[Cite as *Manos v. Manos*, 2010-Ohio-1178.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

TAMMY J. MANOS Appellant v. CHRIS G. MANOS Appellee	C.A. No. 24717 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. 2007-04-1331

DECISION AND JOURNAL ENTRY

Dated: March 24, 2010

GALLAGHER, Presiding Judge.

{¶1} Appellant, Tammy J. Manos ("Wife"), appeals from the decision of the Summit County Court of Common Pleas, Domestic Relations Division. For the reasons that follow, we affirm in part, reverse in part and remand.

{¶2} In April 2007, Wife filed a complaint for divorce from appellee, Chris G. Manos ("Husband"), alleging incompatibility. In August, an agreed temporary order, setting forth the duties and obligations of the parties while the case was pending, was issued by the trial court.

{¶3} In September 2008, the case proceeded to trial. In December, the trial court issued a judgment entry granting the parties a divorce, and ordered spousal support for Wife and detailed the division of property.

{¶4} Thereafter, Wife requested findings of fact and conclusions of law. Both parties were ordered to submit proposed findings of fact and conclusions of law. The parties did so, and the trial court issued its findings of fact and conclusions of law.

{¶5} The trial court determined that the couple was married on November 29, 1980, and that four children were born as issue of the marriage but that all were emancipated at the time of the divorce proceedings. The court found the parties incompatible and granted a decree of divorce.

{¶6} Husband was awarded his American Mutual Funds Account ($51,272) and his two H.R. Block IRA accounts (totaling $5,164). Wife was awarded her two H.R. Block IRA accounts (totaling $4,808), the T. Rowe Price account ($21,822), the Erie Family Life Insurance (CSV $2,607), and the Oak Associates Fund ($785). Husband was awarded a total of $56,435, and Wife was awarded a total of $54,710 from their financial accounts.

{¶7} The parties owned a residence in Tallmadge, Ohio, where Husband resided, and a condominium in Florida, where Wife resided. Both were listed for sale, and the parties were ordered to split the proceeds, if any. Husband was ordered to pay both mortgages until both were sold.

{¶8} Husband was awarded all his interest in his law practice (not valued) and the office building (valued at $103,000). Husband was ordered to pay all the debts of the marriage and the law practice for a total of $171,925.

{¶9} The court found that the $25,000 in cash that was in the family safe was in the possession of Wife and awarded her said monies, as well as all of the jewelry in her possession.

{¶10} Each party was awarded the automobile currently in his or her possession. The household items and personal property were to be divided by agreement. Each party was ordered responsible for his or her own attorney's fees.

{¶11} Wife appeals, asserting five assignments of error for our review.

{¶12} Wife's first assignment of error states the following:

"The trial court erred by making findings of facts and conclusions of law which do not support its decision as set forth in its December 2, 2008 judgment entry."

{¶13} Under this assignment of error, Wife summarizes her arguments, which are set forth in the remaining four assignments of error. We will address her arguments under the appropriate assignment of error.

{¶14} Wife's second assignment of error states the following:

"The trial court erred in making its division of property between the parties."

{¶15} Wife complains that the division of property was unequal and that the trial court failed to make findings to support its distribution of property.

{¶16} A trial court has broad discretion in making divisions of property in domestic cases. *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 1998-Ohio-403, 696 N.E.2d 575. A trial court's decision will be upheld absent an abuse of discretion. Id. "Abuse of discretion" is more than an error of law or judgment; it implies that the court acted in an unreasonable, arbitrary, or unconscionable fashion. Id. If there is some competent, credible evidence to support the trial court's decision, there is no abuse of discretion. Id.

{¶17} R.C. 3105.171(C)(1) requires an equal distribution of marital property unless an equal division would be inequitable. In making a division of marital property, the court shall consider all relevant factors, including those set forth in R.C. 3105.171(F), which include the following: "(1) The duration of the marriage; (2) The assets and liabilities of the spouses; (3) The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage; (4) The liquidity of the property to be distributed; (5) The economic desirability of retaining intact an asset or an interest in an asset; (6) The tax consequences of the property division upon the respective awards to be made to each spouse; (7) The costs of sale, if it is necessary that an asset

be sold to effectuate an equitable distribution of property; (8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses; (9) Any other factor that the court expressly finds to be relevant and equitable."

