

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BROWN COUNTY

VICKIE LIMING,	:	
Plaintiff-Appellant,	:	CASE NO. CA2008-10-007
- vs -	:	<u>OPINION</u>
	:	7/6/2009
KENNETH NEAL LIMING,	:	
Defendant-Appellee.	:	

APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. 20060876

Susan Mineer, Suite 200, 65 North Second Street, Batavia, Ohio 45103, for plaintiff-appellant
Michael E. Cassity, 107 East Main Street, P.O. Box 478, Mt. Orab, Ohio 45154, for
defendant-appellee

RINGLAND, J.

{¶1} Defendant-appellant, Vickie Liming, appeals a judgment of the Brown County Court of Common Pleas following her divorce from plaintiff-appellee, Kenneth Neal Liming. We affirm.

{¶2} The parties were married on October 25, 1980. The couple had three children as issue of their marriage. At the time of the decree of divorce, two children were over the age of 18 and the third was an emancipated minor. On October 11, 2006, Wife filed for

divorce. Wife was 45 years old and Husband was 46 years old at the time of the divorce. The parties owned real estate with an appraised value of \$510,000 and a mortgage balance of \$156,570.53.

{¶3} Throughout the duration of the marriage, Husband was employed as a welder and also farmed the couple's property. In 2006, Husband earned an estimated gross income of \$45,688. At the time of the divorce, Husband was no longer in the farming business and the trial court found that he did not anticipate returning to it.

{¶4} Wife has a limited education level, only completing school through the tenth grade. Before the birth of the couple's children, Wife was employed as a school bus driver. For the majority of the marriage, Wife was a stay-at-home mother or worked minimally at service jobs earning minimum wage. Wife urges that she has been unable to gain regular employment due to disabling panic attacks, which she claims to have suffered throughout the marriage. She further states that she has prepared to obtain her GED on various occasions, but never took the test due to her panic attacks and responsibilities as a mother.

{¶5} As part of the farming operations, the parties had a \$100,000 line of credit for operating expenses. When the parties separated, they had a debt of \$49,621.27 from the line of credit. Following their separation, Husband obtained a loan from Wells Fargo and a loan from his 401K plan to pay off the debt from the credit line.

{¶6} In the decree of divorce, the magistrate awarded Wife half of the proceeds from the sale of the marital property, \$28,000 for her half of the couple's farm equipment, and spousal support in the amount of \$15,000 per year for three years. Wife filed objections to the magistrate's decision, challenging the separation of property and award of spousal support. The trial court overruled Wife's objections. Wife timely appeals, raising two assignments of error.

{¶7} Assignment of Error No. 1:

{¶8} "THE TRIAL COURT ERRED WHEN IT INAPPROPRIATELY APPLIED THE GUIDELINES SET FORTH BY THE KUNKLE V KUNKLE CASE BY LIMITING THE AWARD OF SPOUSAL SUPPORT TO A PERIOD OF THREE YEARS."

{¶9} In her first assignment of error, Wife disagrees with the trial court's decision, awarding only three years of spousal support. Wife argues that, due to her former status as a housewife, her limited education, and her history of panic attacks, she has a very limited earning capacity compared to Husband. Wife urges that she should receive lifetime spousal support or, in the alternative, spousal support for more than three years.

{¶10} A trial court is vested with the authority to order an award of reasonable spousal support to either party in a divorce proceeding. R.C. 3105.18(B). Pursuant to R.C. 3105.18(C)(1), "[i]n determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the * * * factors" set forth in R.C. 3105.18(C)(1). See, also, *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, paragraph one of the syllabus. These factors include each party's income, earning capacities, age, retirement benefits, education, assets and liabilities, and physical, mental and emotional condition; the duration of the marriage; their standard of living; inability to seek employment outside the home; contributions during the marriage; tax consequences; and lost income capacity due to a party's fulfillment of marital responsibilities. R.C. 3105.18(C)(1)(a)-(m). In addition, a trial court is free to consider any other factor it deems relevant and equitable. R.C. 3105.18(C)(1)(n). After considering these statutory factors, if the court orders an award of spousal support, "the trial court must indicate the basis for its award in sufficient detail to enable a reviewing court to determine that the award is fair, equitable and in accordance with the law." *Kaechele*, paragraph two of the syllabus.

