[Cite as *Keller v. Keller*, 2026-Ohio-3422.]

# IN THE COURT OF APPEALS
# FIRST APPELLATE DISTRICT OF OHIO
# HAMILTON COUNTY, OHIO

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| NOELLE ELIZABETH KELLER, | : | APPEAL NOS. C-250337<br>C-250377 |
| Plaintiff-Appellee/Cross-Appellant, | : | TRIAL NO. DR-2300395 |
| vs. | : | |
| JOHN FRANCIS KELLER, III, | : | *JUDGMENT ENTRY* |
| Defendant-Appellant/Cross-Appellee. | : | |
| | : | |

This cause was heard upon the appeals, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed in part and reversed in part, and the cause is remanded.

Further, the court holds that there were reasonable grounds for these appeals, allows no penalty, and orders that costs be taxed 50 percent to the appellant and 50 percent to the appellee.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

**To the clerk:**

**Enter upon the journal of the court on 9/2/2026.**

**Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.**

**By:_________________________**
**Administrative Judge**

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| Plaintiff-Appellee/Cross-Appellant, | : | TRIAL NO. | DR-2300395 |
| vs. | : | | |
| JOHN FRANCIS KELLER, III, | : | *O P I N I O N* | |
| Defendant-Appellant/Cross-Appellee. | : | | |
| | : | | |

Appeals From: Hamilton County Court of Common Pleas, Domestic Relations Division

Judgment Appealed From Is: Affirmed in Part, Reversed in Part, and Cause Remanded

Date of Judgment Entry on Appeal: September 2, 2026

*Barbara J. Howard Co., L.P.A., Melissa Thompson Millard*, and *Rachel Myers*, for Plaintiff-Appellee/Cross-Appellant,

*Stagnaro Hannigan Koop, Co., LPA,* and *Michaela Stagnaro*, for Defendant-Appellant/Cross-Appellee.

**MOORE, Judge.**

**{¶1}** Defendant-appellant/cross-appellee John Keller ("Husband") and plaintiff-appellee/cross-appellant Noelle Keller ("Wife") appeal from the Hamilton County Court of Common Pleas, Domestic Relations Division's divorce decree. Specifically, Husband contends that the court erred in determining the marriage's de facto termination date, the classification and division of real and personal property, and the division of the dependent-child tax exemption. Wife argues that the court erred when it did not adopt the magistrate's order that Husband make an equalization payment to Wife. Wife also takes issue with the court's orders regarding the division of child-care expenses and guardian ad litem fees.

**{¶2}** For the reasons set forth below, the judgment of trial court is affirmed in part and reversed in part and the cause is remanded.

## *I. Factual and Procedural History*

**{¶3}** In March 2023, Wife filed her divorce complaint. In advance of trial, the parties entered into an agreed entry that established when Wife would leave the marital home and that Husband would pay Wife $25,000 as a partial property-division payment. The entry also recognized that the allocation of the parties' personal property, the division of expenses, and child support, were to be resolved at trial.

**{¶4}** In July 2024, the matter proceeded to a trial before the magistrate. Both Husband and Wife testified concerning the purchase, valuation, and allocation of the parties' marital home. Wife retained Eileen Vogel, a certified real-estate appraiser, who testified that she valued the property at $490,000. Vogel explained her comparative-valuation process, as well as assumptions made regarding potential damage to the home and how that damage impacted her valuation of the property.

**{¶5}** The couple also testified concerning the division of personal property.

This testimony concerned the parties' cars, Husband's watch collection, Husband's deposit accounts, Husband's retirement accounts, the issue of spousal support, as well as a supposed cash gift that Husband and Wife made to Husband's parents toward the purchase of a Corvette.

**{¶6}** In October 2024, the magistrate made findings. The magistrate determined the marriage's de facto termination date was June 3, 2023, when Wife removed her personal property from the home and Husband was the sole occupant.

**{¶7}** The magistrate classified the marital home as marital property and awarded the home to Husband. Using Vogel's $490,000 valuation, the magistrate ordered that Husband pay Wife her one-half equity stake, less the mortgage's June 2023 balance and minus the amount of the down payment Husband made when he purchased the home. The total amount Husband was to pay Wife for her interest in the marital home was $98,893.90.

**{¶8}** As to the parties' personal property, the magistrate made similar itemized determinations. The magistrate addressed the division of the parties' vehicles, the Corvette gifted to Husband's father, the disputed deposit and retirement accounts, two Rolex watches, and the division of child support and court costs.

**{¶9}** Both parties filed objections to the magistrate's decision, and the matter proceeded to a hearing before the domestic relations court. The court adopted the magistrate's decision in part, but sustained Husband's objections regarding the award of attorneys' fees, guardian ad litem ("GAL") fees, and child-care expenses. All other objections were overruled, and this appeal followed.

