

[Cite as *Williams v. Williams*, 2016-Ohio-7487.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103975

NATHANIEL WILLIAMS

PLAINTIFF-APPELLANT

vs.

S. MARIE WILLIAMS

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-13-349363

BEFORE: Boyle, J., E.A. Gallagher, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: October 27, 2016

ATTORNEYS FOR APPELLANT

Natalie F. Grubb
Jessica M. Bartolozzi
Mark E. Owens
Grubb & Associates, L.P.A.
437 W. Lafayette Road
Suite 260-A
Medina, Ohio 44256

FOR APPELLEE

S. Marie Williams, pro se
18013 Hillgrove Avenue
Cleveland, Ohio 44119

MARY J. BOYLE, J.:

{¶1} Plaintiff-appellant, Nathaniel Williams (“husband”), appeals from a judgment of the Cuyahoga County Court of Common Pleas, Domestic Relations Division, overruling his objections to the magistrate’s decision and granting him a divorce from defendant-appellee, S. Marie Williams (“wife”). Husband raises four assignments of error for our review:

1. The trial court abused its discretion when it awarded appellee indefinite spousal support of \$400 a month because the amount is inequitable and unreasonable, as appellee is not disabled.
2. The trial court abused its discretion when it awarded appellee indefinite spousal support of \$400 a month from appellant because appellee was not disabled at the time of the termination of the marriage.
3. The trial court abused its discretion when it failed to sanction appellee when she failed to abide by a court order to produce overdue discovery to appellant.
4. The trial court abused its discretion when it failed to award appellant attorney fees when it granted appellant’s unopposed motion to compel discovery responses of appellee.

{¶2} Finding no merit to husband’s appeal, we affirm.

I. Procedural History and Factual Background

{¶3} The parties were married in June 1993. They had two children during their marriage, but only one was a minor at the time of the divorce; the juvenile court, however, had jurisdiction over the child.

{¶4} Husband and wife physically separated on April 1, 2008. Husband filed a complaint for divorce on October 25, 2013. Husband was granted an uncontested divorce from wife in March 2014. A few weeks later, however, wife filed a motion for relief from judgment, which the trial court granted.

{¶5} A magistrate held a two-day hearing on husband's complaint for divorce in June 2015, and subsequently issued his decision on all matters. The magistrate recommended that the duration of the marriage be from June 7, 1993 to April 1, 2008. The magistrate further recommended that husband pay wife \$400 per month in spousal support indefinitely, but that the court should retain jurisdiction to modify the spousal support.¹

{¶6} Husband filed objections to the magistrate's decision, challenging the amount and duration of the spousal support, as well as the magistrate's decision recommending that his request for attorney fees — relating to his motion to compel wife to respond to his discovery requests — be denied.

{¶7} The trial court overruled husband's objections and adopted the magistrate's decision in its entirety. It is from this judgment that husband appeals.

II. Amount and Duration of Spousal Support

¹The magistrate further stated that spousal support would terminate upon the death of either party or upon the remarriage or cohabitation of wife.

{¶8} In his first and second assignments of error, husband challenges the duration and amount of the spousal support. We will address these assignments together as they are related.

{¶9} A trial court enjoys broad discretion in awarding spousal support. *Gordon v. Gordon*, 11th Dist. Trumbull No. 2004-T-0153, 2006-Ohio-51, ¶ 13. 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. *Deacon v. Deacon*, 8th Dist. Cuyahoga No. 91609, 2009-Ohio-2491, ¶ 57, citing *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 96-97, 518 N.E.2d 1197 (1988). The factors the trial court must consider include each party's income, earning capacity, age, retirement benefits, education, assets and liabilities, and physical, mental, and emotional condition, the duration of the marriage, their standard of living, inability to seek employment outside the home, contributions during the marriage, tax consequences, and lost income due to a party's fulfillment of marital responsibilities. R.C. 3105.18(C)(1)(a)-(m). In addition, the trial court is free to consider any other factor that the court finds to be "relevant and equitable." R.C. 3105.18(C)(1)(n).

