[Cite as *Jackson v. Jackson*, 2012-Ohio-662.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

BRIAN R. JACKSON,	:	OPINION
Plaintiff-Appellee,	:	
-vs-	:	CASE NOS. 2011-L-016 and 2011-L-017
ROBIN S. JACKSON,	:	
Defendant-Appellant.	:	

Civil Appeals from the Lake County Court of Common Pleas, Domestic Relations Division, Case No. 07 DR 000384.

Judgment: Affirmed.

Douglas C. Blackburn, Direnfeld, Green & Blackburn, 224441 Detroit Road, Suite 200, Westlake, OH 44045-1543 (For Plaintiff-Appellee).

Joseph G. Stafford and Gregory J. Moore, Stafford & Stafford Co., L.P.A., The Stafford Building, 2105 Ontario Street, Cleveland, OH 44115 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Robin S. Jackson appeals from the judgments of the Lake County Court of Common Pleas, Domestic Relations Division, which adopted two qualified domestic relations orders ("QDROs") regarding her ex-husband's retirement plans in Lincoln Electric. For the following reasons, we affirm the trial court.

Substantive Facts and Procedural History

{¶2} Mrs. Jackson and her ex-husband, Brian R. Jackson, were married in 1996. They have one child, born in 1998. Mr. Jackson filed a complaint for divorce in

2007, and the trial for the divorce was held on July 13, 2009, October 9, 2009, and November 30, 2009. The parties eventually resolved most issues and, at the final hearing on November 30, 2009, Mrs. Jackson's counsel read into the record the parties' agreement regarding child support, spousal support, and Mr. Jackson's bonus and stock options. On May 10, 2010, the court journalized a judgment entry of divorce adopting the in-court agreement.

{¶3} The only contested issue in this divorce and the only issue on appeal is the QDROs for Mr. Jackson's two retirement plans with Lincoln Electric: (1) The Lincoln Electric Retirement Annuity Program, which is a defined benefit plan, and (2) The Lincoln Electric Employees Savings Plan, which is a defined contribution plan ("401K" plan). Regarding these QDROs, the transcript of the November 30, 2009 final hearing reflects the following exchange:

{¶4} "THE COURT: The qualified Domestic Relations order[s] do not need to be presented prior to the judgment entry of divorce being filed. So they will not hold up the paperwork, because it is not unusual for those orders regarding pensions to take more than a month or longer than the judgment entry of divorce just because they take longer.

{¶5} "Have you discussed, Mr. Stafford [Mrs. Jackson's counsel] and Mr. Blackburn [Mr. Jackson's counsel], the preparation of the judgment entry?

{¶6} "MR. STAFFORD: I'll prepare the judgment entry as well as the Qualified Domestic Relations Orders and hopefully have it all done and submitted to this Court prior to Christmas.

{¶7} "MR.BLACKBURN: Are you going to submit it to me first?

{¶8} "MR.STAFFORD: Yes."

{¶9} Despite requests from Mr. Jackson's counsel, Mrs. Jackson's counsel never did submit a proposed QDRO as promised. As Mr. Jackson would turn 60 in August 2010, and planned to retire at the beginning of 2011, Mr. Jackson's counsel drafted QDROs for the retirement plans and sent the proposed QDROs to Mrs. Jackson's counsel for review on June 15, 2010. He also sent the proposed QDROs to Lincoln Electric for its approval.

The September 21, 2010 Objections to the June 15, 2010 Draft

{¶10} Three months later, on September 21, 2010, Mrs. Jackson, through counsel, filed objections to the proposed QDROs with the trial court. She lodged three specific objections.

{¶11} Regarding the defined benefit plan, she alleged the proposed QDRO was not pursuant to the judgment entry of divorce, in that the proposed QDRO for the defined benefit plan disregarded section (c) of page 15 of the judgment entry, which, according to her, provides that Mr. Jackson's defined benefit plan is a benefit that should be actuarially adjusted to her own life expectancy.[1]

{¶12} Regarding the defined contribution plan, Mrs. Jackson had two objections. She alleged the proposed QDRO was not consistent with section (c) of the judgment entry of divorce at page 13, which states she was entitled to "contributions made into the Plan after the division of the account balance that are attributable to the periods or plan years before July 1, 2009, in her portion of the Plan."