### *II. Analysis*

**{¶10}** On appeal, Husband raises seven assignments of error. Husband disputes the court's decision determining the marriage's de facto termination date, and challenges the court's entry classifying the marital home, the parties' vehicles, and various accounts as marital property subject to equitable division. Husband also disputes the court's decision awarding Wife one of his watches and not the value of the watch. Finally, Husband contends that the court erred in awarding Wife one half of the dependent-child tax exemption.

**{¶11}** In her cross appeal, Wife raises four assignments of error. She asserts that the trial court erred in failing to adopt the magistrate's decision directing Husband to make an equalization payment. Wife also argues the trial court erred in its decision regarding the assumption of GAL fees, the division of child-care costs, and how child-care costs were to be paid.

### *A. The De Facto Termination Date of the Marriage*

#### *1. Standard of Review*

**{¶12}** Husband argues in his first assignment of error that the domestic relations court erred in finding that the de facto termination date of the marriage was June 3, 2023. Husband contends the date should be March 31, 2023, because Wife retained counsel in February 2023, filed for divorce on March 9, 2023, stopped financial contributions on March 30, 2023, and obtained a separate apartment on April 1, 2023. Husband argues that the parties were physically, emotionally, and financially separated by the end of March 2023, with no intent to reconcile.

**{¶13}** Wife responds that she still resided in the marital home before June 3, 2023, that her personal items remained in the home, and that she spent all of her time with the parties' child. She asserts that she was still paying "the family bills that she historically had" and that she had secured an apartment to "eventually move to" after the parties established the terms of their separation.

**{¶14}** We review the domestic relations court's determination under an abuse-of-discretion standard. *Lemarr v. Lemarr*, 2011-Ohio-3682, ¶ 4 (1st Dist.). A court has abused its discretion when, based on the totality of the circumstances, the court's decision was unreasonable, arbitrary, or unconscionable. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 33.

**{¶15}** Under R.C. 3105.171(A)(2), the termination date of a marriage is the date of the final hearing in a divorce, or if the domestic relations court determines that that date would be inequitable, "the court may select dates that it considers equitable in determining marital property."

**{¶16}** "Prior to dividing a couple's property and debts, the domestic relations court must determine the duration of the marriage by pinpointing the time period that will be considered 'during the marriage.'" *Stewart v. Stewart*, 2025-Ohio-1635, ¶ 34 (1st Dist.), quoting *Owens v. Owens*, 2022-Ohio-3450, ¶ 18 (1st Dist.). "The term 'during the marriage' is a term of art and is the period that is used to identify separate and marital property and debts and to value the couple's property and debt." *Id.*

**{¶17}** If the domestic relations court determines that it would be inequitable to use the date of the final hearing as the termination date of the marriage, to achieve equity, "a domestic relations court must be permitted to utilize alternative valuation dates, such as the time of permanent separation or de facto termination of the marriage, where reasonable under the facts and circumstances presented in a particular case." *Sergey Sargsyan v. Gayane Martirosyan*, 2021-Ohio-4576, ¶ 27 (10th Dist.), quoting *Berish v. Berish*, 69 Ohio St.2d 318, 321 (1982).

**{¶18}** Ohio courts have considered several factors to aid in determining whether a de facto termination of marriage date is equitable, including, but not limited to whether (1) the parties separated on less than friendly terms; (2) the parties believed the marriage ended before the hearing; (3) either party cohabited with another person during the separation; (4) the parties were intimately involved during the separation; (5) the parties lived as husband and wife during the separation; (6) the parties maintained separate residences; (7) the parties utilized separate bank accounts or were/were not financially intertwined (except temporary orders); (8) either party attempted to reconcile; (9) either party retained counsel; and (10) the parties attended social functions together or vacationed together. *See Dill v. Dill*, 2008-Ohio-5310, ¶ 11 (3d Dist.); *W.G. v. D.G.*, 2024-Ohio-1690, ¶ 15 (8th Dist.).

**{¶19}** The language of the agreed entry establishes that Wife did not move out of the marital home until June 3, 2023—the agreed-upon date when Husband was to assume exclusive occupancy of the house. Standing alone, the agreed entry supports Wife's assertion that her belongings were still in the home in March 2023. Further, Husband testified to continuing to financially support Wife after she moved out of the marital home. R.C. 3104.171 permits the domestic relations court to choose a date that it considers equitable for the purposes of classifying and dividing marital property. Here, the court's determination that the de facto termination date of the marriage was June 3, 2023, was not an abuse of discretion as that decision was not arbitrary, unreasonable, or unconscionable. Husband's first assignment of error is, therefore, overruled.

### *B. The Classification and Division of Property*

**{¶20}** As Husband's second through sixth assignments of error and Wife's first assignment of error challenge the domestic relations court's division of property, we consider these assignments of error together.

