[Cite as *Ellison v. Ellison*, 2026-Ohio-4406.]

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

SHERRUN L. ELLISON,	:	APPEAL NO. C-260069 TRIAL NO. DR-2300809
Plaintiff-Appellant,	:	
vs.	:	
STEPHEN P. ELLISON,	:	*JUDGMENT ENTRY*
Defendant-Appellee.	:	

This cause was heard upon the appeal, 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.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

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 11/6/2026.

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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SHERRUN L. ELLISON,	:	APPEAL NO. C-260069 TRIAL NO. DR-2300809
Plaintiff-Appellant,	:	
vs.	:	
STEPHEN P. ELLISON,	:	*O P I N I O N*
Defendant-Appellee.	:	

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

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: November 6, 2026

Walton + Brown, LLP, and *Sean L. Walton*, for Plaintiff-Appellant,

Murray Law, LLC, and *Elizabeth R. Murray*, for Defendant-Appellee.

KINSLEY, Presiding Judge.

{¶1} When Sherrun Ellison ("Wife") and Stephen Ellison ("Husband") divorced, the Domestic Relations Division of the Hamilton County Court of Common Pleas determined that property Husband purchased before the marriage on Elbrook Avenue ("Elbrook") would remain his separate property. The trial court also issued an equitable award under R.C. 3105.73 ordering Wife to pay $20,000 of Husband's outstanding attorney's fees. Wife appeals, arguing that the trial court abused its discretion in both respects. We disagree and affirm the judgment of the trial court.

Background

{¶2} Husband and Wife were married on September 1, 2018. Wife filed a complaint for divorce on May 11, 2023. Thereafter, the parties amicably resolved some of the legal issues in the divorce proceeding. But, as to the parties' assets, some issues remained, including whether Elbrook was Husband's separate property or instead was marital. The trial court conducted a trial to resolve these outstanding issues on March 13, April 21, and May 29, 2025.

{¶3} Wife testified that Husband purchased Elbrook in 2012, six years before they were married. She and Husband lived at Elbrook from about September 2017 to September 2018, the same month they were married. According to Wife, Husband's brother ("Brother") lived in Elbrook after they moved out through at least April 2023, but Wife never saw a lease agreement for the property. Wife also denied directly receiving rent payments from Brother or his wife for Elbrook, and she further denied receiving checks or cash from Husband for the Elbrook rent. Wife acknowledged that Husband would Venmo her money, but she claimed this was sent to cover daycare and household expenses. According to Wife, Husband paid the Elbrook mortgage from a joint account into which her employment income was deposited. She therefore

claimed that marital income was used to pay the Elbrook mortgage.

{¶4} Wife testified that she and Husband made improvements to Elbrook during the marriage—replacing the carpet and stove and painting the interior. Husband hired two people, including his father, to do the work. Wife did not know the cost of the repairs. Wife also testified that she and Husband performed regular maintenance on the house and paid a monthly bill for a company to service the heating and cooling system.

{¶5} According to Wife, the parties refinanced Elbrook in 2020 to remove $27,000 of the home's equity, which they used to make large payments towards several credit cards. Wife acknowledged that she was not a party to the mortgage and was not named on the deed, even after the refinance.

{¶6} Finally, Wife addressed a claim Husband raised in the divorce that her actions had increased his legal fees. In this context, she acknowledged changing attorneys several times over the course of the divorce proceeding but denied that she had backed out of any settlement agreements.

{¶7} Husband testified that he bought Elbrook in August 2012 and that Wife moved there in 2017. After he and Wife moved out in August 2018, he rented the property to Brother and Brother's wife. Husband explained that he initially charged Brother $850 per month in rent but increased the rent to $1,000 after a 2020 "cash-out" refinance to pay down credit card debt. He later increased the rent again to $1,500 in 2023. Husband testified that the rent always covered the mortgage and that Brother directly paid the utilities.

{¶8} Husband said that he had a lease agreement with Brother and Brother's wife which Wife likely would not have seen "because she had nothing to do with the property." Husband presented the lease agreement, which provided for an $850

rental payment each month, to the trial court. Husband explained that although Brother was often late in his payments, he ultimately paid his rent while Husband and Wife were married. According to Husband, Brother and Brother's wife would pay Husband by cash app, cash, or check. Husband would then deposit the money into his US Bank account and either pay the mortgage from that account or transfer the money to the parties' joint bank account and pay the mortgage from there. Husband explained that he regularly sent Wife the rent money through a cash app because she had "direct access to the Ally [joint] account." He insisted that "there were deposits made to cover whatever came out of the account for Elbrook" and that none of their joint income paid for Elbrook. During his testimony, Husband reviewed many months of bank statements and identified multiple deposits that he said came from rent payments to cover the Elbrook mortgage. He explained that the deposit amounts often did not match the rent payments because he would deposit money from many sources at the same time and because the rental payment amounts were inconsistent.