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1. Section (c) at page 15 of the judgment entry of divorce, which concerns the defined benefit plan, states: "The Alternate Payee's share of the benefit to be actuarially adjusted to her own life expectancy. *If this is not permitted*, then a shared QDRO payment will be utilized with appropriate post-retirement protection based on the martial portion of her accrued benefit." (Emphasis added.)

{¶13} Her second objection regarding the defined contribution plan was that she was "entitled to gains, losses and appreciation on her share of the account set forth on page 14, Section 'D' of the Judgment Entry of Divorce."[2]

{¶14} On September 20, 2010, the day before Mrs. Jackson filed her objection to the June 15, 2010 draft, Mr. Jackson sent Mrs. Jackson's counsel a revision of the June 15, 2010 draft, based on input from Lincoln Electric after its review of the June 15, 2010 draft.

The September 29, 2010 Objection to the September 20, 2010 Draft

{¶15} On September 29, 2010, Mrs. Jackson filed objections to the revised, September 20, 2010 draft. She stated two objections: (1) the proposed QDRO for the defined benefit plan provided a benefit based on a survivorship benefit instead of on her lifetime; and (2) the proposed QDRO for the defined contribution plan failed to provide for gains, losses, and appreciations on her share in the account. These are essentially the same objections previously raised, except she no longer objected to the provision regarding her share of the contributions made into the plan before July 1, 2009.

Final Draft of QDROs Sent to Mrs. Jackson on November 18, 2010

{¶16} On November 18, 2010, Mr. Jackson's counsel sent Mrs. Jackson's counsel a final draft of the QDROs reviewed and approved by Lincoln Electric. Attached to the correspondence was, as requested by Mrs. Jackson's counsel, communications between Mr. Jackson's counsel and Lincoln Electric regarding the drafting and approval of the QDROs. Mr. Jackson requested Mrs. Jackson return a

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2. Section (d) at page 14 of the judgment entry of divorce states: "If the Plan does not permit an immediate distribution of funds, Defendant, Robin S. Jackson's share shall be maintained in a separate account (in separate accounts); and such accounts shall be credited with all interest and investment income and/or losses attributable to her share of the Plaintiff, Brian R. Jackson's account balance after the division of this Plan until the date of total distribution."

signed copy to be filed with the court as soon as possible, and expressed an urgency of the resolution of the QDROs matter – Mr. Jackson was to retire at the beginning of 2011 and neither party could receive payments from either plan until the QDRO's were in place. Additionally, it was necessary to release the defined contribution plan fund so that Mr. Jackson could use his share of the fund to pay off the bankruptcy trustee for the stock options.[3] The release of the funds was also necessary to allow satisfaction of the support order and the IRS income tax lien.

{¶17} On November 26, 2010, almost a year after he had agreed in court to prepare and submit the QDROs, and more than six months after the final decree, Mrs. Jackson's counsel, for the first time, filed a motion for an extension of time, "for the parties to submit the Qualified Domestic Relations Order." He explained the extension of time was necessary due to his "heavy trial schedule and the press of daily business."

Final Draft of QDROs Filed with Court on November 30, 2010

{¶18} On November 30, 2010, Mr. Jackson's counsel filed objections to Mrs. Jackson's request for extension of time. Attached to it was Mr. Jackson's affidavit, stating that he would be prejudiced by any further delay, because he was now eligible to draw on the pension plans, and, without the access to the plans, he would not have sufficient funds to meet his spousal and child support obligations, support arrears, and an IRS levy, as well as living expenses. In addition, he stated he needed access to his 401K to conclude the bankruptcy proceedings.

{¶19} Also on November 30, 2010, Mr. Jackson's counsel, having received no objections or input from Mrs. Jackson's counsel regarding the final draft provided to him on November 18, 2010, sent the final draft of the QDROs to the trial court. He

3. Mr. Jackson apparently had filed a Chapter 13 bankruptcy petition in 2008.

represented that the QDROs have been approved and will be accepted for administration by Lincoln Electric upon the court's approval of the QDROs.