**{¶21}** In divorce proceedings, the domestic relations court is required to divide marital property equitably between spouses. R.C. 3105.171(B). "A domestic relations court is vested with broad discretion to determine what constitutes an equitable division of property in a divorce proceeding, and its exercise of discretion will not be disturbed on appeal in the absence of some demonstration that the court abused its discretion." *Bass v. Bass*, 2022-Ohio-2970, ¶ 22 (2d Dist.), quoting *Jelen v. Jelen*, 86 Ohio App.3d 199, 203 (1st Dist.1993), citing *Martin v. Martin*, 18 Ohio St.3d 292 (1985); *see Jelen* at 203, citing *Briganti v. Briganti*, 9 Ohio St.3d 220 (1984) ("In determining whether the domestic relations court abused its discretion, a reviewing court cannot examine the valuation and division of a particular marital asset or liability in isolation; rather, the reviewing court must view the property division in its entirety, consider the totality of the circumstances, and determine whether the property division reflects an unreasonable, arbitrary or unconscionable attitude on the part of the domestic relations court.").

**{¶22}** Unlike the review of a division of property, when the characterization or valuation of property is in question, we review the sufficiency or manifest weight of the evidence, depending on the challenge raised by the party challenging the classification. *Shteiwi v. Abdelmassih*, 2025-Ohio-2901, ¶ 26 (1st Dist.), citing *Edje v. Holmes*, 2024-Ohio-1663, ¶ 15 (1st Dist.).

**{¶23}** "There is a presumption in Ohio that an asset acquired during the course of the marriage is marital property, unless proved otherwise." *Bass* at ¶ 21, quoting *Tincher v. Tincher*, 2020-Ohio-3352, ¶ 63 (5th Dist.); R.C. 3105.171. This court addressed the difference between separate and marital property in *Mullins v. Mullins*, 2023-Ohio-3266 (1st Dist.):

> The parties' marital property consists of real or personal property owned by either spouse, including retirement benefits acquired during the marriage and interest in those benefits. Marital property does not include any separate property. Separate property

> consists of, among other things, *property acquired before the marriage* and certain other property, such as inheritances and gifts, acquired by one spouse during the marriage. A spouse may retain separate property despite having commingled it with marital property, because as long as it is traceable, separate property retains its identity.

(Emphasis added.) (Internal quotation marks and citations omitted.) *Shteiwi* at ¶ 27, citing *Mullins* at ¶ 14, quoting *Devito v. Devito*, 2022-Ohio-2563, ¶ 23 (1st Dist.).

**{¶24}** The "key issue" in determining whether property is separate or marital is the traceability of the commingled asset. *Shteiwi* at ¶ 29, citing *Tyra v. Tyra*, 2022-Ohio-2504, ¶ 15 (1st Dist.). The party disputing the marital classification of property bears the burden of demonstrating by a preponderance of the evidence that the asset in question is separate property. *Id.* This includes the burden to prove appreciation in the value of separate property. *Bozhenov v. Pivovarova*, 2023-Ohio-2437, ¶ 13 (12th Dist.). "Because traceability presents a question of fact, we must give deference to the domestic relations court's findings, and the court's decision on the matter will not be reversed as against the manifest weight of the evidence when it is supported by competent credible evidence." *Mullins* at ¶ 31, citing *Tyra* at ¶ 15 , quoting *Fiamengo v. Fiamengo*, 2016-Ohio-4720, ¶ 29 (2d Dist.), quoting *Maloney v. Maloney*, 2005-Ohio-1368, ¶ 23 (2d Dist.).

*1. The Marital Home*

**{¶25}** In Husband's second assignment of error, he challenges the classification of the home as marital property, arguing that Wife contributed nothing to the purchase, agreed to a sole ownership arrangement, and made minimal contributions to household expenses. Husband argues that the appreciation in the value of the home was passive market gain, and that only the marital interest should be included in the mortgage paydown of $13,649.49. Husband also contests the magistrate's reliance on the March 2024 appraisal, arguing that it was conducted a year after the parties had separated, and it gave Wife the benefit of market appreciation without her financially contributing to the home. Because Husband challenges the classification of the marital home, we apply the manifest-weight-of-the-evidence standard of review. *Shteiwi*, 2025-Ohio-2901, at ¶ 26 (1st Dist.).

**{¶26}** When fashioning a division of marital assets, the trial court is obliged to determine what property is marital and what property is nonmarital. R.C. 3105.171(B); *see Girton v. Girton*, 2009-Ohio-4458, ¶ 6 (4th Dist.). "In 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.'" R.C. 3105.171(G). A court must comply with its duty by making findings in sufficient detail to allow for meaningful appellate review of its decision. *Girton* at ¶ 6.

**{¶27}** It is undisputed that Husband purchased the property before the date of the marriage. The property was commingled with marital funds because the parties paid down the existing mortgages during the marriage. *See Ruff v. Ruff*, 2023-Ohio-2349, ¶ 37 (11th Dist.). To demonstrate which portion of the home's value remained separate property, Husband was required to show that the appreciation in the home's value was passive. *See id.* To determine whether the appreciation in value was active or passive, the domestic relations court had to determine whether it resulted from efforts by either spouse (active) or from market forces (passive). *See Shteiwi* at ¶ 28.

