

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

AMANDA HARDIN

Appellant

v.

JEFFERY HARDIN

Appellee

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C.A. No. 30865

Trial Court Case No. 2023 DR 00305

(Appeal from Common Pleas Court-
Domestic Relations)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on October 23, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



ROBERT G. HANSEMAN, JUDGE

TUCKER, J., and EPLEY, J., concur.

OPINION
MONTGOMERY C.A. No. 30865

AMANDA HARDIN, Appellant, Pro Se
KEARA R. DEVER, Attorney for Appellee

HANSEMAN, J.

{¶ 1} Amanda Hardin appeals pro se from a final judgment and decree of divorce entered in the Domestic Relations Division of the Montgomery County Common Pleas Court.¹ Amanda challenges the trial court's orders pertaining to child support, child custody, and the classification and division of the parties' property. She also challenges the trial court's finding that the appellee, Jeffery Hardin, did not knowingly misrepresent his living situation and did not engage in financial misconduct. In addition, Amanda challenges the trial court's decision denying her motion for contempt. Amanda further asserts that her trial counsel provided ineffective assistance in various respects. For the reasons outlined below, the judgment of the trial court is affirmed.

Facts and Course of Proceedings

{¶ 2} Amanda and Jeffery were married on August 16, 2020. They have one biological son together, A.H., who was born in September 2018. Amanda, who is 46 years old, has two other minor children. Jeffery, who is 70 years old, has three other children, who are adults. On May 1, 2023, approximately 33 months into their marriage, Amanda filed a complaint for divorce.

{¶ 3} Based on the parties' financial disclosure affidavits, the trial court issued a temporary order for Jeffery to pay Amanda \$439.67 in monthly child support and \$450.00 in monthly spousal support. The trial court awarded Amanda temporary custody of A.H. and

1. For clarity, we refer to the parties by their first names.

granted Jeffery parenting time in accordance with the Standard Order of Parenting Time. The parties later entered into an agreed entry that modified the parenting time order. The temporary support orders remained unchanged.

{¶ 4} On December 13, 2023, Amanda filed a petition for conciliation asking the trial court to stay the divorce proceedings for 90 days. The trial court granted the stay, which expired on March 12, 2024. After the stay expired, the parties agreed to engage in mediation, which was unsuccessful. The matter was referred to a magistrate and scheduled for a final divorce hearing on August 7, 2025.

{¶ 5} Prior to the final divorce hearing, on June 10, 2025, Amanda filed a motion to prohibit A.H. from accessing Jeffery's electronic devices on grounds that the devices allegedly contained inappropriate, sexually-explicit material. The magistrate ordered the motion to be heard on the same day as the parties' final divorce hearing.

{¶ 6} Six days before the final divorce hearing, Amanda filed a motion to continue the hearing. The magistrate did not rule on the motion, and the hearing went forward as scheduled. Both Amanda and Jeffery testified at the hearing. Amanda presented the testimony of her friend Stacy Hurst and Jeffery's sister, Elizabeth Napier. Amanda also presented 33 exhibits, as well as sub-exhibits, all of which were admitted into evidence. The testimony and exhibits pertained to child and spousal support, child custody, the division of the parties' property, A.H.'s use of Jeffery's electronic devices, and alleged misrepresentations and financial misconduct by Jeffery.

Final Divorce Hearing

{¶ 7} The following information was presented during the final divorce hearing.

{¶ 8} Amanda and Jeffery maintained separate residences during the entirety of their marriage. They would spend time together at Amanda's residence located at 400 South

Clayton Road, New Lebanon, Ohio, but Jeffery almost always stayed the night at his own residence. Jeffery's residence was located at 8712 Germantown Road, West Alexandria, Ohio ("Germantown residence"), until he sold that property on July 22, 2022.

{¶ 9} Jeffery sold the Germantown residence for \$385,900.00. After paying expenses and the mortgage on the property, Jeffery realized \$205,746.35 in sale proceeds. Jeffery deposited all of the sale proceeds into an LCNB National Bank checking account ("LCNB checking account") held solely in his name. He thereafter transferred a majority of the sale proceeds into various other bank accounts. A few months later, Amanda was added as a joint owner of the LCNB checking account. Amanda never contributed any money into that account.