The December 7, 2010 Objection to the Final Draft

{¶20} On December 7, 2010, Mrs. Jackson filed an objection to the November 18, 2011 draft with the court and asked the court to reject the proposed QDROs. She referred to her previous objections to the earlier drafts filed on September 21, 2010, and September 29, 2010, without raising any specific, additional objection to the final QDROs. Attached to her motion were letters from her counsel dated October 8, 2010, and November 5, 2010, to Mr. Jackson's counsel requesting correspondence concerning the QDROs between Mr. Jackson's counsel and Lincoln Electric. The significance of these letters is unclear, because Mr. Jackson already provided the requested communications on November 18, 2010. Mrs. Jackson asked the court to "schedule an attorney conference so that Counsel for the parties can meet and resolve the issues."

{¶21} On December 13, 2010, Mr. Jackson filed a reply to Mrs. Jackson's objection to the final draft of the QDROs, asking the court to approve the final draft. Mr. Jackson stated that the requests made in Mrs. Jackson's prior objections were either addressed in subsequent drafts and/or had been rejected by Lincoln Electric as inconsistent with the provisions of the retirement plans. Mr. Jackson also advised the court that the final QDROs had been approved and accepted by Lincoln Electric for administration. Regarding Mrs. Jackson's belated request for an "attorney conference" to resolve the issues, Mr. Jackson maintained it was merely another tactic to delay the entry and implementation of the QDROs, in light of the fact that Mrs. Jackson's counsel

had failed to draft the QDROs as agreed upon and failed to engage in discussion of her desired modifications.

{¶22} On January 5, 2011, the court issued two judgment entries adopting the final draft of the QDROs submitted by Mr. Jackson on November 30, 2011.

{¶23} It is from these judgments that Mrs. Jackson now appeals. She assigns the following error for our review:

{¶24} "The trial court erred and/or abused its discretion by approving the two (2) judgment entries, qualified domestic relations orders, submitted by the appellee."

Standard of Review

{¶25} As an initial matter, "[p]ension and retirement benefits acquired by either spouse during the course of a marriage are marital assets that must be considered in arriving at an equitable division of marital property." *Weller v. Weller*, 11th Dist. No. 2001-G-2370, 2002-Ohio-7125, ¶32, citing *Bisker v. Bisker*, 69 Ohio St.3d 608, 609 (1994). "A trial court has broad discretion in dividing marital property, including pension plans." *Id.*, citing *Bisker* at 609. "Absent an abuse of discretion, the trial court's decision will not be disturbed on appeal." *Id.*, citing *Bisker* at 609. A trial court abuses its discretion when it fails "to exercise sound, reasonable, and legal decision-making." *Muscarella v. Muscarella*, 11th Dist. Nos. 2010-T-0091 and 2010-T-0098, 2011-Ohio-1159, ¶17, citing *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11.

The Local Rules

{¶26} In this case, the trial court requested the parties prepare the judgment entries for the QDROs. Lake County Domestic Relation Loc. R.18 ("Judgment Entries")

governs the preparation, submission, and rejection of judgment entries by the parties. Loc.R.18.01(A) states:

{¶27} "(A) The Court may order or direct either counsel or pro se litigant to prepare the Judgment Entry. If the Court orders counsel or pro se litigant to prepare the Judgment Entry, it shall be submitted to the Court within a reasonable time, not to exceed twenty-one (21) days after the date of the Judge's hearing or the filing of the Order adopting or modifying the Magistrate's Decision. Prior to submission to the Court, the Judgment Entry shall be submitted to opposing counsel or pro se litigant for signature.

{¶28} "(1) Signatures: It is the responsibility of all counsel of record or pro se litigant to sign the Judgment Entry if accurate. Attorney fees or other appropriate sanctions shall be considered if counsel of record or pro se litigant unreasonably withholds his/her signature. If any Judgment Entry is presented to the Court without the signatures of counsel or pro se litigant, a Certificate of Service to the Court documenting the date that the Judgment Entry was served on opposing counsel or pro se litigant must accompany the Judgment Entry. The Entry shall not be submitted to the Court until seven (7) business days have passed from the date on the certificate of service.

{¶29} "(2) Rejection of Judgment Entry: In the event of a rejection of the Judgment Entry, opposing counsel or pro se litigant shall file objections within five (5) business days of receipt of the proposed Judgment Entry and shall serve copies of the same on opposing counsel or pro se litigant, and the matter shall be set for hearing as the Court docket permits."

