

[Cite as *Katz v. Katz*, 2017-Ohio-4290.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103715

ADAM KATZ

PLAINTIFF-APPELLEE

vs.

NICOLE KATZ

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-12-341664

BEFORE: Laster Mays, J., McCormack, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: June 15, 2017

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant, Nicole Katz (“appellant”), appeals an adverse determination to the outcome she sought in the Cuyahoga County Court of Common Pleas, Division of Domestic Relations, relating to division of property, debt, spousal support, child support, custody, and attorney fees. We affirm the trial court’s decision.

I. Background and Facts

{¶2} Appellant and Adam K. Katz (“appellee”) were married March 20, 2004. Two children were born as issue of the marriage.

{¶3} Marital conflict ensued and, in 2008, as the result of a heated domestic confrontation, appellee was charged with domestic violence and pled guilty to disorderly conduct. In fact, as established during the divorce trial, the relationship was often volatile and fraught with conflict.

{¶4} On April 27, 2012, appellee filed a complaint for divorce shortly after vacating the family home. Appellant counterclaimed on June 29, 2012. A long, contentious divorce proceeding followed.

{¶5} In May 2013, the Office of Family Conciliation Services of the Cuyahoga County Court of Common Pleas Domestic Relations Division issued a Forensic Family Evaluation Report (“FFE Report”). The FFE Report recommended continuation of the shared parenting plan schedule with joint medical appointment schedules, and oversight

by a parenting coordinator.

{¶6} Appellant filed a motion to adopt the shared parenting plan on June 11, 2013. Trial was instituted before the magistrate on July 15, 2013, and lasted for 23 days.

Testimony included: (1) descriptions of appellant's anger issues and lack of interpersonal skills; (2) appellant's allegations of inappropriate behavior (texting) between appellee, a swim coach at a prominent private school, and a student, resulting in appellee's resignation; (3) appellant's negative categorizations of appellee and his family members, such as labeling a paternal grandparent as a child abuser and appellee as a pedophile. A number of telephone recordings between the parties were introduced into evidence. Expert opinions by psychologists regarding parenting and custody were also entertained, as well as the GAL's report and recommendation.

{¶7} The trial concluded March 20, 2014. At the close of trial, pursuant to the February 6, 2014 agreed entry, the parties submitted affidavits and exhibits on the outstanding financial and property issues. Written closing arguments and proposed findings of fact and conclusions of law were submitted on April 11, 2014.

{¶8} On October 7, 2014, the magistrate issued a 128-page decision granting the divorce, designating appellee as the sole residential parent and legal custodian of the children, awarding child support to appellee, and allocating assets and liabilities ("Decision").

{¶9} Appellant's preliminary objections to the Decision were filed October 20, 2014, accompanied by the request for the 25 volume, 3,600 page transcript. On

November 5, 2014, appellee and the guardian ad litem (“GAL”) were granted an interim order, over appellant’s objections, moving forward with the ordered parenting plan in the Decision and suspending appellee’s pretrial temporary child support payments. On November 15, 2014, the trial court denied appellant’s motion to set aside the interim order.

{¶10} The transcript was filed on March 2, 2015; on April 23, 2015, with leave of court, appellant filed supplemental objections to the Decision, on May 14, 2015, which were opposed by appellee. On August 18, 2015, an emergency motion was granted without a hearing, directing that appellant refrain from interfering with the children’s school and health care providers.

{¶11} On October 1, 2015, the trial court issued a judgment entry overruling the majority of appellant’s objections to the magistrate’s “meticulous, * * * well-reasoned and thoughtful opinion.” The trial court sustained appellant’s objection to the finding that the support arrearage could not be determined as of the date of the Decision; however, the court determined that the Decision correctly stated the amount of arrearage as of February 3, 2014, and that the arrearage was preserved as of that date. The trial court agreed that the gains, losses, and survivor benefits should be included in the award, and corrected the entry on these issues.

{¶12} A sua sponte nunc pro tunc judgment entry was issued on October 7, 2015, correcting the entry to mirror the Decision, and including requisite decree language adopting the Decision. This appeal was filed on November 2, 2015.