**{¶28}** The Ohio Supreme Court has held that R.C. 3105.171(A)(3)(a)(iii) "unambiguously mandates that when either spouse makes a labor, money, or an in-kind contribution that causes an increase in the value of separate property, that increase in value is deemed marital property." *Bozhenov*, 2023-Ohio-2437, at ¶ 14 (12th Dist.), quoting *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 400 (1998); *see Gerber v. Gerber*, 2006-Ohio-1384, ¶ 12 (8th Dist.) (an increase in value due to repairs or improvements performed by either spouse during the marriage or by payment on the mortgage principal with marital funds is marital property); *Shteiwi*, 2025-Ohio-2901, at ¶ 28 (1st Dist.) (How property appreciates is material to its equitable division; "active appreciation" is due to the labor, monetary, or in-kind contributions of either or both of the spouses that occurred during the marriage.).

**{¶29}** If, however, the appreciation of the separate property is attributable to conditions outside the parties' control, such as inflation, the property's location, or market-driven factors, the increase in value is passive appreciation and remains separate property. *Bozhenov* at ¶ 12-13; *Shteiwi* at ¶ 28; R.C. 3105.171(A)(6)(a)(ii) and (iii).

**{¶30}** The marital home was a mixed asset. Husband made a down payment on the home before the marriage. The down payment was therefore paid with nonmarital funds. The home, therefore, was Husband's separate property. *See Bozhenov* at ¶ 12-13. However, the record also shows that the home's appreciation was attributable to active appreciation due to the improvements that were made by the parties during the course of their marriage, as evinced by the testimony of Husband, Wife, and the appraiser. In addition to this testimony, the domestic relations court used the appraisal, which was done four months before the divorce trial. The record contains the original mortgage documents, which were executed five months before the marriage. Together, the mortgage documents establish the home's premarital value, and the appraisal establishes a valuation of the home towards the end of the parties' marriage, after the improvements to the home were made. While there is no valuation of the house from the exact start of the marriage or as of the de facto termination of the marriage, there is a valuation in the record that was done just a few months before the court finalized the couple's divorce decree.

**{¶31}** Accordingly, while the home remained husband's separate property throughout the marriage, the active appreciation of the home's value is a marital asset. Therefore, the domestic relations court erred by classifying the marital home as solely a marital asset.

**{¶32}** Although the court erred in its classification of the marital home, it correctly distributed the value of the active appreciation in the home, particularly where Wife had stipulated to awarding Husband the value of the down payment. While the court should have classified the marital home as a mixed asset, the erroneous finding did not prevent it from coming to the correct conclusion in distributing the appreciated value of the home. Therefore, the domestic relations court's error was harmless because the distribution of the value of the home was equitable. Husband's second assignment of error is overruled.

*2. Division of the Remaining Property*

a. The Rolex Watches

**{¶33}** In Husband's third assignment of error, he argues that the domestic relations court's award of one of the parties' two Rolex watches to Wife instead of the equitable value was punitive and inequitable, particularly where Wife testified that she wanted her share of the value of the watches. Husband contends that he should retain the watches and pay Wife half the value.

**{¶34}** In fashioning an equitable division, the domestic relations court must consider all relevant factors enumerated in the statute, including the duration of the marriage, the assets and liabilities of the spouses, the liquidity of the property to be distributed, the economic desirability of retaining intact an asset or interest in an asset, the tax consequences of the property division, the costs of sale if necessary, and any other factor the court expressly finds to be relevant and equitable. *Edje*, 2024-Ohio-1663, at ¶ 45 (1st Dist.); R.C. 3105.171(F) and 3105.18(C)(1). The statute does not mandate that all property be liquidated and divided by cash payment; rather, the court may make in-kind distributions when it is equitable to do so. R.C. 3105.171(A)(3)(a)(iii).

**{¶35}** Husband's argument that Wife's jewelry items should be offset against the value of the Rolex watches is not well-taken. It was not unreasonable for the domestic relations court to find that Wife's jewelry items are distinguishable from the investment-grade Rolex watches in both nature and purpose. A memorial locket and a necklace designated as a keepsake for the child serve sentimental and familial purposes rather than investment or monetary ones.

**{¶36}** The fact that Husband preferred a cash equalization does not render the court's in-kind division unreasonable or an abuse of discretion. The domestic relations court is free to ascertain and apply a statutorily compliant valuation protocol to achieve an equitable result. *Katz v. Katz*, 2017-Ohio-4290, ¶ 54-55 (8th Dist.); *see Shteiwi*, 2025-Ohio-2901, at ¶ 63 (1st Dist.) (holding the domestic relations court's division of cryptocurrency wallet by value instead of coinage was an equitable method of property division). The record reflects that Husband's valuation evidence regarding the Rolex watches was limited and inconsistent. The statute vested the domestic relations court with discretion to determine what is equitable based on the totality of circumstances, and an in-kind division of comparable personal property is well within that discretion. *See Edje* at ¶ 18. Thus, Husband's third assignment of error is overruled.

b. The Vehicles

**{¶37}** The trial court addressed the division of a Mercedes and a Cadillac, and the reimbursement of a disputed gift of funds made towards the purchase of a Corvette.

