

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JEFFREY C. MCQUAIDE

Appellant/Cross-Appellee

v.

CATHERINE A. MCQUAIDE

Appellee/Cross-Appellant

C. A. Nos. 24544 & 24552

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2006-10-3260

DECISION AND JOURNAL ENTRY

Dated: September 30, 2009

MOORE, Presiding Judge.

{¶1} Appellant, Jeffrey McQuaide, and Cross-Appellant, Catherine McQuaide, appeal from the judgment of the Domestic Relations division of the Summit County Court. This Court affirms.

I.

{¶2} Catherine and Jeffrey McQuaide were married on August 10, 1987. In November of 2002, the parties separated, but did not file for a divorce. At that time, the parties divided their household goods, furnishings, and personal property. After the separation, Catherine McQuaide (“Wife”), depended upon Jeffrey McQuaide (“Husband”) for support. In 2005, the parties jointly sold their marital residence. Husband and Wife each received half of the proceeds of the sale, approximately \$71,000 each. Husband deposited his portion in a Scottrade account and Wife purchased a used car and used the rest for monthly living expenses. Husband and Wife

did not divide Husband's other retirement accounts. Prior to the divorce hearing, Husband continued to liquidate his retirement funds.

{¶3} On October 4, 2006, Husband filed for divorce. The matter went to trial on August 21, 2007 and November 13, 2007. At issue as relevant to this appeal was the division of the Scottrade account, other retirement accounts and the parties' individual checking accounts. On November 24, 2008, the trial court issued its divorce decree, awarding Husband the entire balance in the Scottrade account. Both Husband and Wife timely appealed from the trial court's judgment. Husband raised two assignments of error and Wife raised one assignment of error for our review.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT ERRED AS A MATTER OF LAW AND FACT IN MAKING AN AWARD OF SPOUSAL SUPPORT."

ASSIGNMENT OF ERROR II

"THE TRIAL COURT ERRED AS A MATTER OF LAW IN OBLIGATING [HUSBAND] TO CONTINUE TO SUPPORT [WIFE] WITHOUT A FINDING OF FACT SUBSTANTIATED BY EXPERT EVIDENCE OF DEFENDANT'S INABILITY TO BE GAINFULLY EMPLOYED."

{¶4} In his assignments of error, Husband contends that the trial court made several errors. We decline to address his assignments of error.

{¶5} Husband's brief woefully fails to conform to the Appellate Rules of Procedure and this Court's Local Rules of Procedure. Notably, App.R. 16(A)(6) requires Husband to provide this Court with "[a] statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division (D) of this rule." Furthermore, App.R. 16(A)(5) requires Husband to provide "[a] statement of the case briefly

describing the nature of the case, the course of proceedings, and the disposition in the court below.” Husband neglected to provide this Court with a statement of the facts and in his statement of the case, requested this Court to “[s]ee the attached Appendix same being the docketing text of the underlying case.”

{¶6} Finally, Husband has failed to adequately present and support his assigned errors. See App.R. 16(A)(7). While Husband has set forth two assigned errors, he has failed to argue them separately. Instead, he has presented approximately ten sentences in which he briefly refers to the record, but presents this Court with no case law to support his vague arguments. In an apparent attempt to support his argument, Husband reproduced R.C. 3105.18 in its entirety, without explaining how or why we should apply the provisions of this section. We have consistently stated that “[a]n appellant must affirmatively demonstrate error on appeal and must provide legal arguments that substantiate the alleged error.” *Rosen v. Chesler*, 9th Dist. No. 08CA009419, 2009-Ohio-3163, at ¶11. “If an argument exists that can support this assignment of error, it is not this court’s duty to root it out.” *Cardone v. Cardone*, (May 6, 1998), 9th Dist. No. 18349, at *8. This Court “will not guess at undeveloped claims on appeal.” *State v. Wharton*, 9th Dist. No. 23300, 2007-Ohio-1817, at ¶42.