II. Assignments of Error

{¶13} Appellant offers 11 assigned errors, recited, and addressed below. We preface our analysis by acknowledging that several assignments of error fail to cite legal authority required by App.R. 12(A)(2) and 16(A)(7), entitling this court to disregard those errors. *Thornhill v. Thornhill*, 8th Dist. Cuyahoga No. 92913, 2009-Ohio-5569, ¶ 11. *Citta-Pietrolungo v. Pietrolungo*, 8th Dist. Cuyahoga No. 85536, 2005-Ohio-4814, ¶ 35, citing *Cardone v. Cardone*, 9th Dist. Summit Nos. 18349 and 18673, 1998 Ohio App. LEXIS 2028 (May 6, 1998) (it is not this court’s responsibility to create a party’s argument and support it). However, due to the highly contentious nature of the action, we find it equitable to summarily entertain the errors.

III. Standard of Review

{¶14} We review this divorce proceeding for an abuse of discretion:

When reviewing the propriety of a trial court’s determination in a domestic relations case, an appellate court generally applies an abuse of discretion standard. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). This same standard is used in reviewing orders relating to alimony and a division of marital property. *Id.*, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983), and *Martin v. Martin*, 18 Ohio St.3d 292, 480 N.E.2d 1112 (1985). Likewise, a trial court’s decision regarding a child support obligation will not be reversed on appeal absent an abuse of discretion. *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 686 N.E.2d 1108 (1997). “Since it is axiomatic that a trial court must have discretion to do what is equitable upon the facts and circumstances of each case, it necessarily follows that a trial court’s decision in domestic relations matters should not be disturbed on appeal unless the decision involves more than an error of judgment.” (Internal citation omitted.) *Booth* at ¶ 144. So long as the decision of the trial court is supported by some competent, credible evidence going to all the essential elements of the case, this court will not disturb it. *Masitto v. Masitto*, 22 Ohio St.3d 63, 66, 488 N.E.2d 857 (1986).

Gray v. Gray, 8th Dist. Cuyahoga No. 95532, 2011-Ohio-4091, ¶ 7.

IV. Analysis

A. The trial court erred and abused its discretion when it designated appellee-plaintiff as sole residential parent and legal custodian and failed to adopt the filed proposed shared parenting plan.

{¶15} Appellant’s first argues that the trial court’s failure to adopt the proposed shared parenting plan filed in this case is in error. This court does not agree.

{¶16} The discretion of the trial court in a custody determination is broad, though not absolute. The court’s analysis “must be guided by the language set forth in R.C. 3109.04.” *In re M.S.*, 8th Dist. Cuyahoga No. 99563, 2013-Ohio-4043, ¶ 15, citing *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988). This court’s role is to “review the record to determine whether there is any evidence in support of the prevailing party.” *Sallee v. Sallee*, 142 Ohio App.3d 366, 370, 755 N.E.2d 941 (12th Dist.2001).” *In re M.S.* at ¶ 16.

{¶17} There is substantial evidence in the record supporting the trial court’s custody determination pursuant to R.C. 3109.04(F). The Decision sets forth detailed, well-supported findings on each of the requisite factors for determining the best interests of the children for allocating parental responsibilities under R.C. 3109.04(F)(1), shared parenting governed by 3109.04(F)(2), and parenting time pursuant to R.C. 3109.051.

{¶18} The GAL recommended that appellee be granted sole custody. After an in camera interview with the children, the court concluded “[i]t is not in the best interest of

the children to determine their wishes and concerns because of the following special circumstances: their young age, their lack of maturity and their emotional attachment to both parents.”

{¶19} Appellee’s expert witness, Dr. Steven Neuhaus (“Dr. Neuhaus”), a licensed clinical and forensic psychologist, met with the parties twice and issued reports in December 2012 and July 2013. Dr. Neuhaus also reviewed the psychological report prepared by Dr. Frank Ezzo (“Dr. Ezzo”), the trial court’s forensic and clinical psychologist, proffered as a witness by appellant.

{¶20} Dr. Neuhaus determined that,

[I]n his expert opinion based upon his investigation, that Defendant/Wife was predictably unpredictable while kind and nurturing. This observation and assessment was considered to be worrisome by the witness. As a part of the witness’s investigation, he listened to numerous recorded phone-calls between the Parties. His reaction to these recordings was that Defendant/Wife was an enraged parent who was unable to control her rage which in turn created an unhealthy foundation to parent the children.

(Decision, p. 21.)