**{¶38}** As to the Mercedes, the court determined based on the Kelly Blue Book Private Party valuation introduced by Wife that the car was valued at $21,070 and was encumbered by a loan balance of $10,709.09. The court did not adopt Husband's testimony that the car was valued at $12,941. The court concluded that Husband failed to demonstrate that the Mercedes was separate property, and ordered that Husband was to retain the Mercedes, subject to paying Wife $5,180.45.

**{¶39}** As to the Cadillac, the court concluded that the car was purchased using mixed funds. The court noted that the Cadillac was purchased using $31,910.75 in insurance proceeds from a totaled SUV that Husband separately purchased by trading in his truck. The court also noted that Wife made $17,877.04 in loan payments towards the totaled SUV. Given the mixed nature of the totaled SUV, the court ordered that the Cadillac be sold and that the parties equally divide the proceeds.

**{¶40}** As to the Corvette, the court found Husband gifted his father $24,700.58 from a bonus he had received while the parties were together. The court concluded that because the bonus was marital in nature, and because there was insufficient evidence in the record to show that Wife formed the intent to gift the funds, Husband owed Wife a reimbursement of $12,350.29.

**{¶41}** Husband disputes each of these decisions.

*The Mercedes*

**{¶42}** Husband argues that the domestic relations court erred by using Wife's

Kelly Blue Book Private Party valuation for the Mercedes. However, in his deposition, he also cited the Kelly Blue Book to support his valuation of the Mercedes. When parties present substantially different valuations of an asset, the domestic relations court is free to believe all, part, or none of any witness's testimony. *Freytag v. Freytag*, 2024-Ohio-2403, ¶ 36 (3d Dist.).

**{¶43}** Husband also disputes the court's conclusion that he failed to demonstrate that the Mercedes was separate property. Husband's claim that the car was separate property rested on the assertion that he purchased the car by trading in another car. However, Husband produced no documentation to establish the existence, value, or application of any such trade-in. "Oral testimony as evidence of the separate nature of property, without documentary proof, may or may not be sufficient to carry the burden." *Estate of Reed v. Reed*, 2017-Ohio-8350, ¶ 8 (9th Dist.), quoting *Fisher v. Fisher*, 2004-Ohio-7255, ¶ 9 (2d Dist.). Husband's unsupported assertion, absent corroborating documentation, was insufficient to meet his burden of proof. Because Husband failed to trace the alleged separate property contribution through documentary or credible testimonial evidence, the domestic relations court properly found that the Mercedes was marital property subject to equitable division.

*The Cadillac*

**{¶44}** Husband's arguments that the court's division of the Cadillac was inequitable are also meritless. The domestic relations court's order for the sale of the Cadillac, with an equal division of the net proceeds, was equitable given the Cadillac's intermingled marital and separate components. The vehicle was purchased with insurance proceeds from a totaled vehicle the couple purchased together, and both parties asserted separate interests based on different alleged contributions, including Wife's substantial post-separation loan payments. Based on Wife's testimony that she made loan payments towards the Cadillac, paired with the tracing evidence in the record that the funds used to purchase the Cadillac came from insurance proceeds of a previous marital vehicle, the court's equitable division of the Cadillac was not an abuse of discretion.

*The Corvette*

**{¶45}** The Corvette reimbursement to Wife was proper because Husband used marital funds to pay off a third party's obligation where the court found that Wife did not agree to make the gift. The domestic relations court properly ordered Husband to reimburse Wife for half of the $24,700.58 in marital funds used to pay off the Corvette. This vehicle, titled in Husband's father's name, was not a marital asset. When Husband used marital funds to pay off a third party's loan, he transferred marital property outside the marital estate without Wife's consent.

**{¶46}** The statute permits the domestic relations court to make a distributive award to facilitate, effectuate, or supplement a division of marital property. R.C. 3105.171(E)(1).

**{¶47}** The magistrate found that Wife did not intend to gift her share of the marital funds used for the Corvette. This finding is supported by credible evidence. Marital funds belong to both spouses, and the transfer of such funds to a third party without the agreement of both spouses constitutes a disposition of marital property that the court may remedy through a distributive award. Therefore, the court had discretion to order the distributive award.

**{¶48}** Husband's fourth assignment of error is overruled.

c. Funds on Deposit

**{¶49}** In his fifth assignment of error, Husband challenges the domestic relations court's classification of his Fifth Third checking and Discover savings accounts as marital. Husband maintained these throughout the marriage, using them for household bills and expenses. Over the course of the marriage, Husband deposited more than $600,000 in marital income into these accounts. Additionally, joint tax refunds and stimulus funds—both marital in character—were deposited into the same accounts. Husband repeatedly transferred funds between the two accounts, further intermingling the sources of funds.

