

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

TAMMY J. MANOS

C.A. No.       27335

Appellant

v.

CHRIS G. MANOS

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     2007 04 1331

Appellee

DECISION AND JOURNAL ENTRY

Dated: July 22, 2015

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KEOUGH, Presiding Judge.

{¶1} Appellant, Tammy J. Manos (“Wife”), appeals from the judgment of the Summit County Court of Common Pleas, Domestic Relations Division, that was issued on March 26, 2014 modifying spousal support and entering judgment against Wife. For the reasons that follow, we modify in part, reverse in part, and remand for further proceedings consistent with this decision.

{¶2} In 2007, Wife filed for divorce from appellee, Chris G. Manos, (“Husband”). At that time, Wife lived in the parties’ Florida condominium and Husband lived in the marital residence in Ohio. In August 2007, the trial court issued an agreed temporary order which provided, in relevant part, that Husband pay temporary spousal support to Wife in the amount of \$1,500 per month, make the monthly mortgage payments for both the Ohio and Florida properties, and pay the condominium association fees on the Florida condo.

{¶3} The divorce action went to trial in September 2008. On December 2, 2008, the trial

court issued a judgment entry granting the parties a divorce, and made orders regarding spousal support and the division of property. Pursuant to the divorce decree, Husband was ordered to pay Wife spousal support of \$1,500 per month. Relevant to this appeal, the court ordered that both the Ohio and Florida residences be sold and the net proceeds divided. The separately filed findings of fact and conclusions of law clarified that “[a]fter sale and payment of mortgages and expenses the net balance should be divided equally between the parties.” Until the sales were completed, Husband was responsible for the mortgage payments for both properties. However, the divorce decree was silent regarding the payment of the condominium association fees during this period.

{¶4} Following two appeals from the divorce decree judgment by Wife, the trial court was finally able to enter a divorce decree judgment that properly addressed all issues pertaining to support arrearages, duration of spousal support, and property division. *See Manos v. Manos*, 9th Dist. Summit No. 24717, 2010-Ohio-1178, ¶ 38-43 (“*Manos I*”); *Manos v. Manos*, 9th Dist. Summit No. 26017, 2012-Ohio-2281, ¶ 11 (“*Manos II*”).

{¶5} On May 31, 2013, Husband filed two post-decree motions — (1) motion for modification of spousal support, and (2) motion for judgment of monies owed to Husband by Wife.

{¶6} The basis for his modification of support was two-fold: (1) Wife had gained employment; and (2) Husband’s income had substantially changed due to economic and health circumstances rendering Husband unable to continue paying spousal support.

{¶7} Regarding the second motion, Husband moved for judgment against Wife in the amount of \$18,500 for money expended to complete the sale of the parties’ Florida

condominium, including satisfaction of the outstanding liens, repairs, and legal fees.

{¶8} Following an evidentiary hearing, the trial court granted both of Husband's motions reducing Husband's spousal support obligation from \$1,500 to \$300 per month and granting Husband judgment against Wife in the amount of \$16,071. Wife appeals from this judgment entry raising four assignments of error.

#### I. Modification of Spousal Support

{¶9} Wife's first three assignments of error relate to the trial court's order modifying Husband's spousal support obligation. Those assignments of error are:

- I. The trial court erred in finding that the Husband's income had decreased by 80%.
- II. The trial court erred in finding that the Wife is capable of holding more financially rewarding employment.
- III. The trial court erred in reducing the Husband's spousal support obligation by 80%.

Accordingly, these assignments of error will be addressed together.

{¶10} With respect to spousal support, a trial court has broad discretion in determining what is proper based upon the facts and circumstances of each case. *Kunkle v. Kunkle*, 51 Ohio St.3d 64, 67, 554 N.E.2d 83 (1990). A reviewing court cannot therefore substitute its judgment for that of the trial court absent an abuse of discretion. *Id.* Furthermore, an appellate court will not reverse a decision of the domestic relations court if there is competent, credible evidence in the record supporting the trial court's decision. *Abernethy v. Abernethy*, 8th Dist. Cuyahoga No. 92708, 2010-Ohio-435, ¶ 39.

