

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

NATALIE L. DEMCHIK MADCHARO

C.A. No. 14CA010547

Appellant

v.

DAVID L. MADCHARO

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 11 DR 073454

Appellee

DECISION AND JOURNAL ENTRY

Dated: June 8, 2015

HENSAL, Presiding Judge.

{¶1} Natalie Madcharo appeals a judgment entry of divorce from the Lorain County Court of Common Pleas. For the following reasons, this Court affirms in part and reverses in part.

I.

{¶2} David and Natalie Madcharo married in January 2003. Husband has a Master's of Business Administration and works as a college instructor. Wife did not work throughout the marriage because of health issues. She began receiving Social Security Disability benefits in 2008. The parties have no children together.

{¶3} In March 2011, Wife filed a complaint for divorce. Following a hearing, the trial court divided the parties' debts and assets and granted them a divorce. In its judgment, the court ordered Husband to pay Wife \$800.00 for 30 months in spousal support. Wife has appealed the court's decision, assigning two errors.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT'S DECLARATION THAT THE ENTIRE BALANCE OF APPELLANT'S FIFTH THIRD BANK ACCOUNT NO. X98320 CONSISTED ENTIRELY OF MARITAL FUNDS IS AGAINST THE MANFIEST WEIGHT OF THE EVIDENCE.

{¶4} Wife argues that the trial court incorrectly found that a savings account that she has at Fifth Third Bank was marital property. Although she admits that \$15,000 of the funds that were in the account came from the parties' joint checking account, she contends the rest was her separate property. She argues that the court's finding was against the manifest weight of the evidence.

{¶5} Revised Code Section 3105.171(B) provides that, "in a divorce proceeding, the trial court must classify the parties' property as either marital property or separate property, after which it must divide the property equitably." *Fetzer v. Fetzer*, 9th Dist. Wayne No. 12CA0036, 2014-Ohio-747, ¶ 22. Marital property includes all real and personal property owned by the parties that was acquired by either or both of them during the marriage. R.C. 3105.171(A)(3)(a)(i). Whether property is marital or separate "is a question of fact that this Court reviews under a civil manifest weight standard." *Fetzer* at ¶ 21, quoting *Hahn v. Hahn*, 9th Dist. Medina No. 11CA0064-M, 2012-Ohio-2001, ¶ 20.

{¶6} When reviewing the manifest weight of the evidence, this Court "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered." *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115 (9th Dist.2001). Manifest weight of the evidence pertains to

the burden of persuasion. *Id.* at ¶ 19. “In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact.” *Id.* at ¶ 21.

{¶7} Wife testified that her Fifth Third savings account had a balance of \$48,312.66. When asked whether she had that money before the marriage, Wife answered: “The vast majority of the money, yes, was transferred from my Third Federal checking account * * * [a]nd there is some that was transferred from our joint account.” Wife had previously testified that the source of the funds in her Third Federal checking account was “deposits from my Social Security Disability,” which she began receiving during the marriage. On cross-examination, she admitted that Husband’s temporary spousal support payments had also gone into the checking account.

{¶8} “The party seeking to have a particular asset classified as separate property has the burden of proof, by a preponderance of the evidence, to trace the asset to separate property.” *Fetzer* at ¶ 24, quoting *Eikenberry v. Eikenberry*, 9th Dist. Wayne No. 09CA0035, 2010-Ohio-2944, ¶ 19. Wife did not present any evidence regarding what the balance of her savings account was at the time of the marriage, and her testimony suggests that the money in the account was from marital sources. Accordingly, we conclude that the trial court did not lose its way when it found that Wife failed to establish that the majority of the funds in her savings account were separate property. We cannot say that the trial court’s finding was against the manifest weight of the evidence. Wife’s first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ABUSED ITS DISCRETION BY AWARDING APPELLANT AN INEQUITABLE AND UNCONSCIONABLE AMOUNT OF SPOUSAL SUPPORT.

{¶9} Wife argues that the trial court abused its discretion when it determined her spousal support. Revised Code Section 3105.18(B) provides that, “[i]n divorce and legal

separation proceedings, * * * the court of common pleas may award reasonable spousal support to either party.” “In determining whether spousal support is appropriate and reasonable,” the court shall consider the factors listed in Section 3105.18(C)(1)(a-n). R.C. 3105.18(C)(1). “This Court reviews a spousal support award under an abuse of discretion standard.” *Hirt v. Hirt*, 9th Dist. Medina No. 03CA0110-M, 2004-Ohio-4318, ¶ 8. “An abuse of discretion implies that the court’s decision is arbitrary, unreasonable, or unconscionable.” *Smith v. Smith*, 9th Dist. Summit No. 26013, 2012-Ohio-1716, ¶ 8, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶10} One of the factors that a court must consider in determining spousal support is the “relative earning abilities of the parties.” R.C. 3105.18(C)(1)(b). Wife argues that the trial court erred when it found that her ability to work was unknown. Although Wife testified extensively about her health issues and physical limitations, and submitted proof of her disability status from the Social Security Administration, the trial court found that there was “no proof * * * introduced to establish the causal relationship between [Wife’s] illnesses and her ability to earn income.” The earning potential of each spouse is a question of fact. *Bucalo v. Bucalo*, 9th Dist. Medina No. 05CA0011-M, 2005-Ohio-6319, ¶ 44.