**{¶50}** While Ohio law does not require expert testimony to establish separate property claims, the circumstances of this case demonstrate why the domestic relations court could reasonably find that Husband failed to carry his burden without a coherent, admissible tracing methodology. *See, e.g., Urbanic v. Urbanic*, 2015-Ohio-1402, ¶ 8 (2d Dist.) (The law does not require expert testimony to prove appreciation on separate property in every case, but, in some cases, it is necessary to meet the burden of proof.). The burden to prove the separate identity of property can be met with documents or testimony, but merely claiming that the property constitutes separate property does not make it so. *Ostry v. McCarthy*, 2021-Ohio-2228, ¶ 8 (9th Dist.). When a party fails to present sufficient evidence tracing their separate property, the domestic relations court can conclude the separate property became commingled with the marital estate. *Tyra,* 2022-Ohio-2504, at ¶ 20-21 (1st Dist.); *see Hood v. Hood*, 2011-Ohio-3704, ¶ 23 (10th Dist.).

**{¶51}** The court found that the accounts were marital based on the extensive commingling of separate and marital funds with no credible tracing evidence. Husband's assertion of specific separate dollar amounts remaining in the accounts, without more, cannot satisfy his burden of proof. The statements that Husband submitted to the court as tracing evidence were so voluminous that it would be impractical for the court to untangle the separate and marital assets without an expert tracer. Husband presented no expert tracing evidence, no evidence showing the route and eventual destination of the alleged separate funds, and no methodology for identifying which specific dollars in the accounts at the time of trial represented his premarital interest, as opposed to the marital income and joint funds that flowed through these accounts. *See Hood* at ¶ 22-23.

**{¶52}** In the absence of any evidence of tracing, Husband has failed to demonstrate that the court's classification of the Fifth Third checking and Discover savings accounts as marital property was against the manifest weight of the evidence. Husband's fifth assignment of error is overruled.

d. Retirement Accounts

**{¶53}** Husband's sixth assignment of error focuses on the trial court's division of two retirement accounts— a UBS Roth IRA (the "Roth IRA") and a UBS Traditional IRA (the "Traditional IRA").

**{¶54}** With respect to the Roth IRA, the trial court first determined that Husband's separate interest in the account was 30.4 percent. The remaining 69.6 percent represented the marital portion, which the court divided equally between Husband and Wife.

**{¶55}** As to the Traditional IRA, the trial court determined that Husband's separate interest in this account was 39.5 percent, and that the remaining 60.5 percent represented the marital portion, which was to be equally divided between Husband and Wife.

**{¶56}** Husband challenges the trial court's equitable division of both the Roth and Traditional IRA accounts. First, with respect to the Roth IRA, Husband argues that the court erred when it failed to find that the Roth IRA was a wholly separate asset because he claims to have demonstrated that it was funded by premarital contributions and by separate funds during the marriage.

**{¶57}** With respect to the Traditional IRA, Husband's objection is based on his claim that the account should have been divided based on the number of shares in the retirement plan and that the trial court erred by applying a percentage to the account's total value. Husband bases his argument on his claim that the Traditional IRA contained, in addition to marital contributions and a premarital balance, a roll-over from a premarital 401(k) retirement plan that he had from previous employment. Husband contends that the 401(k) plan was held and maintained by him as separate property prior to and during the marriage.

**{¶58}** Husband specifically takes issue with the court's division of the proceeds from the 401(k) account that were rolled over into the Traditional IRA. Husband argues that by simply applying a percentage to the total value of the Traditional IRA, the court failed to give him credit for the market appreciation of the separate funds that were rolled over from the 401(k). Husband argues that the best way to divide the funds in the Traditional IRA would have been for the court to determine the number of shares that Wife was entitled to instead of awarding Wife a percentage of the account's value.

**{¶59}** As stated, we must give deference to the domestic relations court's findings with respect to the marital classification of property and the party disputing the marital classification bears the burden of demonstrating by a preponderance of the evidence that the asset in question is separate property. *Shteiwi*, 2025-Ohio-2901, at ¶ 29 (1st Dist.), citing *Tyra*, 2022-Ohio-2504, at ¶ 15 (1st Dist.). And, the trial court's decision on the matter will not be reversed as against the manifest weight of the evidence when it is supported by competent credible evidence. *Mullins*, 2023-Ohio-3266, at ¶ 31 (1st Dist.), citing *Tyra* at ¶ 15, quoting *Fiamengo*, 2016-Ohio-4720, at ¶

29 (2d Dist.), quoting *Maloney*, 2005-Ohio-1368, at ¶ 23 (2d Dist.).

**{¶60}** Here, Husband presented no expert tracing evidence, no evidence showing the route and eventual destination of the alleged separate funds, and no methodology for identifying which specific dollars in the accounts at the time of trial represented his premarital interest, as opposed to the marital income and joint funds that flowed through these accounts. As a result, Husband failed to satisfy his burden of demonstrating by a preponderance of the evidence that the asset in question is separate property. *See Hood*, 2011-Ohio-3704, at ¶ 22-23 (10th Dist.). Because the trial court's decision was supported by competent credible evidence, it should not be reversed simply because Husband presented an alternative methodology for determining how the assets should have been divided.