{¶21} Dr. Neuhaus opined that appellee was more “predictable and stable.” He also expressed concern about appellant’s impact on the minor children:

[The] Wife did not allow the children to be innocent. Instead, she made them afraid to be disloyal to her as the witness observed from his interactions with the children. Furthermore, Defendant/Wife attempted to make them victims of physical abuse by alleging the paternal grandmother harmed them even though independent investigators all found the allegations to be unsubstantiated. The witness reported that Defendant/Wife continued to find fault in the independent professionals such as counselors, teachers, school administrators, and police stating that they all failed the children. Ultimately, the witness stated that the children live in a minefield.

Id. at p. 23.¹

{¶22} Dr. Ezzo proffered a single report in May 2013 determining that shared parenting was a viable option, but cross-examination revealed a number of negative indicators for shared parenting, such as appellant’s manifestation of “narcissistic/talionic rage,” defined as “revenge and rage as intense episodes of anger.” Appellant’s recorded statements to appellee that she wanted him dead and his mother to die of a massive coronary exemplify this behavior.

{¶23} Dr. Ezzo also confirmed that aspects of appellant’s psychological test results did not support shared parenting, indicating: (1) serious impairment of occupational and social functions; (2) thought dysfunction, suspicion, and difficulty with interpersonal relationships; and (3) anger and dependence issues. Appellant used anti-anxiety medication to “help take the edge off.” Dr. Ezzo also conceded that much of the information that he relied on in support of shared parenting was provided to him by appellant.

{¶24} Following a comprehensive analysis of statutory factors, the trial court concluded:

For the foregoing reasons, Defendant/Wife’s plan for exercise of shared parenting is not in the best interest of the children and is not approved. The court denies the parent’s motion requesting shared parenting. It is in the best interest of the minor children to allocate the parental rights and

¹ We find that this testimony not only supports the trial court’s decision regarding custody, it confirms that the trial court did not abuse its discretion in refusing to provide appellant with a transcription of the children’s in camera interview during the case.

responsibilities for the care of the children primarily to Plaintiff/Husband, and designate him as residential parent and legal custodian of the children.

It is in the best interest of the minor children for Defendant/Wife to have limited yet consistent contact with the minor children because she has established a consistent history of interfering with Plaintiff/Husband's parenting time, poisoning the children to act in a negative way toward their Father and paternal relatives, disrupting the children's enjoyment of activities, attempting to poison others to think negatively about Plaintiff/Husband and making numerous unsubstantiated claims of abuse against Plaintiff/Husband and Paternal Grandmother.

(Decision, p. 87-88.)

{¶25} The first assigned error is not well-taken and is overruled.

B. The trial court erred and abused its discretion when it failed to award spousal support to appellant.

{¶26} Appellant's second error cites the incorrect application of spousal support factors under R.C. 3105.18(C). Appellant claims entitlement to a 44-month award based on her status as a stay-at-home mother for the last six years of the marriage, coupled with appellee's voluntary teaching license relinquishment pending resolution of the divorce proceedings. We find that the record supports the trial court's findings.

{¶27} A court may award reasonable spousal support at the request of either party:

An award of spousal support may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, from future income or otherwise, as the court considers equitable.

R.C. 3105.18(B).

{¶28} R.C. 3105.18(C) sets forth the requisite factors:

(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.

(2) In determining whether spousal support is reasonable and in determining the amount and terms of payment of spousal support, each party shall be considered to have contributed equally to the production of marital income.

Id.

{¶29} Where the record evidences the trial court's consideration of the statutory allocation factors, and "the judgment contains details sufficient for a reviewing court to determine that the support award is fair, equitable, and in accordance with the law," the determination will be upheld. *Chattree v. Chattree*, 2014-Ohio-489, 8 N.E.3d 390, ¶ 71 (8th Dist.), citing *Daniels v. Daniels*, 10th Dist. Franklin No. 07AP-709, 2008 Ohio App. LEXIS 772, 9 (Mar. 4, 2008), citing *Schoren v. Schoren*, 6th Dist. Huron No. H-04-019, 2005-Ohio-2102, ¶ 11.

{¶30} The Decision comprehensively analyzes the prescribed factors. The parties possess post-graduate degrees in education. Appellant failed to secure full-time employment in contravention of the trial court's order, but testified she placed applications and served as a substitute teacher. Appellee was forced to resign from his private school teaching position due to appellant's proactive efforts to ruin his career as a result of the unsubstantiated claims of improper conduct with a student.