{¶30} The enforcement of local rules is a matter within the discretion of the court promulgating the rules. *Dvorak v. Petronzio*, 11th Dist. No. 2007-G-2752, 2007-Ohio-

4957, ¶30. "Courts are given latitude in following their own local rules; the enforcement of court rules is within the discretion of the court." *In re D.H.*, 8th Dist. No. 89219, 2007-Ohio-4069, ¶25. *See also*, *Babel v. Babel*, 12th Dist. Nos. CA2005-05-104 and CA2005-06-141, 2006-Ohio-4323, ¶20.

Mrs. Jackson's Objection Was Untimely Pursuant to Local Rules

{¶31} Here, in light of Mr. Jackson's imminent retirement, his counsel, after waiting six months for Mrs. Jackson's counsel to submit the QDROs as he had agreed to do in court, prepared a draft of the QDROs and presented them to Mrs. Jackson for her approval and signature on June 15, 2010. He presented her a revised draft on September 20, 2010, based on the input from Lincoln Electric on the earlier draft.

{¶32} Loc.R. 18 requires the objection to a proposed judgment entry be filed within five business days. Mrs. Jackson filed her objection to the June 15, 2010 draft on September 21, 2010. She filed her objection to the September 20, 2010 draft on September 29, 2010. Both were untimely pursuant to the local rules.

{¶33} Mr. Jackson's final QDROs, approved and accepted for administration by Lincoln Electric and sent to Mrs. Jackson's counsel in a correspondence dated November 18, 2010 – a date undisputed by Mrs. Jackson on appeal, was not objected to until December 7, 2010, again, past the 5-day time for objections.

{¶34} Mrs. Jackson did not submit any QDROs for Mr. Jackson's review; did not propose her own draft in response to Mr. Jackson's draft; and failed to comply with the local rules in her objection to the final draft eventually adopted by the court. In light of his imminent retirement at the beginning of 2011, on November 18, 2010, Mr. Jackson submitted to Mrs. Jackson the final draft of the QDROs approved by his employer, and,

after hearing no objection from Mrs. Jackson within the time set forth in the local rules, filed the final draft for the court's adoption.

{¶35} Mrs. Jackson repeatedly failed to conform her objections to the local rules, and, in the process, unreasonably delayed Mr. Jackson's access to his retirement funds. Under these circumstances, the trial court is afforded latitude in enforcing its own local rules. It properly exercised its discretion in adopting the final QDROs, more than a year after the court ordered the QDROs to be prepared by counsel.

Trial Court Was Not Required to Hold Additional Evidentiary Hearing

{¶36} Mrs. Jackson claims the trial court should have held a hearing prior to adopting the final QDROs. We note, however, that she never requested a hearing (asking only for an attorney conference in the objections she filed on December 7, 2010).

{¶37} Furthermore, there is no dispute here over the terms of the in-court agreement. The trial court was only to entertain Mrs. Jackson's allegation that the QDROs did not comport with the agreement, something the trial court could review and determine, based on the filings by the parties, without an additional evidentiary hearing. *See Barton v. Barton*, 10th Dist. No. 96APF11-1526, 1997 Ohio App. LEXIS 2429 (June 3, 1997) (Civ.R. 7(B)(2) does not require evidentiary hearing when the parties submitted briefs and documents in support of their claims; the trial court did not err in not holding additional evidentiary hearing to ascertain the differences between the proposed QDROs).

Mrs. Jackson's Objection to the QDROs is Without Merit

{¶38} Because the issues were not properly preserved by a timely objection below, they are waived for purposes of our review. *See Goldfuss v. Davidson*, 79 Ohio

St.3d 116, 121(1997) (to preserve an issue for review, a party must timely advise a trial court of possible error, by objection or otherwise).

{¶39} However, even assuming Mrs. Jackson has adequately preserved the issue for our consideration, her claim is without merit. In her December 7, 2010 objection to the final draft, she stated, very generally, that the drafts of the QDROs "are not consistent and in compliance with the terms and conditions of the Judgment Entry of Divorce," referring the trial court only to her previous filings of objections. In these prior filings, she raised three specific objections: (1) the QDRO for the defined benefit plan should have been based on her own life expectancy; (2) the QDRO for the defined contribution plan failed to award her the contributions made into the plan before July 1, 2009; and (3) the QDRO for the defined contribution plan failed to award her gains and appreciation on her share of the account.

{¶40} Because the final QDROs actually contained the provision requested by Mrs. Jackson regarding her second objection, Mrs. Jackson only reiterates the first and third objection on appeal.