{¶ 10} Amanda testified that the mortgage payments on the Germantown residence were made from marital income from the start of their marriage in August 2020 until Jeffery sold the Germantown residence in July 2022. Amanda was not a party to the mortgage, and she was unaware of what the mortgage payments were. Amanda did not present any evidence establishing how much the mortgage principal was reduced by the alleged mortgage payments made between August 2020 and July 2022.

{¶ 11} After selling the Germantown residence, Jeffery moved to his family's farmhouse, located at 4217 South Preble County Line Road, West Alexandria, Ohio. At the time of the hearing, Jeffery resided at the farmhouse with his nephew, Ricky Dixon, who is the son of his sister, Elizabeth. The farmhouse is located near 4319 South Preble County Line Road, Elizabeth's residence. Although Jeffery resided at the farmhouse, he received his mail at Elizabeth's home address.

{¶ 12} Jeffery and Elizabeth were beneficiaries of the Russell Hardin Revocable Family Trust ("family trust"). The family trust was formed on May 18, 2015, to hold title to

real and personal property for the benefit of Russell Hardin (Jeffery and Elizabeth's father) and the benefit of Russell's children after his death. The trust corpus included the family's farmland. The trust designated Russell as the trustee and Elizabeth as the successor trustee after Russell's death.

{¶ 13} On December 11, 2021, Jeffery received a \$3,000.00 payment for the trust leasing a portion of the family's farmland after his father's death. In her capacity as successor trustee, Elizabeth canceled the lease and sold the income producing portion of the farmland, which amounted to 100 acres. Jeffery received \$100,000.00 for his share of the sale proceeds. Jeffery deposited the \$100,000.00 into a FM Bank savings account held solely in his name. The \$100,000.00 was not commingled with marital funds. Jeffery later transferred \$30,000.00 of his Germantown residence sale proceeds into the FM Bank savings account. In 2024, the FM Bank savings account accrued \$6,333.58 in interest income.

{¶ 14} In addition to the aforementioned trust disbursements, on June 9, 2021, Jeffery received an inheritance check in the amount of \$14,630.96. This money represented Jeffery's share of funds that were left in his father's bank account. These funds had no connection to the family trust.

{¶ 15} Elizabeth was the owner of a cattle business called HND Cattle Company ("HND Cattle"). She was the sole proprietor of HND Cattle. Although Jeffery helped out on the family's farm and owned two pet cows, Jeffery had no ownership interest in HND Cattle and was not employed by the company. Jeffery received no regular income or wages from HND Cattle or Elizabeth. He received one check in the amount of \$1,100.00 from HND Cattle after selling a calf that one of his pet cows gave birth to. Jeffery also previously raised beef

for him and Amanda to eat and would sell half of the beef that he raised. Jeffery received two checks for beef, one for \$600.00 and one for \$1,200.00. Jeffery no longer raised beef.

{¶ 16} Jeffery received annual retirement benefits from General Motors (“GM”) and annual Social Security benefits. In 2024, Jeffery received \$25,004.40 in Social Security benefits and \$18,485.00 in retirement benefits. Amanda testified that she had a freelance photography business, which brought in between \$4,000.00 and \$6,000.00 a year. Amanda testified that she earned \$3,800.00 in 2022 for breeding and selling dogs; however, she had not sold a litter in a few years. Amanda’s tax returns indicated that her income was \$6,437.00 in 2021, and it was \$6,612.00 in 2022.

Magistrate’s Decision

{¶ 17} On October 28, 2025, the presiding magistrate issued a decision regarding the matters presented at the final divorce hearing. The magistrate held that the funds in the FM Bank savings account were Jeffery’s separate property and that the funds in the LCNB checking account were marital property. The magistrate found that as of April 21, 2023, the LCNB checking account had a balance of \$310.56.