{¶9} Husband further testified that his father and uncle painted and re-carpeted Elbrook in 2018, before he and Wife married, and that he and his father paid for those updates. He said that he did not pay for any repairs during the marriage.

{¶10} Husband also testified about his attorney's fees, indicating that he incurred additional fees because of Wife's actions during the divorce proceeding. These included forcing the parties to pay for a business valuation, backing out of several tentative agreements, and filing an emergency restraining order that she eventually dropped. Finally, Husband explained that after 15 years of working in the same field, his employment was terminated, and his only income was from unemployment insurance.

{¶11} Brother testified that he and his wife moved into Elbrook in 2017, at

which time they signed a lease agreement that required them to pay $850 per month in rent, plus utilities. He said that the rent increased to $1,500 at some point. Brother explained that he rarely paid the entire month's rent at once, often making incremental payments throughout the month. If he fell behind, he would catch up the following month. Brother asserted that he and his wife would sometimes put cash in Husband's mailbox, and on a few occasions, Brother gave cash directly to Wife, explaining to her that it was for Elbrook's rent.

{¶12} As to repairs, Brother testified that he took care of the property but if something like an appliance broke, Husband would have taken care of it. Brother explained that his father painted and re-carpeted the property before they moved in and also provided maintenance.

{¶13} Husband's attorney testified regarding her legal fees. She represented Husband from June of 2023 through trial. Her initial hourly rate was $445 but it eventually increased to $450. At these rates, Husband had incurred $56,328 in attorney's fees over two years of litigation, excluding trial fees. Husband's attorney attested that the fees were "reasonable and necessary to defend [Husband] from [Wife's] actions" and asked the trial court to order Wife to contribute to payment of those fees.

{¶14} Husband's attorney explained that after Wife filed the complaint for divorce, she moved to Columbus with the parties' children, which required Husband to file several "reactive motions." Because of Wife's conduct, Husband also had to file motions regarding exclusive use of the house, relocation without permission, and the return of the children to Husband. Further, Husband and Wife reached numerous agreements in mediation but Wife "withdrew all those agreements and we ended up in a parenting investigation." This was complicated when Wife changed attorneys in

August 2023, which required them to "basically . . . start over." Further, Husband's attorney indicated that on multiple occasions, "we thought we had resolved something and [Wife] would add to it and add more information or more documents." As examples, she pointed to Wife's position that she has an interest in Elbrook and to her claiming all three of the parties' children on her tax return despite an agreement to the contrary.

{¶15} Following the testimony, on June 27, 2025, the magistrate issued a decision which resolved the parties' contested issues. In pertinent part, the magistrate determined that Elbrook was entirely Husband's separate property, finding that he sufficiently traced the mortgage payments to the rental income he received from Elbrook and that no marital income or labor was used for improvements or maintenance of the property. The magistrate also ordered Wife to pay $20,000 of Husband's attorney's fees, finding that Wife's "pattern of conduct over two years [was] underhanded and conniving. . . ."

{¶16} Wife filed objections to the magistrate's decision, and on November 5, 2025, the trial court issued an order adopting the magistrate's findings regarding Elbrook and the attorney's fees. This appeal followed.

Analysis

{¶17} Wife raises three assignments of error on appeal. In her first and second assignments of error, Wife contends that the trial court erred when it awarded Husband $20,000 in attorney's fees based on Wife's conduct during mediation and without also considering Husband's conduct. In her third assignment of error, Wife argues that the trial court erred in finding that Elbrook was entirely Husband's separate property.

A. Evid.R. 408

{¶18} In her first assignment of error, Wife argues that the trial court abused its discretion in awarding Husband attorney's fees when it relied on conduct and statements made during settlement negotiations in violation of Evid.R. 408.