{¶41} As to her third objection, which concerns gains and appreciations on her share of the retirement plans, a review of the judgment entries of the QDROs indicates that her objection is without merit. Regarding the QDRO for the defined benefit plan, an annuity plan, which is by its nature not subject to the market forces, the QDRO provides for an equal division for the benefits attributable to the period from the date of marriage to July 1, 2009, and that "[a]ny further benefit increase attributable to Marital Service will be split equally and based on the following formula: Years (Marital Service) Divided by (Years of Service used for determining the benefit increase) Times (Monthly Benefit Increase)." Regarding the QDRO for the defined contribution plan, which is subject to

the market forces, it provides that "the Alternative Payee's [Mrs. Jackson's] and Participant's [Mr. Jackson's] Account shall each bear their own respective gains and/or losses (if any) from July 1, 2009 through the time they are distributed from the Plan." Contrary to Mrs. Jackson's claim, the QDROs include provisions for potential gains and appreciations in the retirement accounts.

{¶42} Regarding the first objection, that the QDRO for the defined benefit plan does not provide for her share of the benefit to be actuarially adjusted to her own life expectancy, we note that the judgment entry of divorce states that "[t]he Alternate Payee's [Mrs. Jackson's] share of the benefit to be actuarially adjusted to her own life expectancy. *If this is not permitted*, then a shared QDRO payment will be utilized with appropriate post-retirement protection based on the martial portion of her accrued benefit." (Emphasis added.)

{¶43} On appeal, Mrs. Jackson refers us to a discussion on the "Separate Interest Approach" from "The Complete QDRO Handbook," Third Ed., 2009. The cited portion of the handbook discusses the advantages of the "Separate Interest Approach," which calculates an actuarial adjustment of the alternative payee's share of the benefit based on the latter's life expectancy.

{¶44} We note that the citation to this handbook was made for the first time on appeal by Mrs. Jackson. In the proceedings below, she did not bring it to the trial court's attention, nor present expert testimony or other evidence based on the "Separate Interest Approach." Furthermore, while there was evidence that Mr. Jackson's proposed QDRO was approved by his employer, Mrs. Jackson presented no evidence to the trial court that benefits actuarially adjusted to an alternative payee's life expectancy based on the "Separate Interest Approach" are even available or permitted

under Lincoln Electric Retirement Annuity program. Therefore, the trial court cannot be expected to fashion a QDRO to provide for such benefits.

{¶45} On appeal, Mrs. Jackson also raises for the first time several objections to the QDROs regarding survivorship rights, beneficiary designation, and her share of the cost of living adjustment ("COLA"), among others. It is well established that a party cannot raise any new issues for the first time on appeal. This court has repeatedly refused to consider errors which were not brought to the trial court's attention at a time when such errors could have been avoided or corrected by the trial court. *See Fazenbaker v. Fazenbaker*, 11th Dist. No. 2009-T-0131, 2010-Ohio-5400, ¶16; *Tryon v. Tryon*, 11th Dist. No. 2007-T-0030, 2007-Ohio-6928, ¶29; *Maiorana v. Maiorana*, 2003-L-067, 2004-Ohio-3925, ¶21; *Dolan v. Dolan*, 11th Dist. No. 2000-T-0154, 2002-Ohio-2440, ¶7. Because Mrs. Jackson did not raise objections regarding these new issues at the proceedings below, these issues are waived.

{¶46} Mrs. Jackson's assignment of error is without merit. The judgments of the Lake County Court of Common Pleas, Domestic Relations Division, are affirmed.

CYNTHIA WESTCOTT RICE, J., concurs,

THOMAS R. WRIGHT, J., concurs with Concurring Opinion.

THOMAS R. WRIGHT, J., concurs with Concurring Opinion.

{¶47} I agree with the majority's analysis and conclusion that appellant's assignment of error is baseless on the merits. However, there is no indication whatsoever that the trial court enforced Loc.R. 18 or based its decision to overrule

appellant's objections due to untimeliness. As stated by the majority, the enforcement of local rules is a matter within the discretion of the court promulgating the rules and that court is given latitude in enforcing or not enforcing them.

Because the trial court exercised its discretion not to enforce the time provisions of Loc.R. 18, we should limit our discussion to the merits.