

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

ROBERT J. BUDD

C. A. No. 24899

Appellee

v.

LINDA M. BUDD

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2004-09-3850

Appellant

DECISION AND JOURNAL ENTRY

Dated: January 13, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Robert and Linda Budd married in 1976. In 2004, Mr. Budd filed for divorce. A trial was held in November 2006, but the presiding judge recused himself before issuing a decision. A second trial was held in May 2008, with the trial court receiving updated pension information the following month. In October 2008, the court issued a decision, dissolving the Budds' marriage and ordering Mrs. Budd to pay \$400 per month in spousal support. This Court reversed because the trial court had not determined a specific date for the termination of the marriage and had not made necessary findings regarding the valuation and division of marital assets. On remand, the trial court issued a revised decision that reached the same conclusion, but added that the date of the final hearing was the termination date of the marriage. Mrs. Budd has appealed, assigning twelve errors. This Court reverses because the trial court did not explain

why it chose a different valuation date than the date of the final hearing for some of the marital assets.

VALUATION DATES

{¶2} Mrs. Budd's second assignment of error is that the trial court incorrectly used different dates for valuing the marital assets without making the necessary findings. She has argued that the court used values from November 2006 for some assets and values from May or June 2008 for other assets, but did not explain why it used different dates.

{¶3} In this Court's previous decision, it identified two problems with the trial court's judgment entry. First, it noted that the court failed to specify the termination date of the marriage, as required by Section 3105.17.1(G) of the Ohio Revised Code. *Budd v. Budd*, 9th Dist. No. 24485, 2009-Ohio-2674, at ¶12. Second, it noted that the court failed "to specify the precise dates that were used in valuing assets" *Id.* It determined that the omissions were error and remanded so the court could "determine a specific date of termination and to make all other necessary factual findings prior to the valuation and division of marital assets." *Id.* at ¶13.

{¶4} In its revised judgment entry, the trial court specified that it used "May 20, 200[8], the date of the final hearing, as the date of termination of the marriage." It, however, did not make any additional findings regarding the dates it was using for valuing the marital assets. Mr. Budd has argued that additional findings were unnecessary because the court valued all of the assets as of the date of the final hearing. His argument belies the record and his own statement of facts. In its decision, the trial court wrote that Mr. Budd had a Charter One account containing \$6415 and a Putnam Investments account worth \$5373. At trial, however, Mr. Budd testified that he had "cashed . . . in" the Charter One account so that he could have money "to live off." He also said that he had "transferred over" the Putnam Investments account to his

401(k). He acknowledged in his statement of facts that the Charter One account “was not in existence at the time of the final hearing” and that the Putnam Investments account “had been rolled over into his 401(k) account at the time of the final hearing.” Furthermore, although Mr. Budd testified at the final hearing that his 401(k) had a balance of \$108,589, the court assigned it a value of \$97,292. It is evident, therefore, that the court did not value all of the marital assets as of the date of the final hearing.

{¶5} In its decision of Mrs. Budd’s first appeal, this Court explained that, “[g]enerally, the trial court should consistently apply the same set of dates when valuing marital property in a divorce proceeding” and that, “[i]f the . . . court determines it is necessary to value certain marital assets from a different set of dates, it must adequately explain its reasons for choosing different valuation dates for those particular marital assets.” *Budd v. Budd*, 9th Dist. No. 24485, 2009-Ohio-2674, at ¶12. The trial court failed to identify specific valuation dates for the marital assets and, to the extent it chose different dates for some assets, failed to explain its reasons for choosing those dates. Accordingly, it did not follow this Court’s mandate. Mrs. Budd’s second assignment of error is sustained.

{¶6} As in her first appeal, Mrs. Budd’s remaining assignments of error allege that “the trial court erred in equitably dividing marital assets, awarding spousal support and reaching certain [factual] findings.” *Budd v. Budd*, 9th Dist. No. 24485, 2009-Ohio-2674, at ¶14. As this Court explained in its opinion in that first appeal “[a]n appellate court cannot undertake a review of whether marital assets have been accurately valued and divided until the specific valuation dates used by the trial court have been clearly identified.” *Id.* at ¶12. A review of Mrs. Budd’s other assignments of error, therefore, “would be premature without a clear understanding of the

valuation dates used by the trial court.” *Id.* at ¶14. Mrs. Budd’s remaining assignments of error are overruled as premature.

CONCLUSION

{¶7} The trial court did not follow this Court’s instruction “to make all other necessary factual findings prior to the valuation and division of marital assets.” *Budd v. Budd*, 9th Dist. No. 24485, 2009-Ohio-2674, at ¶13. The judgment of the Summit County Common Pleas Court, Domestic Relations Division, is reversed, and this cause is remanded for further 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 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 appellee.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
BELFANCE, J.
CONCUR

APPEARANCES:

MARGARET E. STANARD, attorney at law, for appellant.

RANDAL A. LOWRY, and KENNETH L. GIBSON, attorneys at law, for appellee.