{¶11} In a divorce action, a spouse does not have to present expert testimony that her medical problems prevent her from earning a living. *See DeRaud v. DeRaud*, 7th Dist. Mahoning No. 89 C.A. 137, 1991 WL 83069, *3 (May 13, 1991); *Bunjevac v. Bunjevac*, 8th Dist. Cuyahoga No. 80069, 2002-Ohio-2956, ¶ 45-51. “[T]he crucial focus is whether the party asserting a disability presents evidence explaining how her disability limits his or herself.” *Albrecht v. Albrecht*, 11th Dist. Trumbull No. 2013-T-0124, 2014-Ohio-5464, ¶ 22.

{¶12} Wife testified that she suffers from an extensive list of health problems, some of which were a consequence of her treatment for cancer. She testified that one of her most

significant problems is peripheral neuropathy, which causes “severely decreased sensation, feeling, tactile ability, strength, ability to grip or hold things, lift things, [or] move things, with my hands.” The condition causes her to drop things and fall over. She also testified that she suffers from hypothyroidism, which causes her to have no strength or stamina, leaving her exhausted all the time. For example, Wife explained that it took her six hours to get ready for court because of the number of breaks she needed to take. She testified that she can only leave her home once or twice a week and can only remain out for four to six hours at a time. She also explained that, after she is away from the house, she has to spend the following day recuperating. She noted that the day after the previous day of trial, she slept until 1:30 p.m. She also testified that she takes 26 different medications or supplements and is on morphine continuously. She further testified that her health problems prevented her from working throughout the marriage.

{¶13} Although the trial court found that Wife is in poor health, it found that there was “no proof” of a causal relationship between her health condition and her ability to work, apparently, because she did not present an expert witness. As explained earlier, however, Wife was not required to submit expert testimony on causation.

{¶14} Wife also argues that the trial court erred when it found that her claimed monthly expenses were in excess of her monthly income and that the excess expenses “were composed of medical expenses and attorney’s fees.” According to Wife, the court failed to acknowledge that, even if you deduct the medical expenses and attorney fees from her monthly budget, her claimed monthly expenses still exceed her income by about \$400.

{¶15} Having reviewed Wife’s expense report and supporting documentation, we notice a few discrepancies. First, while she claimed that her monthly cell phone bill was \$140, the bill she submitted indicated that her balance for the prior month was only \$66. The electric bill she

submitted also indicated that her previous bill had been \$20 less. Most significantly, we note that Wife claimed that her monthly mortgage and housing association fees were \$972.72. She also claimed that she has to pay an additional \$180.18 in real estate taxes. The escrow account disclosure statement that Wife submitted, however, shows that the \$180.18 in taxes was already incorporated into the \$972.72 figure. Accordingly, it appears that Wife double-counted her real estate taxes when calculating her claimed monthly expenses. Upon review of the record, we conclude that the trial court did not lose its way when it characterized Wife's excess monthly expenses.

{¶16} Wife next argues that the trial court incorrectly calculated Husband's monthly income and expenses. According to Husband, his base salary is \$44,100. He also receives \$1,288 per month to purchase benefits such as health insurance. Husband testified that he was currently spending \$1,000 on health insurance, but that it would drop to \$500 after the divorce. Husband admitted that he will continue receiving the full \$1,288 each month after the divorce even though his health insurance costs are halved.

{¶17} The trial court calculated Husband's "total salary compensation" by adding the unspent part of his benefits allowance to his base salary, and finding that his total income is \$47,100. The court did not appear to take into consideration Husband's uncontested testimony that the unspent part of his benefits allowance will be increasing by \$500 a month or \$6,000 a year after the divorce. We, therefore, conclude that the court lost its way when it found that Husband's total salary compensation was only \$47,100.

{¶18} In light of the trial court's failure to determine Wife's earning ability and its miscalculation of Husband's total salary compensation, we conclude that the court's spousal

support award must be vacated, and the amount reconsidered. Wife's second assignment of error is sustained.

III.

{¶19} The trial court's findings about Wife's earning ability and Husband's total compensation are not supported by the record. The judgment of the Lorain County Court of Common Pleas is affirmed in part and reversed in part, and this matter is remanded for further proceedings consistent with this decision.

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 Lorain, 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(C). 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.

JENNIFER HENSAL
FOR THE COURT

MOORE, J.
CONCURS.

CARR, J.
CONCURRING IN JUDGMENT ONLY.

{¶20} I concur with the majority's opinion with regard to Wife's first assignment of error and with regard to most aspects of the second assignment of error.

{¶21} Wife argues in the second assignment of error that the trial court erred by finding that her excess expenses were solely comprised of medical expenses and attorney fees which could be properly deducted from her monthly expenses, thereby allowing her to live within her monthly budget. The majority considered other of Wife's claimed expenses in concluding that the trial court did not mischaracterize Wife's excess monthly expenses. I would constrain the analysis to the expenses Wife identified in her argument, rather than other expenses that no party has challenged.

APPEARANCES:

MICHAEL K. ASHAR, Attorney at Law, for Appellant.

PATRICK D. RILEY, Attorney at Law, for Appellee.