{¶11} R.C. 3105.18 governs the award of spousal support and its modification. In order for a court to modify the spousal support award, the court must find (1) that a substantial change

in circumstances has occurred and (2) that the change was not contemplated at the time of the original decree. *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, 905 N.E.2d 172, paragraph two of the syllabus; R.C. 3105.18(F). If the court reserved jurisdiction for modification in the divorce decree, the trial court must consider the factors set forth in R.C. 3105.18(C)(1) to determine whether the existing support order should be modified in light of a significant change in circumstances. *Id.* at ¶ 31.

{¶12} Such factors include: (1) the parties' income from all sources, including income derived from the property division made by the court; (2) the relative earning abilities of the parties; (3) the parties' ages and physical, mental, and emotional conditions; (4) the parties' retirement benefits; (5) the duration of the marriage; (6) the relative extent of education of the parties; (7) the relative assets and liabilities of the parties; and (8) the tax consequences of an award of spousal support for each party. *See* R.C. 3105.18(C)(1).

{¶13} The trial court is not required to comment on each statutory factor; rather, the record must only show that the court considered the statutory factors when making its award. *Barlow v. Barlow*, 9th Dist. Wayne No. 08CA0055, 2009-Ohio-3788, ¶ 22, citing *Kreilick v. Kreilick*, 161 Ohio App.3d 682, 2005-Ohio-3041, 831 N.E.2d 1046, ¶ 22 (6th Dist.). Moreover, in considering a motion to modify a spousal support order, “[t]he court need only consider the factors which have actually changed since the last order.” *Lumpkin v. Lumpkin*, 9th Dist. Summit No. 21305, 2003-Ohio-2841, ¶ 16, quoting *Mizenko v. Mizenko*, 8th Dist. Cuyahoga No. 78409, 2001 Ohio App. LEXIS 2514, \*5 (June 7, 2001).

{¶14} Due to the strong interest in finality, the Ohio Supreme Court has cautioned that courts should only modify spousal support orders when one or both of the parties' circumstances

have “drastically” changed or there is a “material alteration of circumstances.” *Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, 905 N.E.2d 172, at ¶ 16, quoting *Wolfe v. Wolfe*, 46 Ohio St.2d 399, 419, 350 N.E.2d 413 (1976); *Olney v. Watts*, 43 Ohio St. 499, 508, 3 N.E. 354 (1885). The burden of establishing the need for a modification of spousal support rests with the party seeking the modification. *Tremaine v. Tremaine*, 111 Ohio App.3d 703, 676 N.E.2d 1249 (2d Dist.1996).

{¶15} In this case, the parties agree that the trial court retained jurisdiction to modify the spousal support order. Following a hearing on Husband’s motion, the trial court found that Husband’s income at the time of divorce was approximately \$85,000 annually, and that his 2011 and 2012 tax returns show an adjusted gross income of \$18,259 and \$15,632, respectively. The trial court therefore determined that Husband’s income had decreased by 80 percent. The trial court further found that Wife is employed part-time, earning \$1,300 per month; however, it determined that Wife is capable of holding more financially rewarding employment. Based on its findings, the trial court decreased Husband’s spousal support obligation by 80 percent or from \$1,500 per month to \$300 per month.

{¶16} Wife maintains on appeal that the findings made by the trial court which it based its decision to modify spousal support are not supported by the evidence in the record, and therefore, an abuse of discretion. We agree, in part.

{¶17} Contrary to the Wife’s assertion, the record supports the trial court’s finding that at the time of the divorce, Husband’s income was approximately \$85,000 annually. The actual figure the court used in determining the original spousal support order was \$83,135. This finding is supported by Husband’s uncontested testimony at the motion hearing and Wife’s

proposed findings of fact that were presented to the trial court for consideration at the time of divorce in 2008. This figure was generated by taking an average of Husband's *net* income (Line 12) from the tax returns for tax years 2004, 2005, and 2006, plus the amount Wife was paid by Husband's law practice. The establishment of spousal support, including the calculation was upheld by this court in *Manos I*. Therefore any challenge to whether this amount was correctly determined is *res judicata* and cannot be challenged now on appeal.

{¶18} However, the evidence does not support the court's finding that Husband's income has decreased by 80 percent, which would justify the substantial decrease in spousal support. A thorough review of the record shows that the trial court used an average of Husband's *adjusted gross income* (Line 37) from tax years 2011 and 2012, and an estimated adjusted gross income for 2013, in determining Husband's income substantially changed. Notwithstanding that the trial court used the wrong adjusted gross income figure for 2012 in its calculation, the trial court's use of Husband's *adjusted gross income* was arbitrary considering the court used Husband's *net* income for determining spousal support in 2008. These two figures are not comparable.