{¶10} The goal of spousal support is to reach an equitable result. *Kaechele* at 96. While there is no set mathematical formula to reach this goal, the court must consider all of the factors outlined above and "not base its determination upon any one of those factors taken in isolation." *Id.* The trial court is not required to enumerate each statutory factor, however, it must demonstrate that it considered all of the "relevant

factors.” *Marsh v. Marsh*, 6th Dist. Ottawa No. OT-09-036, 2010-Ohio-5023, ¶ 6. Essentially, either the record or the trial court’s decision must articulate the basis for the award in sufficient detail “to enable an appellate court to establish whether the award is fair, equitable and in accordance with the law.” *Kaechele* at 97; *Friedler v. Friedler*, 8th Dist. Cuyahoga No. 92402, 2009-Ohio-4719, ¶ 11, citing *Stafinsky v. Stafinsky*, 116 Ohio App.3d 781, 689 N.E.2d 112 (11th Dist.1996).

{¶11} The Ohio Supreme Court has long recognized that a trial court must have discretion to do what is equitable upon the facts and circumstances of each divorce case. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). Thus, when reviewing a trial court’s determination in a domestic relations case, including spousal support, an appellate court generally applies an abuse of discretion standard. *Holcomb v. Holcomb*, 44 Ohio St.3d 128, 130, 541 N.E.2d 597 (1989); *Masitto v. Masitto*, 22 Ohio St.3d 63, 66, 488 N.E.2d 857 (1986). An abuse of discretion “implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Under this deferential standard, we may not freely substitute our judgment for that of the trial court. *Deacon* at ¶ 14, citing *Soulsby v. Soulsby*, 4th Dist. Meigs No. 07CA1, 2008-Ohio-1019.

{¶12} In this case, the magistrate set forth a detailed and thorough finding regarding each of the relevant factors under R.C. 3105.18(C)(1). The magistrate’s findings regarding these factors were as follows.

{¶13} The magistrate found that husband had been a truck driver for 31 years. Wife used to work for Cleveland Public Power as a “store clerk,” but had not worked there or anywhere else since 1996. The magistrate found that husband earned \$41,400 annually from driving a truck, and that wife made \$8,400 from social security. The magistrate found that husband was limited to 40 hours per week at \$19.95 per hour with no possibility of overtime, with small pay increases yearly. Regarding wife’s earning ability, the magistrate found that her medical records established that she was disabled “and likely will never earn substantial income.”

{¶14} Regarding the “ages and physical, mental and emotional conditions of the parties,” the magistrate found that husband was 54 years old and wife was 56 years old. The magistrate found that husband had high blood pressure, Type II diabetes, and had an enlarged heart. The magistrate found that according to wife’s “extensive medical records” that were introduced into evidence, wife suffered a series of strokes that have caused her to live in an assisted living facility, and that she was not compliant with the recommended treatment for diabetes before the stroke. The magistrate further found that although wife did not submit documentary evidence regarding her income, wife testified that she received social security income because of her poor health.

{¶15} As for retirement benefits, the magistrate found that husband had a 401K, which wife received the marital portion in the amount of \$7,800. The magistrate further found that wife “may have an OPERS pension from her time working” at Cleveland Public Power.

{¶16} The magistrate found that for purposes of spousal support, the marriage was of a long duration — 22 years. The magistrate found that husband’s arguments that wife had her strokes after he left the home to be without any legal basis, and noted that the de facto termination date of the marriage of April 1, 2008, was not relevant to determining spousal support.

{¶17} The magistrate found that R.C. 3105.18(C)(1)(f) (regarding the residential parent’s ability to work outside the home) was not relevant to this case, and that there was little or no evidence regarding the parties’ standard of living during the marriage.

{¶18} Regarding the relative assets and liabilities of the parties, the magistrate found that the marital property had been divided equally. The magistrate noted that husband’s argument that wife should not receive spousal support because her adult son supports her was without any legal basis.