{¶31} The trial court summarized its findings:

Although the testimony and evidence provided demonstrated that Defendant/Wife stayed at home with the children so that Plaintiff/Husband could be gainfully employed and be the sole income earner of the family,

Defendant/Wife was the only cause of why Plaintiff/Husband lost the ability to continue in the role of sole income earner of the family. Due to Defendant/Wife's voluntary, purposeful and damaging actions, Defendant/Wife has interrupted her own ability to enjoy the income that Plaintiff/Husband once was able to earn. Plaintiff/Husband's annual earnings are approximately half of what they were prior to Defendant/Wife's actions which caused him to lose all of his well-established employment positions. Now, Defendant/Wife will need to take voluntary, purposeful and productive actions to establish her own income source that can attempt to help her and the children to enjoy a standard of life to which they were accustomed. After considering the factors set forth above, it is neither appropriate nor reasonable for spousal support to be paid. This determination shall not be subject to the court's continuing jurisdiction.

(Decision, p. 100.)

{¶32} The trial court did not abuse its discretion because it clearly considered appellant's concerns and addressed the requisite factors. The second assigned error is overruled.

C. The trial court erred and abused its discretion when it awarded appellee/plaintiff child support instead of appellant/defendant an award, when it awarded appellee/plaintiff both children as tax exemptions, and when it ordered appellant/defendant to pay a percentage of uncovered co-pays and medical expenses for the parties' minor children.

{¶33} The trial court distinctly delineated the R.C. 3119.01(C)(11) factors considered in determining the annual income of appellee. The court considered the affidavits of the parties, and appellant's contributions to appellee's loss of employment and income reduction.

{¶34} Imputed income was assessed to appellant in the amount of \$28,500 per year. Appellant earned \$95 per day as a substitute teacher in 2013. Of the potential 180 days of wages available to her during the regular school year, appellant earned nine percent. The \$28,500 figure also takes summer employment into account. The court found no factors impeding appellant's ability to earn a living. Each party's income was adjusted for local income taxes.

{¶35} The court concluded:

Based upon the testimony provided by both Parties, Defendant/Wife has been employed full-time when she made the effort to be employed. The testimony also provided that Defendant/Wife has chosen to accept part-time employment when the court ordered her to secure full-time employment. Additionally, Defendant/Wife voluntarily left her part-time employment only to seek different employment that was not full-time in nature but allowed for the possibility of fulfilling full-time hours as a substitute teacher if she elected to accept any and all assignments offered to her. Again, Defendant/Wife did not provide any testimony that she sought full-time employment at any time while the trial on the Complaint for Divorce was pending.

(Decision, p. 90.)

{¶36} Appellee was determined to be the health insurance obligor, and appellant the child support obligor, in light of the award of custody to appellee:

The child support obligation computed pursuant to R.C. 3119.02, the Basic Child Support Schedule and the applicable worksheet is \$453.83 when private health insurance is being provided * * * and \$381.50 when private health insurance is not being provided * * *. The worksheet used in computing child support under R.C. 3119.022 or 3119.023 is attached as Exhibit B. The court finds there is no reason to deviate.

Id. See *Gray v. Gray*, 8th Dist. Cuyahoga No. 95532, 2011-Ohio-4091, at ¶ 18 (the court "shall" calculate the amount of child support in accordance with the worksheet,

basic child support schedule, and applicable statutory provisions of R.C. 3119.02 to 3119.24).

{¶37} R.C. 3119.82 requires that the court determine, as part of a child support order, which parent may claim the children as dependents. The trial court walked through the statutory factors. After due consideration of the award of sole custody to appellee, and each party's earning capacity and employment status, the court allowed each party to claim one child for 2014. Appellee was awarded the deductions for both children for all tax purposes from 2015 forward. The court determined that the allocation was in the best interests of the children. R.C. 3119.82, *Carr-Woodard v. Woodard*, 8th Dist. Cuyahoga No. 103283, 2016-Ohio-5134, ¶ 33.

{¶38} Appellant has failed to substantiate by fact or law an abuse of discretion on this error. The third assigned error is overruled.

D. The trial court erred and abused its discretion when it ordered appellant/defendant to pay any portion of GAL fees and attorney fees to GAL's legal counsel.

{¶39} The Decision lays out the rationale for the fee awards to the GAL and the GAL's counsel. The parties were charged equally for the GAL fees for executing the duties required by Sup.R. 48 and Loc.R. 35 of the Court of Common Pleas of Cuyahoga County, General Division.

