>1</sup> Third, we find no error in the trial court considering Robert’s increased costs of health insurance now that he no longer benefits from Charlette’s plan. Finally, we find that the court properly weighed all of the factors in ultimately determining an award of spousal support that is both reasonable and equitable.

{¶16} We likewise find no merit to Charlette’s claim that the trial court failed to properly consider her ability to pay spousal support. The trial court clearly relied on Charlette’s submitted W-2s for purposes of determining her income and ability to pay spousal support. We further find that the trial court took into account Charlette’s stated living expenses as set forth on her financial disclosure statement and “adjusted by testimony” in arriving upon the spousal support amount. We simply cannot say that the

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<sup>1</sup> Certainly, the marital residence could have been sold with the proceeds being divided equally among the parties. Similarly, a QDRO (“qualified domestic relations order”) could have been issued to divide the marital portion of Charlette’s retirement account. Charlette, however, elected to borrow \$50,000 to buy out Robert’s interest in their marital property. This amount represents a fair and equitable division of the parties’ property that the parties specifically negotiated.

trial court abused its discretion in awarding \$600 per month for two years based on the record before us.

{¶17} The first and second assignments of error are overruled.

#### Attorney Fees

{¶18} In her third assignment of error, Charlette argues that the trial court erred and abused its discretion in awarding, as additional spousal support, attorney fees in the amount of \$3,000.

{¶19} Although there are “no automatic attorney fees” in domestic relations cases, R.C. 3105.73(A) provides a trial court “may award all or part of reasonable attorney fees and litigation expenses to either party if the court finds the award equitable.” *Rossi v. Rossi*, 8th Dist. Cuyahoga Nos. 100133 and 100144, 2014-Ohio-1832, ¶ 100. In determining whether an award of attorney fees is equitable, “the court may consider the parties’ marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate.” R.C. 3105.73(A).

{¶20} The decision to award attorney fees under R.C. 3105.73(A) rests within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *Walpole v. Walpole*, 8th Dist. Cuyahoga No. 99231, 2013-Ohio-3529, ¶ 33, citing *Rand v. Rand*, 18 Ohio St.3d 356, 359, 481 N.E.2d 609 (1985).

{¶21} Contrary to Charlette’s assertion, we find that the trial court specifically considered whether an award of attorney fees was equitable. The trial court properly

exercised its discretion and limited its award of attorney fees only to the fees incurred in connection with the issue of spousal support. Aside from the significant difference in the parties' income — a factor supporting an award of attorney fees in Robert's favor — the record further reveals that Charlette's refusal to negotiate in good faith was a significant factor in the trial court's decision to award the attorney fees. The trial court specifically noted that "[a]ll of [Robert's] legal services were necessary under the facts of the case and trial itself was necessitated by the lack of a good faith offer of spousal support and/or the lack of response to [Robert's] proposed spousal support." Based on the record before us, we find that the award of attorney fees in this case was equitable.

{¶22} The third assignment of error is overruled.

{¶23} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

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MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and  
SEAN C. GALLAGHER, J., CONCUR