“Appellant’s briefs consist of vague, nebulous and generalized statements which in no way assist this court in understanding the nature of this appeal. The briefs represent nothing more than a perfunctory and cursory effort to place the record before this court and have the court perform appellant’s obligation and duty to adequately brief and argue the case. App.R. 16 is designed as an aid to counsel and to the court. Appellant’s dismal failure to conform has certainly been of little or no aid or assistance to this court in understanding the appeal.” (Internal citations and quotations omitted.) *Crow v. Fisher* (Sept. 29, 1986), 12th Dist. No. CA86-05-008)

Due to these inadequacies set forth above, we decline to address Husband's arguments on appeal. App.R. 12(A)(2). Accordingly, we disregard Husband's assignments of error and the judgment of the trial court is affirmed.

WIFE'S ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED IN AWARDING [HUSBAND] THE ENTIRE BALANCE OF THE SCOTTRADE ACCOUNT."

{¶7} In her sole assignment of error, Wife contends that the trial court erred in awarding Husband the entire balance of the Scottrade account. We do not agree.

{¶8} The trial court maintains broad discretion in fashioning its division of marital property. *Bisker v. Bisker* (1994), 69 Ohio St.3d 608, 609. R.C. 3105.171(B) and (C)(1) provide that in a divorce proceeding, all marital property is to be divided equally unless an equal division would be inequitable. If an equal division would be inequitable, that marital property is to be divided in an equitable manner. Upon review, this Court must consider the distribution in its entirety under the totality of the circumstances. *Jelen v. Jelen* (1993), 86 Ohio App.3d 199, 203.

{¶9} Wife contends that Husband's "receipt of the entire balance of the Scottrade account was unequal and inequitable." The trial court determined that the marital home was sold during the marriage. Husband and Wife each received half of the proceeds of the sale. While Husband deposited his half into the Scottrade account, Wife did not save her half. Wife does not point this Court to any case law to support her argument that the trial court's determination was not equitable and was unequal and that therefore the trial court abused its discretion. App.R. 16(A)(7). Despite her citation to R.C. 3105.171(C), which requires the trial court to consider the several enumerated factors set forth in R.C. 3105.171(F) when dividing marital property, Wife has not pointed to any abuse of discretion on the part of the trial court to consider these factors.

Instead, she sets forth a conclusory statement that the division was inequitable and unequal. Accordingly, we do not find that the trial court abused its discretion.

{¶10} The trial court determined that the division of the proceeds of the sale of the marital property was “no different than the manner in which they divided their household goods, furnishings, and personal property at separation. The court finds that equal division of the proceeds from the sale of the marital residence to be a partial division of marital property.” We agree.

{¶11} Wife does not contest the findings of the trial court that prior to the divorce proceedings she received her half of the proceeds of the marital property. Essentially, Wife requests this Court to conclude that the trial court abused its discretion because, although the proceeds of the marital property were equally divided prior to the divorce proceedings, she was entitled to half of Husband’s portion because it remained marital property at the time of the divorce proceedings. In fact, Wife’s position on this issue would result in an inequitable distribution. Under her theory, she would have received approximately \$71,000 from the initial sale of the home, and another \$35,500 from Husband’s portion of the proceeds, leaving Husband with only \$35,500. The trial court’s failure to adopt Wife’s position was not an abuse of discretion.

{¶12} Wife’s assignment of error is overruled.

III.

{¶13} Husband’s assignments of error are disregarded. Wife’s assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to both parties equally.

CARLA MOORE
FOR THE COURT

DICKINSON, J.
CONCURS

CARR, J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶14} I concur in judgment only as to Mr. McQuaide's appeal. I would consider Mr. McQuaide's assignments of error but hold that he has not presented any support for the assignments of error that would require us to reverse the trial court's judgment.

APPEARANCES:

CHRIS G. MANOS, Attorney at Law, for Appellant/Cross-Appellee.

JOY S. WAGNER, Attorney at Law, for Appellee/Cross-Appellant.