{¶19} Reviewing Husband's net income for 2011 and 2012 as evidenced on his tax returns, it shows that Husband's net income (Line 12) was \$47,241 and \$50,825, respectively, for an average of \$49,033. This would only be a decrease by 41 percent. Therefore, a 41 percent salary decrease may qualify as a substantial change in circumstances. Pursuant to R.C. 3105.18(F)(1)(a), a change in circumstances "includes, but is not limited to, any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses." See *Fine v. Fine*, 8th Dist. Cuyahoga Nos. 96433 and 96434, 2012-Ohio-105 (finding a reduction in salary from \$550,000 to \$300,000 qualifies as a change in circumstances); *Rochon*

*v. Rochon*, 9th Dist. Summit No. 16819, 1994 Ohio App. LEXIS 5789 (Dec. 21 1994).

{¶20} However, the trial court's determination should not end with this finding. The trial court was also required to consider R.C. 3105.18(F)(1)(b) — whether this foreseeable or unforeseeable change was taken into account by the parties or the court as a basis for the existing award when the support order was established. In this case, the trial court did not address this other factor.

{¶21} Additionally, there was no evidence presented that would support the trial court's determination that Wife was capable of earning more than her current income. At the time of divorce, the decree specifically indicated that the award of support was ordered for nine years due to the length of the marriage, the education of the parties, and the necessary living expenses of the Wife. No testimony or evidence was presented that Wife in the five years since divorce had gained any additional education or skill-set that would suggest Wife was capable of earning more than her current income.

{¶22} Although Wife now has a part-time job, this alone cannot be a justification to modify a spousal support award because Wife obtaining employment during the spousal support obligation period was not a change that was not contemplated at the time of the original decree. It is reasonable to assume that at the time of divorce Wife would gain some type of employment during that nine-year obligation period. Finally, although the fact that a spouse acquires employment is a factor properly considered in a modification proceeding, it does not follow that such employment eliminates the need for spousal support. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 220, 450 N.E.2d 1140 (1983).

{¶23} Accordingly, the trial court's failure to conduct a complete analysis pursuant to

R.C. 3105.18(F), including consideration whether these changes were anticipated at the time of divorce, is abuse of discretion. Therefore, we sustain Wife's assignments of error and remand the matter back to the trial court to determine whether Husband's decrease in income was contemplated by the parties or the court when the existing support award was ordered.

## II. Judgment of Monies Owed to Husband by Wife

{¶24} Husband sought judgment against Wife in the amount of \$18,500 for expenses associated with the sale of the Florida condominium, including unpaid condo fees, attorney fees, legal fees, and repairs. Following a hearing on Husband's motion, the trial court granted Husband judgment against Wife for \$16,071.

{¶25} In her second assignment of error, Wife contends that the trial court erred in granting Husband a judgment against her for unpaid condominium fees and attorney fees. Specifically, Wife contends that a portion of the condo fees were Husband's obligation under the temporary support orders. Furthermore, Wife contends that the divorce decree was silent as to who was the responsible party for the payment of the condo fees between the time of divorce and until the sale of the condo; thus, the unpaid condo fees should be considered marital debt and divided equally. Additionally, Wife contends that the attorney fees expended were costs to close the real estate sale and record the deed, thus, those costs should also be divided equally between the parties.

{¶26} Generally, we review trial court's determinations in domestic relations cases for an abuse of discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). "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*, 5 Ohio St.3d at 219, 450 N.E.2d 114.

{¶27} Reviewing the trial court’s order, the evidence presented, and the divorce decree, we find that the trial court abused its discretion in awarding Husband judgment against Wife in the amount of \$16,071. This amount is arbitrary and unreasonable because it is not supported by the evidence.

{¶28} According to the court’s order, the judgment award includes \$15,358 “to satisfy the lien for condominium fees,” \$620 for legal fees, and \$93 for court costs. While some of these dollar figures were taken from Husband’s exhibit No. 26, those amounts were unsupported by the record, and regardless how the figures are added up, the bottom-line judgment award is inconsistent with the testimony and evidence.