{¶40} Appellant was unilaterally charged fees for the respective services required solely due to her threats to file grievances against the GAL during trial. “But for” appellant’s actions “making the GAL’s ability to fulfill her role freely and in the best interests of the children,” GAL counsel would not have been required. (Decision, p. 102.)

{¶41} We have previously recognized the propriety of allocating GAL fees “based on which party caused the work of the guardian ad litem.” *Strauss v. Strauss*, 8th Dist. Cuyahoga No. 95377, 2011-Ohio-3831, ¶ 77, citing *Jarvis v. Witter*, 8th Dist. Cuyahoga No. 84128, 2004-Ohio-6628, ¶100, *overruled on other grounds*, *Siebert v. Tavaraz*, 8th Dist. Cuyahoga No. 88310, 2007-Ohio-2643. A trial court is given considerable discretion in these matters. *Strauss* at ¶ 77.

{¶42} We do not find that the trial court’s determination is unreasonable, arbitrary, or unconscionable. *Blakemore*, 5 Ohio St.3d at 219, 450 N.E.2d 1140. The fourth assigned error lacks merit and is overruled.

E. The trial court erred and abused its discretion when it did not order appellee/plaintiff to pay appellant/defendant’s attorney fees.

{¶43} Payment of attorney fees in divorce proceedings is governed by R.C. 3105.73. A court may award fees where the court deems the payment to be equitable under the circumstances. “[T]he 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). *See also Strauss*

at ¶ 65 (“[t]he decision to award attorney fees rests in the sound discretion of the court * * *”).

{¶44} The trial court meticulously detailed the grounds for denying a fee award:

The Parties have stipulated to each other’s counsel’s expertise, experience and hourly rate as an attorney who regularly practices in domestic relations court. They each presented their legal fee invoices to this Court.

While complexities existed in this case and the length of the trial went far beyond the originally scheduled five days at the insistence of the legal counsel of both Parties, there were no unique issues or procedural complexities involved in this case. The volume of evidence provided at the discretion of the Parties equally resulted in the lengthy twenty-three day trial which inevitably created complexities that the Parties and their legal counsel created and needed to address.

The complexities of bringing the case to trial were accepted by the Parties prior to engaging in trial. This Court made great efforts to educate and enlighten the Parties about the amount of time and effort each of their attorneys plus the Guardian ad Litem would need to expend in order to fully try the case which in turn would amount to large attorney fees. The Court is content that each understood the task they assumed by choosing to have their side of the case demonstrated to this Court by their respective attorneys with the ultimate decisions on all outstanding issues to be made by the Court.

Furthermore, after the division of the marital property and debt along with the determination of no spousal support being awarded to either Party, neither Party will have the financial ability to pay all of his/her own attorney fees and neither Party will have the ability to contribute to the requesting party’s fees. Therefore, in addition to insufficient evidence being presented by each party to support a fee award, each Party will be responsible for his or her own financial investment into the attorney fees necessary to allow this case to be fully litigated as they desired and insisted.

(Decision, p. 101.)

{¶45} The trial court did not abuse its discretion and the decision is affirmed.

The fifth assignment of error is overruled.

F. The trial court erred and abused its discretion by failing to apply the final date of trial as the termination date of the marriage.

{¶46} R.C. 3105.171 defines the term “during the marriage” for purposes of determining the division of marital property and distributive award.

(2) “During the marriage” means whichever of the following is applicable:

(a) Except as provided in division (A)(2)(b) of this section, the period of time from the date of the marriage through the date of the final hearing in an action for divorce or in an action for legal separation;

(b) If the court determines that the use of either or both of the dates specified in division (A)(2)(a) of this section would be inequitable, the court may select dates that it considers equitable in determining marital property. If the court selects dates that it considers equitable in determining marital property, “during the marriage” means the period of time between those dates selected and specified by the court.

{¶47} There is a presumption that the final hearing date serves as the date of termination. *Strauss*, 8th Dist. Cuyahoga No. 95377, 2011-Ohio-3831, at ¶ 31. A de facto termination date may be selected where the court finds it equitable:

“In general, trial courts use a de facto termination of marriage date when the parties separate, make no attempt at reconciliation, and continually maintain separate residences, separate business activities, and separate bank accounts. However, courts should be reluctant to use a de facto termination of marriage date solely because one spouse vacates the marital home. Rather, a trial court may use a de facto termination of marriage date *when the evidence clearly and bilaterally shows that it is appropriate based upon the totality of the circumstances*. A court’s decision to use the date of the final hearing or a de facto date is discretionary and will not be reversed on appeal absent an abuse of discretion.” [*O’Brien v. O’Brien*, 8th Dist. Cuyahoga No. 89615, 2008-Ohio-1098], ¶ 41. (internal citations omitted).