{¶19} We review a trial court's decision to admit or exclude evidence, and in particular a decision regarding the applicability of Evid.R. 408, for an abuse of discretion. *State v. Fields*, 2025-Ohio-2248, ¶ 32 (1st Dist.); *Shafer Indus. Servs. v. A & M Towing & Rd. Serv., Inc.*, 2025-Ohio-3197, ¶ 29 (11th Dist.). "An abuse of discretion occurs when a court exercises its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority." *Cofer v. Boggan*, 2026-Ohio-2803, ¶ 10 (1st Dist.), quoting *Gipson v. Mercy Health Sys. of S.W. Ohio*, 2025-Ohio-2208, ¶ 12 (1st Dist.). "[I]t implies that the court's attitude is arbitrary, unreasonable, or unconscionable." *Hayes v. Durrani*, 2021-Ohio-725, ¶ 8 (1st Dist.), quoting *Boolchand v. Boolchand*, 2020-Ohio-6951, ¶ 9 (1st Dist.).

{¶20} Evid.R. 408 provides that evidence of "conduct or statements made in compromise negotiations" regarding "a claim which was disputed as to either validity or amount [] is not admissible *to prove liability for or invalidity of the claim or its amount*." (Emphasis added.) This rule "does not bar information from settlement negotiations when it is offered for another purpose and not to prove liability against one of the parties to the negotiations." *Adams v. Disabato*, 2025-Ohio-1219, ¶ 42 (3d Dist.). Following this principle, Ohio courts have routinely admitted evidence of settlement negotiations when offered for a purpose other than proving liability. *See, e.g., Hopes v. Barry*, 2011-Ohio-6688, ¶ 36 (11th Dist.) (trial court did not err in considering e-mails regarding settlement negotiations when offered to "demonstrate the parties' intention that the mediation agreement was to be a full settlement

agreement"); *Lewis v. Alfa Laval Separation*, 128 Ohio App.3d 200, 211 (4th Dist. 1998) (settlement evidence admissible to explain why certain evidence was unavailable to expert witness and to explain why company was not a party to the case); *Kirkpatrick v. Kirkpatrick*, 2015-Ohio-427, ¶ 35-36 (5th Dist.) (partial agreement reached during mediation admissible "to advise the trial court of the issues still pending"); *Swearingen v. Swearingen*, 2007-Ohio-1241, ¶ 15 (10th Dist.) (proposed settlement agreement and statements made during mediation admissible to prove appropriate venue for case); *McFarland v. Gillespie*, 2019-Ohio-1050, ¶ 28 (5th Dist.) (evidence of settlement agreement permitted to help jury understand why defendant was not present at trial).

{¶21} As with these cases, Husband did not introduce evidence of Wife's conduct in and following settlement negotiations to prove Wife's liability for a disputed claim in the divorce, like the character of Elbrook or the equitable division of a marital asset. Rather, Husband presented evidence that Wife reneged on settlement agreements to support his request for attorney's fees pursuant to R.C. 3105.73. That statute specifically permits a trial court to order a party to a divorce to pay attorney's fees based on "the conduct of the parties" during litigation. As such, "the admission of the evidence did not impact the resolution of the operative issues surrounding the divorce, including the division of marital assets, custody, or child [] support," but instead went to the factors a trial court must consider under R.C. 3105.73. *See Swearingen* at ¶ 15. Because Husband did not offer this evidence "to prove liability for or invalidity of the [divorce] claim or its amount," and instead offered it for the purpose of supporting his request for statutory attorney's fees, its admission did not violate Evid.R. 408. *See id.* We overrule Wife's first assignment of error.

B. Attorney's Fees

{¶22} In her second assignment of error, Wife argues that the trial court abused its discretion in issuing an award of attorney's fees by improperly admitting evidence in violation of Evid.R. 408, by improperly considering only Wife's conduct in its analysis, by awarding attorney's fees as a punitive measure, and by failing to find that the attorney's fees were reasonable.

{¶23} Under R.C. 3105.73, "a court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable." In determining whether an award is equitable, the trial court may consider the parties' assets and income, their conduct, and any other relevant factors it deems appropriate. R.C. 3105.73(A). We review a trial court's award of attorney's fees for an abuse of discretion. *Iranpour-Boroujeni v. Emami*, 2024-Ohio-2546, ¶ 134 (1st Dist.).

{¶24} Wife first argues that the award of attorney's fees was based on improperly admitted evidence in violation of Evid.R. 408. We have already rejected this argument.

{¶25} Next, Wife argues that the trial court violated R.C. 3105.73 by failing to consider the conduct of both parties in determining whether to award attorney's fees. Wife is incorrect. Trial courts are not required "to engage in any examination balancing of the parties' conduct and need[] only [] find that the award [is] equitable." *Kim v. Kim*, 2020-Ohio-22, ¶ 48 (9th Dist.); *see Hunter v. Troutman*, 2025-Ohio-366, ¶ 112 (8th Dist.) (holding that "[t]he trial court was under no obligation to examine the parties' behavior and determine whether [Husband] also exhibited acrimonious or inappropriate behavior"). But even though the trial court was not obliged to consider Husband's conduct in awarding attorney's fees, it in fact did so. The trial court adopted the magistrate's finding that "[t]hough Husband did not conduct himself

innocently at all times, he was most often defending himself and reacting to Wife's behavior." We therefore reject Wife's argument that the trial court should have considered Husband's conduct in determining the fee award.