{¶29} The evidence showed that Husband issued a check for unpaid condo fees, which included interest and incidental fees in the amount of \$14,548.90. *See* tr. 77-78; exhibit No. 19A. The evidence showed that Husband paid for legal fees “to transact the sale of the condominium and to record the deed” in the amount of \$620. *See* tr. 79-80, exhibit Nos. 23A and 23B. Husband testified that he paid \$93 in court costs in Florida for a Full Faith and Credit Action due to Wife being uncooperative in the sale transaction. *See* tr. 80-81; exhibit No. 24.<sup>1</sup> Adding these figures together do not equal \$15,358.90 as suggested by Husband in his exhibit No. 26 or in the \$16,071 judgment amount as ordered by the court. The total dollar amount is \$15,261.90.

{¶30} Notwithstanding that the figures used by the trial court were unsupported by the

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<sup>1</sup>Husband also testified that he expended \$945.19 for repairs to the condo. However, the trial court’s judgment entry does not reflect an award for these amounts, therefore this issue is not before this court.

record, the trial court made a finding to support its order that was not included in the divorce decree. The trial found that “[w]hen the Temporary Order ended the [condo] fees became Plaintiff Wife’s obligation.” This finding is not in the divorce decree and nothing in the record suggests that Wife was obligated to pay for the condo fees.

{¶31} Pursuant to the terms of the divorce decree, the Florida condo was to be sold and any proceeds from the sale were to be divided equally between the parties. Husband testified that he sold the Florida condo for \$45,000. After paying off the mortgage on the property, the net proceeds from the sale totaled \$10,807.03. No evidence was presented that the net proceeds were divided between the parties or that this balance was considered by the trial court in making its determination regarding monies owed by Wife.

{¶32} Husband testified and presented documentary evidence that the Florida condo fees went unpaid from July 1, 2008 until the condo was sold. The parties do not dispute that Husband was responsible for the payment of the condo fees during the divorce proceedings pursuant to a temporary support order. Accordingly, Husband was responsible for the condo fees until December 2, 2008, the date of the divorce decree.

{¶33} Because the Florida condo was a marital asset, which was to be sold and the net proceeds were to be divided equally between the parties, any outstanding liability expenses, like unpaid condo fees, taxes, insurance, or the mortgage, should be divided equally and assessed against each party. Furthermore, it was contemplated in the trial court’s 2008 findings of fact and conclusions of law that the net proceeds of the sale of the two marital residences would be divided equally “after sale and payment of mortgages and expenses.” Therefore, the expenses associated with the sale of the condo would be deducted prior to the division of the net proceeds.

{¶34} Interpreting the divorce decree to the evidence presented, we are able to modify the trial court's order to reflect the proper judgment. Pursuant to the temporary order of support, Husband was required to pay the condo fees until the divorce decree, December 2008. Therefore, of the \$14,548.90 that represented the outstanding unpaid condo fees, Husband was responsible for \$2,523 (\$1740 at 15% interest for three years). This leaves a balance of \$12,025.90. Applying the remainder of the proceeds from the sale of the condo, a balance of \$1,218.87 remained that should be divided and assessed equally against each party. Therefore, each party is responsible for approximately \$609.44 of the unpaid condo fees.

{¶35} Additionally, the attorney fees associated with the transaction to close the sale of the condo should also be divided and assessed equally. Therefore, each party assumes \$310 of the attorney fee bill. However, evidence was presented to support the trial court's assessment of court costs against Wife due to Husband having to file a Full Faith and Credit Action against Wife. Therefore, Wife is obligated to pay the \$93 in court costs.

{¶36} Accordingly, we find that the trial court did not abuse its discretion in ordering judgment in favor of Husband. However, the amount is modified to reflect that Wife owes Husband \$1,012.44. This amount represents her share of the condo lien and attorney fees associated with the sale of the condo. This amount also includes the assessment of court costs against Wife.

{¶37} Judgment modified in part, reversed in part, and remanded to the trial court for further proceedings consistent with this opinion.

Judgment modified in part,  
reversed in part, and  
remanded for further proceedings.

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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(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.

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KATHLEEN ANN KEOUGH  
FOR THE COURT

MARY EILEEN KILBANE, J., and  
PATRICIA ANN BLACKMON, J., CONCUR

(Sitting by assignment: Kathleen Ann Keough, Presiding Judge, Mary Eileen Kilbane, Judge, and Patricia Ann Blackmon, Judge, of the Eighth District Court of Appeals.)

APPEARANCES:

DAVID FERGUSON, Attorney at Law, for Appellant.

DON LOMBARDI, Attorney at Law, for Appellee.