{¶11} "After determining a need exists, the court is then confronted with the often difficult task of determining the duration of the need." *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 69. "The modern trend favors terminating alimony on a date certain." *Id.* "[E]xcept in cases involving a marriage of long duration, parties of advanced age or a homemaker-spouse with little opportunity to develop meaningful employment outside the home, where a payee spouse has the resources, ability and potential to be self-supporting, an award of sustenance alimony should provide for the termination of the award, within a reasonable time and upon a date certain, in order to place a definitive limit upon the parties' rights and responsibilities." *Id.*

{¶12} "The reason for awarding sustenance alimony payable only to a date certain is that the payee's need requiring support ceases, when, under reasonable circumstances, the payee can become self-supporting." *Id.* "Conversely, if under reasonable circumstances a divorced spouse does not have the resources, ability or *potential* to become self-supporting, then an award of sustenance alimony for life would be proper." (Emphasis sic.) *Id.*

{¶13} "The trial court has broad discretion in deciding support is needed based on the facts and circumstances of each case." *Id.* at 67. "A reviewing court cannot substitute its judgment for that of the trial court unless, considering the totality of the circumstances, the trial court abused its discretion." *Id.* An abuse of discretion occurs when the trial court's judgment is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶14} In this case, the trial court addressed each R.C. 3105.18(C)(1) factor in significant detail. The court concluded, "[t]he marital estate of the parties has been appraised at \$510,000 and has a remaining mortgage of approximately \$150,000. Both parties will receive a significant return from the sale of their property which will help them support themselves. Furthermore, the Plaintiff is to receive \$28,000 from the Defendant for

the marital farming equipment. The Court finds that the Plaintiff has the resources from the division of marital property and the award of spousal support for \$15,000 a year for three years to become self supporting and that an award of spousal support for life does not meet the exception outlined by the Ohio Supreme Court."

{¶15} After review of the record, we find no abuse of discretion by the trial court. The court considered all relevant factors. Further, Wife presented no evidence that she lost income production capacity as a result of being a homemaker or medical documentation substantiating the extent of her alleged panic attacks. *Gould v. Gould*, Butler App. No. CA2004-01-010, 2005-Ohio-416, ¶53; *Carman v. Carman* (1996), 109 Ohio App.3d 698, 703.

{¶16} Finally, Wife argues that Husband's earning potential is far greater than the \$45,000 annual earnings he received. However, Wife never sought or requested the court to impute greater income to Husband or requested that the yearly amount of spousal support be increased. *Theurer v. Foster-Theurer*, Warren App. Nos. CA2008-06-074, -083, 2009-Ohio-1457, ¶84.

{¶17} Wife's first assignment of error is overruled.

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT ERRED WHEN IT ATTRIBUTED THE DEBTS ASSUMED BY MR LIMING FOR LOANS FROM WELLS FARGO AND HIS 401K PLAN TO THE MARRIAGE. BOTH DEBTS WERE POST-SEPARATION AND NON-MARITAL."

{¶20} Under her second assignment of error, Wife argues the trial court erred by finding the loans acquired by Husband to be marital debt. Wife argues the loans were assumed post-separation without her knowledge and were acquired to defeat her interest in the marital property.

{¶21} A trial court's classification of debt as marital or separate is reviewed under the manifest weight of the evidence standard. *Nicholas-Ross v. Ross*, Butler App. No. CA2008-

03-090, 2009-Ohio-1723, ¶23. In addition, debts accumulated during the marriage are presumed to be marital debts. *Id.* at ¶26, citing *Nemeth v. Nemeth*, Geauga App. No. 2007-G-2791, 2007-Ohio-3263, ¶50. When debt is accumulated during the marriage, the burden is on the party seeking to have that debt classified as a separate liability to demonstrate, by a preponderance of the evidence, that such debt was the separate obligation of the other spouse. *Nicholas-Ross* at ¶26, citing *Brady v. Brady*, Portage App. No. 2007-P-0059, 2008-Ohio-1657, ¶38.

{¶22} After review of the record, we find that the evidence supports the decision of the trial court. The loans were acquired to preserve marital assets. Specifically, the loans obtained by Husband from Wells Fargo and his 401K plan were used towards payment of the credit line accumulated during the marriage. The credit line was used to fund the farm mortgage, barn mortgage, and the operating costs of the farm. Husband did not acquire any new or additional debt following the couple's separation and there is no evidence of any harm suffered by Wife from the transaction.

{¶23} Wife's second assignment of error is overruled.

{¶24} Judgment affirmed.

BRESSLER, P.J., and YOUNG, J., concur.

[Cite as *Liming v. Liming*, 2009-Ohio-3310.]