{¶18} R.C. 3105.171(G) requires "written findings of fact that support the determination that the marital property has been equitably divided." The objective of the findings of fact authorized by R.C. 3105.171(G) is to facilitate meaningful appellate review consistent with Civ.R. 52. *Hamad v. Hamad*, Franklin App. No. 06AP-516, 2007-Ohio-2239. The requirements of R.C. 3105.171(G) are satisfied when the reviewing court is able to ascertain the requisite information from various portions of the record, including the trial court's decision. Id.

{¶19} Wife was awarded a total of $54,710 from the parties' financial accounts, $25,000 from the safe, the Nissan automobile valued at $8,000, and the jewelry, as well as half the proceeds after the sale of both homes.

{¶20} Husband received $56,435 from the financial accounts, his law practice (not valued by the parties), the interest in his office building valued at $103,000, as well as half the proceeds after the sale of both homes. In addition, the court allocated all of the debt, marital and business, to Husband in the amount of $171,925.

{¶21} We find that the division of property was not unfair to Wife. Because Husband's earning ability was greater, Wife escaped all debt, while Husband's debt exceeds his financial allocation. Accordingly, we find the trial court did not abuse its discretion when it divided the marital property.

{¶22} Wife also complains that there is no evidence to support the trial court's finding that she had taken $25,000 in cash from the safe in the parties' home. Wife argues that the court

mistakenly relied on her daughter's videotape deposition regarding the $25,000 when her daughter's deposition was never offered into evidence or filed with the court.

{¶23} We find no merit to this argument because a review of the record reveals that the daughter's videotaped deposition was introduced and played at trial, without objection by Wife. Therefore, the court could rely on the daughter's testimony regarding the whereabouts of the $25,000.

{¶24} Wife's second assignment of error is overruled.

{¶25} Wife's third assignment error states the following:

"The trial court erred in its award of spousal support to the appellant-Wife."

{¶26} Wife claims that the trial court's findings do not support the spousal support award, either in amount or duration. Wife complains that $1,500 a month is insufficient to meet her needs and that spousal support should not terminate. In addition, she points out that the court ordered spousal support payments for nine years, then incorrectly credited Husband with two years of support payments, and further compounded the error by ordering support for a period of 72 months (the equivalent of six years).

{¶27} The trial court enjoys broad discretion in awarding spousal support, and we will not reverse such a decision absent an unreasonable, arbitrary, or unconscionable attitude exhibited by the court. *Macko v. Macko* (Feb. 26, 1998), Cuyahoga App. No. 72339; *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67, 554 N.E.2d 83. R.C. 3105.18(C)(1)(a) through (n) provides the factors that a trial court is to review in determining whether spousal support is appropriate and reasonable and in determining the nature, amount, terms of payment, and duration of spousal support. However, unlike the statute concerning property division, R.C. 3105.18 does not require the lower court to make specific findings of fact regarding spousal

support awards. If the court does not specifically address each factor in its order, a reviewing court will presume each factor was considered, absent evidence to the contrary. *Carroll v. Carroll*, Delaware App. No. 2004-CAF-05035, 2004-Ohio-6710, citing *Watkins v. Watkins*, Muskingum App. No. CT 2001-0066, 2002-Ohio-4237.

{¶28} Ohio courts have often expressed that spousal support awards should generally be terminable on a specified date. *Cope v. Cope*, Summit App. No. 20768, 2002-Ohio-3860, citing *Kunkle*, supra. However, an exception exists in cases where there was a marriage of long duration or when a spouse was a homemaker and has little opportunity to develop meaningful employment outside the home. Id. In those cases, a trial court has the discretion to award spousal support of indefinite duration but is not required to do so. *Geschke v. Geschke*, Medina App. Nos. 3266-M and 3268-M, 2002-Ohio-5426.

{¶29} The trial court stated that it considered "the length of the marriage, the education of the parties, the necessary living expenses of the Wife, along with the other factors enumerated in O.R.C. Section 3105.18." We find that the trial court properly considered all relevant factors and came to an equitable spousal support figure, in light of the fact that Husband was ordered to pay both mortgages, all of the marital debt, as well as spousal support.

{¶30} Further, we find that the trial court did not abuse its discretion when it ordered that the spousal support was terminable, since Wife was only 49 years of age, did not report any health problems, and was approximately two semesters short of a college degree. Nevertheless, the trial court's order defining the duration of the spousal support is inconsistent. At one point, the trial court ordered nine years of support with credit for nearly two years but then ordered support for 72 months, which is only six years. Therefore, we overrule in part and sustain in part

Wife's third assignment of error, and remand the case to the trial court to clarify the duration of the spousal support order.

{¶31} Wife's fourth assignment error states the following:

> "The trial court erred by failing to afford the appellant-Wife an opportunity to be heard regarding her request for attorney fees."

{¶32} Wife argues that at trial she indicated that she had no funds to pay her attorney's fees and that the court indicated that it would hold a hearing at a later date. Wife complains that the trial court erred when it failed to hold a hearing on her request for attorney's fees.

{¶33} R.C. 3105.73(A) governs the award of attorney's fees and litigation expenses in domestic relations cases and provides: "a court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable." In assessing whether an award 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." Id. A trial court's decision to award or not award attorney's fees in a divorce action is subject to an abuse of discretion standard. *Ockunzzi v. Ockunzzi*, Cuyahoga App. No. 86785, 2006-Ohio-5741. A party is not entitled to attorney's fees; rather, the court may decide on a case-by-case basis whether an award of attorney's fees would be equitable. Id.

{¶34} Rule 25.02 of the Local Rules of the Summit County Domestic Relations Court requires that the party seeking payment of attorney's fees "shall do so by a written motion or by another pleading, accompanied by a notice of hearing."

{¶35} We note that Wife did not file a written motion or pleading requesting payment of her attorney's fees in accordance with the court's local rules.[1] Wife simply testified at trial that

[1] Both Wife and Husband requested attorney's fees for the preparation of contempt motions against each other.

she could not pay her attorney. Although the trial court indicated that it would hold a hearing regarding the attorney's fees, the court instructed the attorneys to submit affidavits regarding their bills, which was not done.

{¶36} We find that the trial court did not abuse its discretion when it ordered each party to pay his or her own attorney's fees, since it was privy to the parties' marital assets, income and debt, the award of spousal support, and the conduct of the parties when it made its decision. Further, nowhere in R.C. 3105.73, the local rule, or the case law is it required that a hearing must be held regarding attorney's fees. Accordingly, we overrule Wife's fourth assignment of error.

{¶37} Wife's fifth assignment error states the following:

> "The trial court erred by failing to determine the amounts owed by the appellee-Husband to the appellant-Wife under the court's agreed temporary order."

{¶38} Wife complains that the trial court failed to determine the amount of arrearages in temporary spousal support and the other items that Husband failed to pay. She also asserts that the journal entry and the findings of fact and conclusions of law are inconsistent with regard to who should pay certain bills. We agree.

{¶39} In the journal entry, the court indicated that "Husband shall be responsible for payment to Wife for two Quest Diagnostic bills ($123 & $435), Florida Hospital Orlando ($537), Tony's Pest Control ($105) and past due Condo Fees ($1,739). Husband shall pay said sums or show proof that they have been paid. Husband is entitled to an offset on said sums for the cost of Wife's airline transportation to attend the trial."

{¶40} "Husband shall be responsible for any arrearage on the temporary spousal support order of the Court."

{¶41} The findings of fact and conclusions of law state "Husband should pay any arrearages, if any, in temporary spousal support and any other monies that were his responsibility."

{¶42} "Wife shall be responsible for the Quest bills, the Florida Hospital bill, and the Pest Control bill."

{¶43} We find that the trial court erred in not determining the arrearage owed to Wife. In addition, there are inconsistencies between the journal entry and the findings of fact that need to be clarified. See *Taylor v. Taylor*, Cuyahoga App. No. 86331, 2006-Ohio-1925. Accordingly, we sustain Wife's fifth assignment of error and remand to the trial court.

Judgment affirmed in part,
reversed in part,
and cause remanded.

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 equally to both parties.

SEAN C. GALLAGHER
FOR THE COURT

STEWART, J.
SWEENEY, J.
CONCUR

(Sitting by assignment: Sean C. Gallagher, Administrative Judge, Melody J. Stewart, Judge, and James J. Sweeney, Judge, of the Eighth District Court of Appeals.)

APPEARANCES:

DAVID FERGUSON, Attorney at Law, for Appellant.

DON LOMBARDI, Attorney at Law, for Appellee.