{¶19} The magistrate found that R.C. 3105.18(C)(1)(j), (k), and (m) were not applicable. The magistrate further found that the tax consequences supported the reasonableness of “the spousal support award recommended.” And the magistrate also considered the fact that husband was the residential parent as granted by the juvenile court, and that he did not receive child support.

{¶20} After considering its findings relative to each factor, the magistrate concluded that it was reasonable to recommend that wife be awarded spousal support in the amount of \$400 per month. Additionally, the magistrate recommended that because

of wife's health issues, the term for spousal support should be indefinite. The magistrate further stated:

[T]he court should retain jurisdiction with regard to duration and amount. Specifically spousal support should be revisited, upon the filing of the proper motion, if [wife] has an increase in income (from employment, government benefits, or from an OPERS pension); or if [husband's] income changes from employment, retirement, or via the receipt of government benefits on behalf of the minor child. Spousal support should terminate upon the death of either party or upon remarriage, or cohabitation of [wife].

{¶21} The trial court addressed each of husband's objections regarding spousal support and overruled them. The trial court stated that the magistrate "clearly considered all of the factors under R.C. 3105.18(C)(1) and indicated the basis for his award in sufficient detail." The trial court found the award of indefinite spousal support, which the court retained jurisdiction to modify, to be reasonable under the circumstances.

The trial court further noted that husband's arguments that wife deceived the court as to the amount of income she received was without merit because the magistrate found wife's testimony credible. The trial court reasoned that husband's argument that he should not have to pay spousal support because wife's adult son supports her was without merit because the son was not legally obligated to support his mother. Finally, the trial court found that the magistrate's reliance on wife's testimony and the medical records was proper, and that the magistrate was in the best position to evaluate all of the evidence.

{¶22} Husband raises several arguments relating to the trial court's spousal support order. He argues heavily throughout his first and second assignments of error that wife did not prove that she was disabled. He asserts that she did not testify that she

was disabled; she did not provide documentation that she was disabled; her medical records do not state that she was disabled; she did not even testify as to what her current diagnosis was; and she did not give any reason as to why she could not work. We disagree.

{¶23} In spousal support determinations, “[e]xpert medical testimony is not necessary to prove the cause of the spouses’s disability as long as the ailing spouse testifies concerning the disability and is subject to cross-examination.” *Watchowski v. Watchowski*, 3d Dist. Henry No. 7-09-07, 2010-Ohio-1501, ¶ 19, citing *Quigly v. Quigly*, 6th Dist. Lucas No. L-03-1115, 2004-Ohio-2464, and *Gullia v. Gullia*, 93 Ohio App.3d 653, 662, 639 N.E.2d 822 (8th Dist.1994). Here, wife submitted her medical records. Although these records did not state or conclude that wife had a “disability,” the records did establish that wife had motor and cognitive impairment because of a stroke. Further, even though wife did not state, “I am disabled,” she testified that she had multiple strokes, and that she had been living at ManorCare, which is an assisted living facility, for approximately six months. Wife further stated that she is receiving rehabilitation services at ManorCare for her strokes, and told the court that she can now walk with a brace and that her speech was “coming back.” Wife agreed though that she was limited in her “health, attention, focus, and ability for long periods of time.” Thus, wife established that she was disabled at the time of the divorce hearing for purposes of the spousal support determination and that she was unable to obtain employment at that time.

{¶24} Husband further argues that the trial court abused its discretion in ordering that the spousal support continue indefinitely. In regard to the duration of a spousal support award, the Ohio Supreme Court has held as follows:

[A]wards of alimony for sustenance and support should be made terminable upon a date certain in the vast majority of cases wherein both parties have the potential to be self-supporting. In such cases, an award of alimony terminable upon a date certain provides both the interim support necessary to the recoverer of the award and certainty in the judgment.” * * *

[P]roviding a termination date is not legally mandated and, in some situations, it could work a hardship on either the payor or payee. Therefore, “* * * in cases involving a marriage of long duration, parties of advanced age, and a homemaker-spouse with little opportunity to develop a career, a trial court may, in the proper exercise of its discretion, award alimony terminable only upon certain contingencies[.]