(Emphasis added.) *Id.* at ¶ 32.

{¶48} The parties stipulated to the March 20, 2004 date of marriage, with no prior cohabitation, and testified that separation occurred on April 27, 2012. The trial court held that it would be inequitable to employ the final hearing date as the termination date where the evidence demonstrates the parties had “lived completely separate and apart” from April 2012, and the final hearing date was prolonged due to the acts of appellant, resulting in disruptions and delays.

Therefore, the time that elapsed from the date of separation to the date of the final day of testimony given at trial on March 20, 2014, ironically, the tenth wedding anniversary of the Parties, was twenty-two months and thirty-eight days.

(Decision, p. 54.) Even after that point, the parties were still in the process of submitting written closing arguments and financial statements and filing motions and objections, until final entry was ordered in October 1, 2015, as amended on October 7, 2015.

{¶49} The trial court concluded the equitable termination date was April 27, 2012. From that time forward, “the Parties lived separate and apart from one another, did not cohabit and established completely separate lives from one another other than Court-ordered parenting of the children, child support and spousal support.” *Id.*

{¶50} We do not find that the trial court abused its discretion in finding a de facto date of termination. The sixth assignment of error is overruled.

- G. The trial court erred and abused its discretion in determining the proper value of appellant/defendant’s automobile.**
- H. The trial court erred and abused its discretion in assessing and allocating the deficiency from the foreclosure of the marital home.**

- I. The trial court erred and abused its discretion in allocating the division of debt between the parties.**
- J. The trial court erred and abused its discretion with the exhibits admitted into evidence and the exhibits not admitted into evidence.**

{¶51} The parties debate the seventh through tenth errors in combination due to common facts and law, and we analyze the errors accordingly. We overrule these assigned errors.

{¶52} Pursuant to R.C. 3105.171(C)(1), in making a determination on marital assets and liabilities, a trial court considers the factors listed in R.C. 3105.171(F), and any other factors deemed relevant by the court to achieve an equitable division. *Neville v. Neville*, 99 Ohio St.3d 275, 2003-Ohio-3624, 791 N.E.2d 434, ¶ 11; *Strauss*, 8th Dist. Cuyahoga No. 95377, 2011-Ohio-3831, at ¶ 37. “[T]rial courts have broad discretion when creating an equitable division of property in a divorce proceeding.” *Id.* at ¶ 39, quoting *Adams v. Chambers*, 82 Ohio App.3d 462, 612 N.E.2d 746 (12th Dist.1992), citing *Teeter v. Teeter*, 18 Ohio St.3d 76, 479 N.E.2d 890 (1985).

{¶53} The parties submitted stipulations as to the financial and property issues. In response to a subsequent court order, they also submitted affidavits and exhibits on March 20, 2014. Several of appellant’s exhibits were excluded by the trial court, and appellee rebutted appellant’s position with supporting documents. Appellant asserts the excluded exhibits were necessary to properly address allocation issues regarding appellant’s automobile, the marital residence foreclosure deficit, and the division of debt.

{¶54} Appellant argues the trial court improperly excluded the exhibits and attributed greater weight to appellee’s evidence in reaching a determination. It is wholly within the trial court’s discretion to weigh the testimony, documentation, and credibility of witnesses. *Strauss* at ¶ 45, citing *Pruitt v. Pruitt*, 8th Dist. Cuyahoga No. 84335, 2005-Ohio-4424, ¶ 32, citing *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 23, 550 N.E.2d 178 (1990). Further, a “trial judge has wide discretion when determining the admissibility of such evidence, and will not be disturbed on appeal absent a clear showing of an abuse of discretion.” *Quellos v. Quellos*, 96 Ohio App.3d 31, 44, 643 N.E.2d 1173 (8th Dist.1994), citing *Renfro v. Black*, 52 Ohio St.3d 27, 32, 556 N.E.2d 150 (1990).