{¶ 18} With regard to the division of the parties’ property, the magistrate awarded Jeffery the LCNB checking account, a 2015 Chevy Silverado valued at \$9,360.00, and a 2023 Chevy Tahoe, which had \$31,380.00 of equity. The magistrate awarded Amanda a 1999 Fleetwood Wilderness camper valued at \$3,800.00 and a 2007 Ford bus valued at \$10,000.00. To compensate for Jeffery being awarded \$27,244.56 more in assets, the magistrate ordered Jeffery to pay Amanda \$13,622.28.

{¶ 19} The magistrate found that although Jeffery had sold cattle/beef in the past, any income from those sales was nonrecurring and that the two cows he owned were merely pets. Accordingly, the magistrate did not include any income from cattle/beef sales in its

child and spousal support analysis. When calculating Jeffery's support obligations, the magistrate considered Jeffery's Social Security benefits, GM retirement benefits, and "miscellaneous other income." The magistrate concluded that Jeffery's total annual income was \$46,000.00.

{¶ 20} The magistrate found that Amanda's income from her photography business was \$6,000.00 a year. The magistrate did not include Amanda's income from breeding dogs in its support calculations because it found that income was nonrecurring. The magistrate, however, determined that Amanda was voluntarily underemployed and imputed \$16,256.00 of income to her. After adding the \$6,000.00 from her photography business, the magistrate determined that Amanda's total annual income was \$22,256.00.

{¶ 21} Using the standard child support computation worksheet, the magistrate ordered Jeffery to pay \$598.39 per month for child support. The trial court found that the length of the parties' 33-month marriage did not justify a spousal support award, and thus it did not order any spousal support. The trial court designated Amanda as the sole legal custodian and primary residential parent of A.H. and granted Jeffery parenting time in accordance with the Standard Order of Parenting Time following a phase-in period.

{¶ 22} Amanda filed several pro se objections and supplemental objections to the magistrate's decision on the final divorce matters.

Trial Court's Review of Objections

{¶ 23} In her objections, Amanda argued that the magistrate's division of assets was inequitable and against the manifest weight of the evidence because the magistrate failed to consider that Jeffery had made several misrepresentations and had engaged in financial misconduct. Amanda alleged that Jeffery had concealed bank accounts and assets and had made material misrepresentations in his financial disclosure affidavit and sworn

interrogatory responses. Amanda claimed that this conduct violated a temporary restraining order issued by the trial court on May 1, 2023. Upon review, the trial court found no material misrepresentation by Jeffery. It also found that Amanda did not satisfy her burden to establish that Jeffery had engaged in financial misconduct. Accordingly, the trial court overruled her objections as to those claims.

{¶ 24} Amanda also claimed that she was entitled to some of the Germantown residence sale proceeds on grounds that marital income was used to pay the mortgage on that property between August 2020 and July 2022. She further claimed that she was entitled to a portion of Jeffery's \$100,000.00 trust disbursement. The trial court disagreed and found that the sale proceeds and trust disbursement were Jeffery's separate property. Additionally, Amanda claimed that she was entitled to some of Jeffery's commercial assets in HND Cattle. The trial court, however, found that the evidence failed to establish that Jeffery owned any interest or assets in HND Cattle. The trial court overruled her objection as to the distribution of the parties' assets.

{¶ 25} Amanda also objected to the magistrate's calculation of the parties' income. The trial court sustained that objection, in part, because it found that the magistrate had erred by finding that Amanda was voluntarily underemployed and by imputing income to her. Using Amanda's 2022 tax return, the trial court found that Amanda's total annual income was \$6,612.00, as opposed to \$22,256.00. Using Jeffery's 2024 tax return, the trial court concluded that Jeffery received \$18,485.00 a year in GM retirement benefits and \$25,004.00 a year in Social Security benefits. The trial court also found that Jeffery received \$6,334.00 in annual interest income from the FM Bank savings account (the account in which he had deposited his \$100,000.00 trust distribution and \$30,000.00 of his Germantown residence sale proceeds). Based on this information, the trial court determined that Jeffery's total

annual income was \$49,823.00, as opposed to \$46,000.00. Using the corrected income information, the trial court calculated Jeffery's monthly child support obligation to be \$675.88.

{¶ 26} Next, Amanda objected to the magistrate's failure to continue her spousal support. Amanda claimed that the magistrate should have continued her spousal support for 12 months. The trial court disagreed, but it sustained the objection, in part, because it found that the magistrate had incorrectly determined that Jeffery had paid temporary spousal support since May 1, 2023. The record actually reflected that Jeffery had failed to pay temporary spousal support in May, June, July, and August 2023. As a result, the trial court ordered Jeffery to pay spousal support arrears of \$1,800.00.

{¶ 27} Amanda also raised an objection claiming that the magistrate had failed to rule on her motion to prohibit A.H. from accessing Jeffery's electronic devices. The trial court deemed the motion to have been overruled by the magistrate and then reviewed the evidence pertaining to the allegations in the motion. After reviewing the evidence, the trial court determined that Amanda had not met her burden to prove that she was entitled to the relief she sought. The trial court overruled her objection on that matter.

{¶ 28} The trial court also overruled Amanda's objection to the magistrate's parenting time order, which granted Jeffery standard-order parenting time with a phase-in period. In support of her objection, Amanda claimed that A.H. had never stayed the night with Jeffery and that A.H. would be unsafe in Jeffery's care because the child would sleep in a toddler bed located in a "breezeway" of Jeffery's house. Amanda also claimed that she feared for A.H.'s safety because Jeffery's older son was in prison for a murder that he had committed in Jeffery's house.

{¶ 29} The trial court found that there was no evidence supporting Amanda's claim regarding Jeffery's older son. The trial court also found that Jeffery had testified to watching

A.H. and Amanda's other children on several occasions, which included a few overnights. The trial court further found that when Amanda was asked how she wanted the court to handle visitation with Jeffery, she had suggested that he receive standard-order parenting time with a phase-in period. Specifically, Amanda testified that Jeffery should "get [A.H.] during the day Saturday and Sunday for a couple of weeks for [A.H.] to be used to being there all weekend and then to get him . . . all day Saturday, Saturday night, and Sunday for a couple of weeks to be used to being there overnight, and then to go to the regular standard order." Divorce Hearing Tr. 19. Based on the evidence, the trial court found that the phasing-in visitation schedule ordered by the magistrate was appropriate to get A.H. acclimated to spending the night with Jeffery and that the schedule was in A.H.'s best interest. The trial court adopted the magistrate's parenting time order and overruled Amanda's objection on that matter.

{¶ 30} After ruling on Amanda's objections, the trial court ordered Jeffery's counsel to prepare and submit a final judgment and decree of divorce commensurate with the trial court's decision. Jeffery's counsel filed the final judgment and decree of divorce on April 14, 2026.

Contempt Motion

{¶ 31} While the magistrate's decision on the final divorce hearing was pending, on September 26, 2025, Amanda filed a motion to show cause why Jeffery should not be held in contempt for violating a temporary restraining order that the trial court had issued on May 1, 2023. The temporary restraining order prohibited Jeffery from engaging in various conduct, including, but not limited to, annoying and harassing Amanda; selling, disposing, or transferring either party's interest in real or personal property; and withdrawing or transferring any bank account funds or interest in business assets.

{¶ 32} In support of her contempt motion, Amanda attached an affidavit averring that Jeffery had violated the temporary restraining order by (1) removing her online log-in credentials from a GM Financial automotive loan account that is used for the vehicle she drives; (2) logging in to their son's school application and changing his pickup instructions so that Jeffery was the sole pickup person for each day of the week; (3) logging in to her Facebook account without her permission, conducting various searches on her friends and family, and blocking several of her business contacts; (4) physically stalking her; and (5) taking certain items of personal property, i.e., a Disney World change jar and a KitchenAid mixer that Jeffery gave her for Christmas.

{¶ 33} On October 21, 2025, the trial court held a hearing on Amanda's contempt motion. Both Amanda and Jeffery testified at the hearing. Amanda presented 39 exhibits, as well as sub-exhibits, for the presiding magistrate to consider. After deliberating, the magistrate issued a decision finding that Amanda had failed to establish that Jeffery violated the temporary restraining order. Accordingly, the magistrate denied Amanda's contempt motion. Amanda filed objections to that decision, which the trial court overruled.