* * *

The reason for awarding sustenance alimony payable only to a date certain is that the payee’s need requiring support ceases, when, under reasonable circumstances, the payee can become self-supporting. Conversely, if under reasonable circumstances a divorced spouse does not have the resources, ability or potential to become self-supporting, then an award of sustenance alimony for life would be proper.

Kunkle v. Kunkle, 51 Ohio St.3d 64, 68-69, 554 N.E.2d 83 (1990), quoting *Koepke v. Koepke*, 12 Ohio App.3d 80, 81, 466 N.E.2d 570 (6th Dist.1983).

{¶25} Here, the trial court determined that the marriage was of a long duration and that wife was not able to support herself at the time of the divorce hearing because of her health issues. The trial court did not abuse its discretion in ordering that the spousal support continue indefinitely, at least until certain changes occur.

{¶26} Husband maintains the trial court should have used the de facto termination date of April 1, 2008, and then his marriage was not one of “long duration” and wife was not “disabled” on that date. We disagree. Courts are not required to order the commencement of spousal support as of the de facto termination date of the marriage. *See Saks v. Riga*, 8th Dist. Cuyahoga No. 101091, 2014-Ohio-4930, ¶ 85; *Best v. Best*, 10th Dist. Franklin No. 11AP-239, 2011-Ohio-6668, ¶ 31 (trial court did not err when it ordered husband to begin paying spousal support as of the date of the final decree rather than the de facto termination date; the court reasoned that “[a]lthough the trial court could have chosen a different commencement date, such as the de facto termination date, nothing required the trial court to do so.”).

{¶27} Moreover, under R.C. 3105.171(A)(2), courts may use a de facto termination date for determining what is marital property and valuing that property for purposes of “equitable division of marital and separate property.” That is what the trial court did in this case — used the de facto termination date for valuing the marital property as of that date and equitably dividing it. But even if the trial court would have used the de facto termination date for purposes of spousal support, the duration of the marriage is only one factor to consider when determining what amount of spousal support is appropriate under R.C. 3105.18(C)(1).

{¶28} Husband also argues that \$400 was excessive based on his income, and the fact that he does not have many assets and wife does not pay him child support. He cites to this court’s decision in *Ballinger v. Ballinger*, 8th Dist. Cuyahoga Nos. 100958,

101074, 101655, and 101812, 2015-Ohio-590, to support this argument. Husband claims that in *Ballinger*, the husband made \$180,000 at the time the marriage ended, but was only ordered to pay \$459 per month. Husband contends that he only makes \$41,400 annually, but was ordered to pay just \$59 per month less than the husband in *Ballinger*.

{¶29} Husband misrepresents the facts in *Ballinger*. At the time of the divorce hearing, the husband in *Ballinger* was 65 years old and had recently retired. The wife in *Ballinger* was 68 years old and had retired when she was 62. While the divorce was pending, the husband was ordered to pay the wife \$3,500 per month; during that time, the husband was *still earning* \$188,000 annually because he had not yet retired. But at the time of the final hearing, *he had retired*. He was no longer making the kind of money he made when the court ordered him to pay temporary support. The husband's retirement benefits were split equally between the parties. During retirement, the husband would receive twice the amount of social security benefits as the wife would. This court affirmed the trial court's indefinite spousal support award of \$459 to the wife in *Ballinger* based on the parties' circumstances at the time of the final hearing. There are several other distinguishing facts in *Ballinger*, including the fact that the wife was in "fairly good health." *Id.* at ¶ 4.