{¶26} Wife next contends that the trial court acted punitively because Wife pursued legal arguments that were ultimately not meritorious. In doing so, she claims that the trial court can only consider misconduct, rather than what she considers the "ordinary and protected work of negotiation and advocacy." This court considered a similar issue in *Kane v. Hardin*, 2019-Ohio-4362, ¶ 29 (1st Dist.). There, in awarding attorney's fees to the husband, "the trial court particularly focused on the conduct of the parties to determine whether an award of attorney fees was equitable." *Id.* The trial court found that the wife's "conduct during the case delayed its resolution," including her "unwillingness to settle contentious issues." *Id.* Although the wife's conduct was not "particularly egregious," we upheld the award of attorney's fees because "the trial court found that [her] conduct caused and unnecessarily prolonged resolution" of the case. *Id.* at ¶ 31-32. Notably, we did so without requiring the trial court to find misconduct.

{¶27} In addition to *Kane*, a litany of cases have held that a trial court can consider the impact of a party's conduct on the cost of litigation when determining whether to award attorney's fees. *See, e.g., Edje v. Holmes*, 2024-Ohio-1663, ¶ 41 (1st Dist.) ("[W]hen one party's improper actions force the other to turn to the court, principles of equity allow the trial court to exercise discretion in determining the appropriate awards based on the parties' respective behavior." (Cleaned up.)); *Padgett v. Padgett*, 2008-Ohio-6815, ¶ 17 (10th Dist.) ("[b]ecause a court addresses an award of attorney fees through equitable considerations, a trial court properly can consider the entire spectrum of a party's actions, so long as those actions impinge upon the

course of the litigation."); *Wolf-Sabatino v. Sabatino*, 2011-Ohio-6819, ¶ 105 (10th Dist.) ("[R.C.] 3105.73(A) specifically permits the court to consider the conduct of the parties without limitation.").

{¶28} We accordingly reject Wife's general proposition that the trial court must find *misconduct* in order to award attorney's fees under R.C. 3105.73. That is not what the statute says, nor what the case law holds. Rather, a trial court may issue an equitable award of attorney's fees based on a party's *conduct* during litigation, as well as any other factors that are relevant.

{¶29} Focusing on Wife's conduct here, the trial court concluded that Wife "caused and unnecessarily prolonged resolution" of the case and required Husband to "defend[] himself and react[] to [her] behavior." *See Kane*, 2019-Ohio-4362, at ¶ 32 (1st Dist.). In awarding attorney's fees, the trial court highlighted that Wife moved to Columbus with the children without the court's permission; caused a disturbance at the marital residence after she moved out, which required Husband to file a motion for exclusive use of the residence; filed a domestic violence civil protection order that was dismissed; frequently changed counsel over the course of litigation; and took unreasonable positions that were not supported by the law, including her position that she was entitled to half of the equity in Elbrook. The trial court did not act punitively in taking these actions into account. In fact, that is what R.C. 3105.73 specifically directs the trial court to do.

{¶30} Finally, Wife argues that the trial court failed to find that Husband's attorney's fees were reasonable. However, Wife did not raise this issue in her objection to the magistrate's decision. "[W]hen a party fails to properly object to a magistrate's decision in accordance with Civ.R. 53(D)(3)(b), it generally forfeits the right to assign those issues as error on appeal." *Burd v. Artis*, 2025-Ohio-625, ¶ 9 (1st Dist.). Because

Wife did not raise this issue below, she waived it for purposes of appeal. *See id.*

{¶31} We overrule Wife's second assignment of error.

C. Elbrook

{¶32} In her third assignment of error, Wife argues that the trial court's classification of Elbrook as entirely Husband's separate property was against the manifest weight of the evidence.