{¶55} The trial court is free to ascertain and apply a statutorily compliant valuation protocol to achieve an equitable result. “When determining the value of marital assets, a trial court is not confined to the use of a particular valuation method, but can make its own determination as to valuation based on the evidence presented.” *Chattree*, 2014-Ohio-489, 8 N.E.3d 390, at ¶ 43, citing *James v. James*, 101 Ohio App.3d 668, 681, 656 N.E.2d 399 (2d Dist.1995). R.C. 3105.171 does not dictate how the trial court makes its determination. *Strauss*, 8th Dist. Cuyahoga No. 95377, 2011-Ohio-3831, at ¶ 36.

{¶56} This court’s role is to “determine whether, based upon all of the relevant facts and circumstances,” the record supports a “rational, evidentiary basis for assigning value to marital property.” *Id.*, citing *James; McCoy v. McCoy*, 91 Ohio App.3d 570,

632 N.E.2d 1358 (8th Dist.1993); and *Focke v. Focke*, 83 Ohio App.3d 552, 615 N.E.2d 327 (2d Dist.1992).

{¶57} Guided by the stipulations, affidavits, and exhibits of the parties, the trial court considered additional relevant factors: (1) appellee’s substantial compliance with court orders versus appellant’s failure to comply to multiple orders; (2) appellant’s negative behaviors requiring court intervention; and (3) appellant’s failure to secure court-ordered full-time employment, further indicating that appellant “has no regard to providing any financial contributions to alleviate the financial deficiencies of the parties.” (Decision, p. 66.)

{¶58} “The distributive award concept is consistent with the well-established principle that trial courts have broad discretion when creating an equitable division of property in a divorce proceeding.” *Strauss*, 8th Dist. Cuyahoga No. 95377, 2011-Ohio-3831, at ¶ 39, citing *Adams*, 82 Ohio App.3d 462, 612 N.E.2d 746, citing *Teeter*, 18 Ohio St.3d 76, 479 N.E.2d 890.

{¶59} Appellant bore the burden of proving, by a preponderance of the evidence, her position regarding separation and allocation of debt. *See Walpole v. Walpole*, 8th Dist. Cuyahoga No. 99231, 2013-Ohio-3529, ¶ 110. Once a court has reached a determination of whether property is marital or separate, the court’s finding will only be reversed if the trial court has abused its discretion. *Strauss* at ¶ 48, citing *Larkey v. Larkey*, 8th Dist. Cuyahoga No. 74765, 1999 Ohio App. LEXIS 5174 (Nov. 4, 1999), citing *Cherry v. Cherry*, 66 Ohio St.2d 348, 355, 421 N.E.2d 1293 (1981).

{¶60} We do not find that the trial court abused its discretion, because the record demonstrates comprehensive consideration of the statutory factors, supported by competent credible evidence. Assigned errors seven through ten are overruled.

K. The trial court erred and abused its discretion in granting appellee-plaintiff's motion for additional orders without first allowing appellant-defendant the opportunity to respond and for issuing a sua sponte nunc pro tunc order contrary to justness, equity, and fairness.

{¶61} We find the eleventh and final error also to be without merit.

{¶62} The trial court issued the final judgment on October 1, 2015, as corrected via the sua sponte nunc pro tunc entry on October 7, 2015. The sua sponte nunc pro tunc entry was issued to: (1) clarify the effective date of termination of appellee's support obligations and implementation of appellant's monthly payment as the support obligor, including a two percent processing fee as a result of the private health insurance order; and (2) include the decree language adopting the Decision and parenting plan, except as otherwise indicated.

{¶63} A nunc pro tunc order serves to correct the record:

[T]o correct the record to reflect what the court actually decided and may not be used to change a prior judgment unless the earlier entry did not accurately reflect the court's action. *Dentsply Internatl., Inc. v. Kostas*, 26 Ohio App.3d 116, 498 N.E.2d 1079 (1985), paragraphs one and two of the syllabus. Nunc pro tunc orders are used to supply information that existed but was not recorded, to correct mathematical calculations, and to correct typographical or clerical errors. *Id.*

Moore v. Moore, 8th Dist. Cuyahoga No. 95967, 2011-Ohio-4238, ¶ 17.

{¶64} The order was entered prior to the instant appeal and was properly employed. The final assigned error is overruled.

V. Conclusion

{¶65} The trial court's order is 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 issue out of this court directing the domestic relations division 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.

ANITA LASTER MAYS, JUDGE

TIM McCORMACK, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR