

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

ALLEN F. HINES

C. A. No. 09CA0022

Appellant

v.

BONNIE HINES-RAMSIER

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 07-DR-0451

Appellee

DECISION AND JOURNAL ENTRY

Dated: June 30, 2010

BELFANCE, Judge.

{¶1} Plaintiff-Appellant Allen Hines (“Husband”) appeals from the judgments of the Wayne County Court of Common Pleas which overruled his and Defendant-Appellee Bonnie Hines-Ramsier’s (“Wife”) objections to the magistrate’s decision and confirmed its prior decision. For reasons set forth below, we reverse and remand.

I.

{¶2} Husband and Wife were married July 4, 2001. The parties had no children born of the marriage. On September 17, 2001, Husband filed a complaint for divorce and Wife subsequently filed an answer. The matter proceeded on a contested basis to a hearing before a magistrate who issued a report and proposed decision wherein it valued and divided the parties’ property including Wife’s business of sewing patches (“Patch Business”). The magistrate classified the Patch Business as marital and awarded it to Wife. In the magistrate’s division of property, it found that the assets that should be awarded to Husband totaled a negative \$390 and

the assets that should be awarded to Wife totaled a negative \$65,923. In order to equalize the division, the magistrate recommended that Husband should pay Wife \$32,766.50. The trial court issued a judgment entry prior to the parties' filing objections. Both Husband and Wife filed objections to the magistrate's decision; Husband contended that the magistrate improperly awarded Wife the Patch Business while forcing Husband to pay for half the debt associated with it. The trial court issued two entries overruling the parties' objections and stating that it adhered to its original decision. Husband has appealed, raising two assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

"The Trial Court erred by finding that the 'Patch' business was marital, awarding the business and all assets to [Wife][,] requiring her to pay all the debts in connection with that business and then requiring [Husband] to pay for one-half of the business debt by classifying it as negative (equity) of \$65,923.00 and calling it an equalization of the property division having [Husband] pay her \$32,766.00 dollars."

ASSIGNMENT OF ERROR II

"The Trial Court erred in regards to its order for the property division as it was an abuse of discretion."

{¶3} In a portion of Husband's argument connected with his first assignment of error, Husband contends that the trial court failed to comply with R.C. 3105.171(G). This Court agrees, although for different reasons than those outlined by Husband.

{¶4} We begin by noting that "[u]nder R.C. 3105.171(B), a trial court must classify property as marital or separate, i.e., non-marital, before such property can be awarded." *Boreman v. Boreman*, 9th Dist. No. 01CA0034, 2002-Ohio-2320, at ¶7. "Once the trial court has characterized the property as marital or separate, it is within its discretion to fashion an equitable division of property. A trial court has broad discretion in making divisions of property in

domestic cases.” Id. at ¶11. Nonetheless, “R.C. 3105.171(F) requires a court to consider certain enumerated factors when determining any division of marital property.” *Kellar v. Kellar*, 9th Dist. No. 03CA0124-M, 2004-Ohio-3425, at ¶6. Moreover, R.C. 3105.171(G) provides that:

“[i]n any order for the division or disbursement of property or a distributive award made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided and shall specify the dates it used in determining the meaning of ‘during the marriage.’” See, also, *Kellar* at ¶6.

“The trial court must ‘indicate the basis for its [marital property division] in sufficient detail to enable a reviewing court to determine that the award is fair, equitable and in accordance with the law.’” Id., quoting *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 97.

{¶5} The trial court’s judgment entry in the instant matter fails to meet several of the above listed statutory requirements; this is so largely because the trial court failed to make factual findings. While the trial court has independently entered judgment and has overruled the objections to the magistrate’s decision, the trial court has not made any factual findings of its own as required by R.C. 3105.171(G) and has neither adopted, modified or rejected the magistrate’s decision. Thus, while the trial court awarded the Patch Business to Wife, it failed to classify the Patch Business as either marital or separate property. See R.C. 3105.171(B). And while the trial court by way of marital property division ordered Husband to pay Wife \$32,766.50, there are no factual findings in the trial court’s entry which allow this Court to review whether the division was equitable. R.C. 3105.171(G). Further, the trial court failed to specify the dates of the marriage as required by R.C. 3105.171(G); see, also, *Budd v. Budd*, 9th Dist. No. 24485, 2009-Ohio-2674, at ¶12. While the magistrate did make findings related to all these issues, the trial court did not adopt the magistrate’s decision and did not itself make the required factual findings necessary for this Court to review the award. See *Kellar* at ¶6. As

Husband's assignments of error both relate to the division of marital property with respect to the Patch Business, we are unable to review either of them. Thus, we conclude it is necessary for this Court to remand this matter to the trial court so that it can make factual findings which will allow this Court to properly review its entry.

III.

{¶6} In light of the foregoing, we reverse the judgment of the Wayne County Court of Common Pleas and remand for proceedings consistent with this opinion.

Judgment reversed,
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 Wayne, 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 Appellee.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

LAWRENCE J. COURTNEY, Attorney at Law, for Appellant.

CHRISTOPHER A. SCHMITT, Attorney at Law, for Appellee.