{¶33} We typically review a trial court's determination of property division in divorce proceedings for an abuse of discretion. *Mahoney v. Moskowitz*, 2026-Ohio-1638, ¶ 50 (1st Dist.). "When an appeal raises a factual issue as to whether specific property is marital or separate, we apply either the sufficiency or manifest weight standard of review, depending on the nature of the challenge." *Id.*, citing *Carter v. Carter*, 2024-Ohio-1046, ¶ 19 (1st Dist.). "In reviewing a weight of the evidence challenge, we weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving conflicts in the evidence, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered." *Carter* at ¶ 19. In making this determination, we afford substantial deference to the credibility determinations of the trier of fact because the trier directly observes the witnesses during trial proceedings. *Meyer v. Lucas*, 2024-Ohio-3035, ¶ 26 (2d Dist.).

{¶34} R.C. 3105.171 controls property division and distribution in divorce proceedings. A trial court is required to "determine what constitutes marital property and what constitutes separate property," and to "divide the marital and separate property equitably between the spouses." R.C. 3105.171(B). "Generally, this means that the court should award each spouse his or her separate property and then distribute the marital estate equally, unless an equal division would be inequitable."

Boolchand, 2020-Ohio-6951, at ¶ 5 (1st Dist.), citing R.C. 3105.171(B)-(D). "Marital property" means "all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage . . ." R.C. 3105.171(3)(a)(iii). "If the evidence indicates that the appreciation of separate property is not due to the input of one spouse's labor, money, or in-kind contributions, the increase in value is passive appreciation and remains separate property." (Cleaned up.) *Sherman v. Sherman*, 2013-Ohio-3501, ¶ 17 (1st Dist.), quoting *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 401 (1998). Appreciation caused by inflation or a change in fair market value remains separate property. *Harrington v. Harrington,* 2008-Ohio-6888, ¶ 12 (4th Dist.).

{¶35} Separate property "retains its separate nature as long as it is traceable, regardless of whether it has been commingled with other property." *Boolchand* at ¶ 25. The party claiming that specific property is separate must prove it by a preponderance of the evidence. *Id.* at ¶ 8.

{¶36} Wife contends that Husband did not sufficiently trace Brother's rent payments for Elbrook to demonstrate that the rent covered the mortgage. She accordingly contends that Elbrook became the parties' marital property because marital funds from the parties' joint account were used to pay for the Elbrook mortgage.

{¶37} The trial court determined otherwise. Based on Husband's and Brother's testimony, along with documentary evidence submitted by Husband, it concluded that the rent Brother paid for Elbrook exceeded the amount of the mortgage. The trial court also concluded that the joint account used to pay the mortgage contained both marital income and "traced rental income that Husband deposited after receiving rental payment," and it rejected Wife's contention that the

2020 refinance created a marital interest in the property. These findings were not against the manifest weight of the evidence.

{¶38} With regard to the rent surplus, Husband testified that Brother and Brother's wife rented Elbrook and that their rent always covered or exceeded the mortgage. Husband explained the mechanics of the payments—he received the rent money from Brother and Brother's wife, deposited it into his account, and transferred or direct-deposited it into the joint account he shared with Wife. To support his testimony, Husband introduced the lease agreement and bank statements documenting regular transfers from his account into the marital account.

{¶39} Brother also testified as to the rental payments and methods. He said that he and his wife split the rental payments, that he paid Husband in cash, and that his wife often paid with a cash app. Brother said that on a few occasions, he paid rent directly to Wife at the marital home. He testified that his rent increased over the course of his tenancy from $850 to $1,500 and that although he was often late, he never failed to pay the full rent during Husband and Wife's marriage.

{¶40} The trial court found Husband and Brother to be credible in their testimony about Elbrook. We defer to this finding on appeal, since the trial court was in the best position to judge the witnesses' demeanor and believability. *Meyer*, 2024-Ohio-3035, at ¶ 26 (2d Dist.).

{¶41} As to the refinance, Husband and Wife both testified that the mortgage was solely issued to Husband and that Wife was not named on either the Elbrook mortgage or deed. Although the refinance increased Husband's mortgage payment, Husband raised the rent to cover the increase.

{¶42} The trial court's determination that Elbrook was entirely Husband's separate property was therefore not against the manifest weight of the evidence. We

accordingly overrule Wife's third assignment of error.

II. Conclusion

{¶43} The trial court did not abuse its discretion in admitting and considering evidence of Wife's conduct during settlement negotiations, because Husband admitted the evidence for a purpose unrelated to Wife's liability. The trial court also properly considered Wife's conduct in awarding attorney's fees to Husband under R.C. 3105.73. Finally, the trial court did not abuse its discretion in characterizing Elbrook as Husband's separate property. We overrule Wife's assignments of error and affirm the judgment of the trial court.

Judgment affirmed.

BOCK and **MOORE, JJ.,** concur.