**{¶61}** Accordingly, the court properly divided Husband's two IRA accounts. Husband's sixth assignment of error is overruled.

### *C. Dependent-Child Tax Exemption*

**{¶62}** In Husband's seventh assignment of error, he asserts that the domestic relations court's order that he pay Wife half the 2023 dependent-child tax exemption benefit was inequitable because Wife was receiving spousal support.

**{¶63}** Courts have recognized that the best interest of the child is furthered when the allocation of the exemption produces net tax savings for the parents. *Tuttle v. Tuttle*, 2007-Ohio-6743, ¶ 21 (12th Dist.). While the designation of Husband to claim the child is justified by net tax savings, the domestic relations court's order requiring Husband to share the net benefit equally with Wife is also equitable under the statutory factors and principles of equitable property division.

**{¶64}** The parties remained married through 2023 and were operating under a shared-parenting plan. They continued to live together until June 2023, and the divorce was not final until June 2025. Parenting time was essentially equal under the shared-parenting arrangement. Under a shared-parenting arrangement, both parties are, in essence, deemed to be the residential parent, and thus a presumption favoring the custodial parent would not apply. *Hall v. Hall*, 2010-Ohio-4818, ¶ 49 (3d Dist.). When no presumption applies, the domestic relations court is essentially left to allocate the dependent tax exemption, focusing on what is in the best interest of the children. *Id.*

**{¶65}** R.C. 3119.82 requires the court to consider the amount of time the child spends with each parent. Where parenting time is essentially equal, the equitable allocation of the financial benefit derived from the exemption reflects the equal contribution of both parents to the child's care and support throughout the year. The statute also requires consideration of the parents' and children's relative financial circumstances and needs. By requiring Husband to share the net benefit equally with Wife, the domestic relations court ensured that both parents benefit from the tax savings generated by the exemption allocation. Husband's seventh assignment of error is overruled.

### *D. Division of Attorneys' Fees*

**{¶66}** In Wife's first assignment of error, she asserts that the domestic relations court abused its discretion when it ordered each party to be responsible for their own legal fees. The court reversed the magistrate's decision requiring Husband to make an equalization payment to Wife, and instead ordered that each party would be responsible for the payment of their own attorneys' fees. Wife argues that the court's declining to adopt the magistrate's decision was arbitrary and unreasonable.

**{¶67}** R.C. 3105.73(A) governs the award of attorneys' fees and litigation expenses in domestic-relations cases. It provides that, in an action for divorce, a domestic relations court "may award all or part of the reasonable attorneys' fees and litigation expenses to either party if the court finds the award equitable." *Id.* The statute also provides that, "in determining whether an award is equitable, the court may consider the parties' marital assets and income, any award of temporary spousal support, the parties' conduct, and any other relevant factors the court deems appropriate." *Id.* We review a domestic relations court's award of attorneys' fees for an abuse of discretion. *Morrison v. Walters*, 2023-Ohio-2887, ¶ 12 (1st Dist.).

**{¶68}** The domestic relations court was entitled to weigh Husband's testimony that Wife stopped contributing to marital expenses at the end of March 2023, while Husband continued to pay household expenses throughout the separation period. The domestic relations court properly considered this information when it determined it would be most equitable for each party to bear the costs of their own attorneys' fees. Wife's first assignment of error is overruled.

***E. GAL Fees***

**{¶69}** In Wife's second assignment of error, she argues that the domestic relations court erred by failing to adopt the magistrate's decision to modify the order regarding the division of the GAL fees. She asserts that the division should have been based on the parties' respective incomes versus being split equally. We disagree.

**{¶70}** Civ.R. 75(B)(2) provides that a domestic relations court has discretion over the amount of GAL fees and the allocation to either or both of the parties, and an appellate court reviews such awards for an abuse of discretion. *Kuchera v. Pfalzgraf*, 2026-Ohio-1218, ¶ 98 (1st Dist.). Sup.R. 8.02(H)(3) sets forth various factors for a domestic relations court to consider when determining how to allocate GAL fees. These factors include the GAL's compensation, the parties' incomes, assets, and financial circumstances, and the conduct of the parties. Sup.R. 8.02(H)(3)(a)-(e). Fees may be allocated based on the parties' litigation success and the parties' economic status. *Kane v. Hardin*, 2019-Ohio-4362, ¶ 23 (1st Dist.). Additionally, it is proper to allocate GAL fees based on which party caused the GAL's work. *Id.*

**{¶71}** The domestic relations court's modification of the magistrate's allocation to an equal division demonstrates a reasonable exercise of discretion. The parenting issues were ultimately resolved by agreement rather than through contested litigation, which would have required extensive GAL investigation and advocacy. The absence of an evidentiary finding that one party caused an increase in the GAL's work also supports the reasonableness of an equal allocation.