{¶30} We find this case to be more similar to *Watchowski*, 3d Dist. Henry No. 7-09-07, 2010-Ohio-1501. The Watchowskis were only married for 14 years. The husband's income was \$2,155.92 per month after deductions. The wife was unable to work because of severe migraines that would occur suddenly. The trial court ordered the

husband to pay the wife \$500 per month in spousal support “until the death of either party, [the husband’s] retirement, or [the wife’s] remarriage or cohabitation with an unrelated male; and, that [the wife] was required to seek work in the event that she became capable of working in a full or part-time capacity.” *Id.* at ¶ 12.

{¶31} While the Third District did not state the husband’s annual income in *Watchowski*, it is certainly more in line with what husband makes in the present case. Further, the duration of the Watchowski’s marriage was only 14 years. If we agreed with husband here that the trial court should have used the de facto termination date of the marriage for purposes of spousal support, the duration of the marriage would still be one year longer than the Watchowskis were married. And in *Watchowski*, as in the present case, the wife was unable to work because of health issues.

{¶32} Our review of the record in this case shows that the magistrate’s spousal support determination, adopted by the trial court, was based on several factors, including the duration of the marriage, wife’s health issues, the fact that wife had not worked outside the home since 1996 (although the parties’ testimony differed as to the reason), and the fact that husband earned \$41,400 per year while wife’s only income was from social security in the amount of \$8,400 per year.

{¶33} After review of this record, we conclude that the evidence presented at the hearing established that at that time, wife was unable to become self-supporting at anytime in the near future. But if she were able to become self-supporting at some point in the future, the trial court reserved jurisdiction to modify the spousal support. The trial

court's decision is well supported in the record, and there is competent, credible evidence going to all of the statutory elements for establishing a spousal support order. Thus, the trial court did not abuse its discretion in overruling husband's objections, adopting the magistrate's decision, and awarding wife \$400 per month in spousal support for an indefinite duration.

{¶34} Accordingly, we overrule husband's first and second assignments of error.

III. Discovery Sanctions under Civ.R. 37

{¶35} In his third assignment of error, husband claims that the trial court erred when it failed to sanction wife for not providing discovery when the court granted his motion to compel under Civ.R. 37. Husband further argues in his fourth assignment of error that the trial court erred in not awarding him attorney fees as a sanction related to his motion to compel discovery under Civ.R. 37. We will address these assignments of error together because they are interrelated.

{¶36} A trial court has discretion in determining a sanction for a discovery violation. *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 256, 662 N.E.2d 1 (1996).

We find no abuse of that discretion here.

{¶37} Civ.R. 37(A)(5)(a) states that if a party's motion to compel discovery is granted:

the court shall, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court shall not order this payment if:

- (i) The movant filed the motion before attempting in good faith to obtain the discovery without court action;
- (ii) The opposing party's response or objection was substantially justified; or
- (iii) Other circumstances make an award of expenses unjust.

{¶38} Civ.R. 37(B)(1) sets forth sanctions that a court may impose for failing to abide by a court order to produce discovery, including but not limited to, ordering that certain facts shall be established, prohibiting the disobedient party from supporting claims or defenses, striking pleadings, and rendering a default judgment. Additionally, Civ.R. 37(B)(3) states:

Instead of or in addition to the orders above, the court shall order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

{¶39} In this case, during wife's direct examination, she agreed that she did her best to complete discovery as quickly as she could. She agreed that there were times that she could not "work on it," and that because of her health, it took a long time to complete. Wife also agreed that she had "some difficulty in understanding" the documents. And she further agreed that her attorneys kept trying to get discovery documents and information from her.

{¶40} Under the circumstances in this case, we cannot say that the trial court abused its discretion in not sanctioning wife for failing to abide by its court order to produce discovery and by not awarding husband attorney fees for the same. It is clear

from wife's testimony that her health issues prevented her from complying with husband's discovery requests fully or in a timely manner.

{¶41} Accordingly, husband's third and fourth assignments of error are overruled.

{¶42} Judgment affirmed.

It is ordered that appellee recover from 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.

MARY J. BOYLE, JUDGE

EILEEN A. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR