

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

EVANGELOS FILLIS, :  
 :  
 Plaintiff-Appellee/Cross-Appellant, : CASE NOS. CA2008-10-093  
 : CA2008-10-101  
 :  
 - vs - : OPINION  
 : 6/15/2009  
 :  
 ANNA J. FILLIS, :  
 :  
 Defendant-Appellant/Cross-Appellee. :

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
Case No. 06-DRB-0785

W. Stephen Haynes, Suite D, 196 East Main Street, Batavia, Ohio 45103, for plaintiff-appellee/cross-appellant

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**BRESSLER, J.**

{¶1} Defendant-appellant/cross-appellee, Anna Fillis (Wife), appeals from the decision of the Clermont County Court of Common Pleas, Domestic Relations Division, dividing the marital assets following her divorce from plaintiff-appellee/cross-appellant, Evangelos Fillis (Husband). For the reasons outlined below, we affirm the decision of the trial court.

{¶2} Husband, a native of Greece, and Wife were married on February 1, 1973.

The couple has three children, all of whom are now emancipated. Husband, who returned to the United States on October 12, 2005 after relocating to Greece in 1995, filed for divorce on June 9, 2006.

{¶13} On August 18, 2008, the trial court, following the final divorce hearing, a three-day trial spanning over the course of two months, determined that, for purposes of property division, December 31, 2005 was the proper de facto termination date of the marriage. The trial court also found that Wife was entitled to a distributive award of \$170,000 due to Husband's financial misconduct. The trial court then classified and divided the marital assets accordingly.

{¶14} Husband and Wife now appeal from the trial court's decision, both raising one assignment of error.

{¶15} Wife's Assignment of Error No. 1:

{¶16} "THE DOMESTIC RELATIONS COURT ERRED AND ABUSED ITS DISCRETION IN ITS DECISION ON DIVORCE AND DECREE OF DIVORCE BY DETERMINING THAT 'DURING THE MARRIAGE' PURSUANT TO R.C. § 3105.171(A)(2) CONSISTED OF THE DATES FEBRUARY 1, 1973 THROUGH DECEMBER 31, 2005."

{¶17} In her sole assignment of error, Wife argues that the trial court, for purposes of property division, erred by finding December 31, 2005 as the proper de facto termination date of the marriage. Specifically, Wife argues that the trial court should have found December 31, 1995 as the proper de facto termination date because her continued "financial involvement [with Husband] was not voluntary or bilateral," due to his "intimidation and physical abuse." This argument lacks merit.

{¶18} Traditionally, the proper date for the termination of a marriage, for

purposes of property division, is the date of the final divorce hearing. R.C. 3105.171(A)(2); *Doyle v. Doyle*, Warren App. No. CA2006-02-027, 2007-Ohio-2554, ¶15; *Dill v. Dill*, 179 Ohio App.3d 14, 2008-Ohio-5310, ¶9. However, when the trial court determines "the date of the final hearing would be inequitable and that a de facto termination of the marriage occurred at an earlier time, the trial court has the discretion to select dates that it considers equitable \* \* \*." *Dill* at ¶9, quoting *Fisher v. Fisher*, Henry App. No. 7-01-12, 2002-Ohio-1297, 2002 WL 444904, at \*2; R.C. 3105.171(A)(2)(b). As a result, because the trial court has broad discretion to select dates that it considers equitable, and since the "determination of the termination date of a marriage is largely a question of fact," this court will not disturb the trial court's finding absent an abuse of discretion. *Doyle* at ¶13, citing *Berish v. Berish* (1982), 69 Ohio St.2d 318, 319; *Pearlstein v. Pearlstein*, Geauga App. No. 2008-G-2837, 2009-Ohio-2191, ¶90. 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. Where there is "competent, credible evidence to support the trial court's decision, there is no abuse of discretion." *Putman v. Putman*, Clermont App. No. CA2008-03-029, 2009-Ohio-97, ¶8, quoting *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 400, 1998-Ohio-403.

{¶9} In this case, Wife presented extensive evidence highlighting Husband's acts of physical and mental abuse that she, as well as her children, endured throughout the length of the marriage.<sup>1</sup> However, there was also evidence establishing that Husband and Wife, in the early part of 1992, created Mr. Pizza, a restaurant now known

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1. Wife testified that the abuse began a week after the couple was married, which included Husband beating, scratching, and strangling her while she was nine months pregnant. There was also testimony presented indicating Husband "chained" his son to the dining room table where he remained for several days. Husband denied the allegations.

as Alabama Fish Bar, and that Wife, even after her husband relocated to Greece in 1995,<sup>2</sup> continued to participate in a variety of business transactions with him, including, among other things, the purchase of a Butler County home in 1996,<sup>3</sup> as well as the purchase of several horses in 2001 and 2004. There was also testimony that Wife, beginning in the latter part of 1995 and continuing through September of 2005, would send her husband money generated from the Alabama Fish Bar each month, with single payments occasionally reaching as high as \$10,000, and that, until 2005, the couple had filed joint tax returns. In addition, there was testimony presented indicating the pair frequently talked on the phone,<sup>4</sup> and that Husband stayed with Wife when he returned to the United States in 2001, 2004 and 2005.

{¶10} The trial court, in determining December 31, 2005 as the proper de facto termination date of the marriage, found "credible evidence was presented that [Wife] was subjected to severe physical and mental abuse by [Husband] throughout the marriage." Despite this finding, however, the trial court also found, based on the totality of the evidence presented, that "the parties continued to be significantly financially entangled up until the end of 2005." After reviewing the record, and even though we may agree that Wife was subjected to severe abuse, we find no error in the trial court's

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2. Husband, during the final divorce hearing, testified that he decided to move back to Greece in 1995 in order to raise livestock after reading that "the Greek government was helping the farms to create cheese and meats for the Greek." Wife, on the other hand, testified that Husband moved out of the house, and eventually back to Greece, after he "beat down" one of their children.

3. Wife testified that Husband did not have any involvement with the purchase of the Butler County house, that he did not attend the closing, and that she signed the mortgage documents on his behalf. Wife, in attempting to explain why Husband's name was included on the deed, testified that it was "because of our tax returns," which had been filed jointly. Husband testified that he was, in fact, present at the closing and that he had signed the documents

4. Wife, in her brief, claims the phone calls from Husband were merely threats of "an immediate return from Greece to impose physical punishment or death \* \* \*." However, Wife, during cross-examination, also testified that she spoke to her husband about, among other things, the animals on his farm and "the books and records of the Alabama Fish Bar."

decision holding the de facto termination date of the marriage as December 31, 2005 as such a finding is supported by competent, credible evidence. As a result, we simply cannot say, based on the facts and circumstances of this case, that the trial court abused its discretion when it determined the use of an earlier de facto termination date would be inequitable. See *Poptic v. Poptic*, Butler App. Nos. CA2002-09-215, CA2002-09-218, 2003-Ohio-7211, ¶66; *Boller v. Boller*, Clermont App. No. CA96-01-005, at 5-6; see, also, *Pearlstein* at ¶90. Therefore, because the trial court did not abuse its discretion by finding December 31, 2005 as the proper de facto termination date of the marriage, Wife's sole assignment of error is overruled.

**{¶11}** Husband's Cross-Assignment of Error No. 1:

**{¶12}** "THE TRIAL COURT ERRED IN FINDING FINANCIAL MISCONDUCT ON THE PART OF [HUSBAND]."

**{¶13}** Husband, in his sole assignment of error, argues that the trial court erred by finding he committed financial misconduct, and abused its discretion in awarding Wife \$170,000 as a distributive award. We disagree.

**{¶14}** Pursuant to R.C. 3105.171(E)(3), if a spouse has engaged in financial misconduct, which includes, among other things, the dissipation or concealment of assets, the trial court may compensate the offended spouse with a distributive award or with a greater share of marital property. *Pressler v. Pressler*, Butler App. No. CA2004-03-068, 2005-Ohio-1408, ¶23. As the trial court's decision on this issue is discretionary, this court will not reverse its decision absent an abuse of discretion. *Id.*, citing *Huener v. Huener* (1996), 110 Ohio App.3d 322, 326.

**{¶15}** In this case, Wife presented evidence that the couple, in anticipation of moving to Greece in the summer of 1990, sold a number of businesses that, when taken

as a whole, totaled approximately \$340,000. Wife, when asked what happened to the proceeds, stated that her husband "took it to Greece." Wife also testified that in August of 1990, just one month after the family moved to Greece, Husband handed Wife four airline tickets, told her that he did not want to see her or their children again, and, the following day, took them to the airport. Wife, after returning to the United States, testified that she had only \$80, no transportation, and that her husband did not send her any type of financial support. In addition, there was testimony that Husband, upon his return to the United States in 1991, had no money and was forced to borrow from friends.

{¶16} Husband, in attempting to explain what happened to the sale proceeds, originally testified that he did not take any of the money. However, after further questioning, Husband eventually testified that he "lost some of the money" after entering into the catalytic converter business, and that he used the rest of the money to "pay the banks." In addition, when asked why his wife had such little money upon her return from Greece, Husband agreed that it was because he had spent it all.

{¶17} In this case, the trial court, in its decision finding Wife was entitled to receive \$170,000 as a distributive award, determined that an equal division of the marital property would be inequitable due to Husband's financial misconduct. In so holding, the trial court found that Husband "acknowledged the sale of these businesses, but his testimony as to the funds received from the sales was evasive, at best." The trial court also found that the sale proceeds were "unaccounted for," and that Husband's testimony regarding his failed business venture into the catalytic converter business, which was unsupported by any further evidence, lacked all credibility. It is the trial court's role to weigh the testimony and credibility of the witnesses, and therefore, we

find the trial court did not err, or abuse its discretion, by finding Husband engaged in financial misconduct, or by awarding Wife \$170,000, half of the \$340,000 sale proceeds, as a distributive award. Accordingly, Husband's sole assignment of error is overruled.

{¶18} Judgment affirmed.

POWELL and YOUNG, JJ., concur.