**{¶72}** Further, while the domestic relations court may consider the parties' economic status in allocating GAL fees, there is no authority requiring it to consider the parties' incomes and earning abilities in doing so. *Powell v. Lawson*, 2019-Ohio-4993, ¶ 36 (10th Dist.). The domestic relations court's decision to sustain Husband's objection and modify the magistrate's allocation to an equal division falls within the range of reasonable outcomes supported by the statutory factors and the record. Because the court is permitted to consider income, its decision to allocate fees equally, rather than proportionally based on income, does not constitute an abuse of discretion. Wife's second assignment of error is overruled.

### *F. The Division of Child-Related Expenses*

**{¶73}** In her third assignment of error, Wife challenges the domestic relations court's modification of the child-related expense allocation. Wife contends that the court erred on two fronts when it failed to make findings that the modification was in the child's best interest, and that the court's modification was an abuse of discretion.

**{¶74}** Before addressing Wife's argument that the court abused its discretion, we note that the court was not required to make written findings. The statute requiring best-interest findings for the allocation of the dependent-child tax exemption benefit does not impose the same requirement for the allocation of extracurricular expenses, educational expenses, or other child-related costs. Written findings are only required in certain situations, none of which are at issue in this case. R.C. 3109.04(B)(2)(b), (C) and (I)(2).[1]

**{¶75}** In Husband's written closing arguments, he argued that he should be responsible for 65 percent of the child-related expenses, and that Wife should be responsible for the remaining 35 percent. Husband attached to his closing arguments a document labeled the Net Income Analysis. Husband's exhibit sheet shows that the exhibit was withdrawn. The Net Income Analysis showed that he made 67.28 percent of the parties' shared income. The Net Income Analysis was not introduced at trial or admitted into evidence.

**{¶76}** The magistrate instead adopted a division ordering Husband to pay 70 percent of child-related costs. Attached to the magistrate's decision was the child-support worksheet, which determined that Husband's income reflected 69.55 percent of the shared income, while Wife's reflected 30.45 percent. In Husband's written objection, he asserted that the court failed to consider the parties' after-tax income, or how the payment of child support would affect the parties' percentages. Husband insisted that he should be responsible for 63 percent of the child-related expenses. Husband's objection exclusively referenced his Net Income Analysis as the source for this figure.

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[1] Written findings are only required (1) if the court conducts an in-camera interview of the child; (2) if the court ordered an investigation of "the character, family relations, past conduct, earning ability, and financial worth of each parent and may order the parents and their minor children to submit to medical, psychological, and psychiatric examinations, and the court determines either parent had been convicted of neglect of a child; or (3) when a party moves for a hearing to expedite an allocation or modification proceeding so that the court can issue an order before the parent's active military service begins." R.C. 3109.04(B)(2)(b), (C) and (I)(2).

**{¶77}** At the court's hearing on the parties' objections, the court asked Husband's counsel what the appropriate percentage would be, to which counsel stated, "I think it was 63 percent we submitted our net income analysis on." The court sustained Husband's objection and ordered that Husband would be responsible for 63 percent of the expenses.

**{¶78}** First, Wife's contention that Husband's reliance on the Net Income Analysis was inappropriate is correct. "It is well settled that statements made by counsel in opening statements and closing arguments are not evidence." *Columbus Bar Assn. v. Cable*, 2026-Ohio-89, ¶ 33, quoting *State v. Frazier*, 1995-Ohio-235, ¶ 92. Because the document was not in the record, Husband's arguments related to its contents are not supported by the record.

**{¶79}** Second, the court's decision was arbitrary. There is no reference in the record supporting Husband's assertion that he is obligated to pay only 63 percent of child-care expenses. While Husband noted in his objection to the magistrate's decision and during the court's hearing on objections that his Net Income Analysis showed that he should pay 63 percent. However, it is unclear where the 63 percent figure comes from and why the court decided to adopt it because it is not supported by the record. Because the adoption of the 63 percent figure was not supported by the record, the court's decision adopting the division of costs was arbitrary and was therefore an abuse of discretion.

**{¶80}** Wife's third assignment of error is sustained, and the cause is remanded to the trial court to adopt a division of child-care expenses supported by the record.

### *G. Childcare Expenses*

**{¶81}** In her fourth assignment of error, Wife challenges the domestic relations court's judgment ordering that the child-care expenses be paid through child support, arguing that it should be paid directly to the child-care facility.

**{¶82}** The inclusion of child-care costs in the child-support worksheet is mandated by statute. R.C. 3119.05(P) ("As part of the child support calculation, the parents shall be ordered to share the costs of child care."). Wife's fourth assignment of error is therefore, overruled.

### *III. Conclusion*

**{¶83}** For the reasons set forth above, the judgment of the trial court is affirmed in part and reversed in part, and the cause is remanded for the trial court to resolve the division of child-care expenses.

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

**KINSLEY, P.J.,** and **ZAYAS, J.,** concur.