{¶ 34} Amanda now appeals from the trial court's decision denying her contempt motion and from the final judgment and decree of divorce. She raises eight assignments of error for review. For purposes of clarity, we review the assignments of error out of order.

First Assignment of Error

{¶ 35} Under her first assignment of error, Amanda claims that the trial court adopted the magistrate's decision on the parties' divorce action without properly considering her objections and without conducting an independent review of the matter as required by Civ.R. 53(D)(4)(d). Amanda asserts that the trial court simply adopted the magistrate's conclusions through boilerplate language. We disagree.

{¶ 36} Civ.R. 53(D) governs proceedings before a magistrate and provides, in relevant part, that when “ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law.” Civ.R. 53(D)(4)(d).

{¶ 37} Pursuant to this rule, when reviewing objections to a magistrate’s decision, “the trial court must conduct an independent review of the facts and conclusions contained in the magistrate’s decision and enter its own judgment.” *Hammond v. Hammond*, 2024-Ohio-5946, ¶ 20 (2d Dist.), citing Civ. R. 53. The court “may not simply state that it approves, adopts, or incorporates a magistrate’s decision.” *Bennett v. Bennett*, 2012-Ohio-501, ¶ 20 (2d Dist.), quoting Sowald & Morganstern, *Ohio Practice Domestic Relations Law*, § 31:13, at 701-702 (2009). “Thus, the trial court engages in de novo review and should not adopt the magistrate’s factual findings unless it agrees with them.” *Hammond* at ¶ 20, citing *Crosby v. McWilliams*, 2003-Ohio-6063, ¶ 33-35 (2d Dist.).

{¶ 38} “The trial court has discretion to determine whether to sustain or overrule an objection to a magistrate’s decision, and we will not reverse that determination absent an abuse of that discretion.” *In re Estate of Price*, 2014-Ohio-537, ¶ 9 (2d Dist.). However, “[a] failure of the trial court to conduct an independent review of the magistrate’s recommendations as required by Civ.R. 53(D)(4)(d) is an abuse of discretion.” *Barrientos v. Barrientos*, 2011-Ohio-5734, ¶ 5 (3d Dist.). “The appellate court must presume that a trial court has performed an independent review of the magistrate’s recommendations unless the appellant affirmatively demonstrates the contrary.” *Id.*, citing *Gilleo v. Gilleo*, 2010-Ohio-5191, ¶ 46 (3d Dist.).

{¶ 39} In this case, Amanda has not affirmatively demonstrated that the trial court did not meaningfully analyze her objections or conduct an independent review of the matter as

required by Civ.R. 53(D)(4)(d). Her claim is belied by the record. The trial court not only addressed each of Amanda's objections in its 33-page decision in detail, but it also modified the magistrate's decision in several respects that favored Amanda. In addition, the trial court identified the testimony and evidence on which it relied in making its findings. It is clear from the record that the trial court conducted a meaningful independent review and did not simply adopt the magistrate's decision through boilerplate language.

{¶ 40} Amanda's first assignment of error is overruled.

Fourth Assignment of Error

{¶ 41} Under her fourth assignment of error, Amanda claims that the trial court erred by ordering an inequitable division of the parties' marital property in violation of R.C. 3105.171. In support of this claim, Amanda asserts that the trial court misclassified certain marital property as separate property. We disagree.

Standard of Review

{¶ 42} "Appellate courts review a trial court's division of property under an abuse of discretion standard, but a trial court's classification of property as marital or separate must be supported by the manifest weight of the evidence." *Pentella v. Pentella*, 2014-Ohio-1113, ¶ 8 (2d Dist.), citing *Mays v. Mays*, 2001 WL 1219345, *3 (2d Dist. Oct. 12, 2001). When reviewing the manifest weight of the evidence, the appellate court ""weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered."" (Bracketed text in original.) *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115 (9th Dist. 2001), quoting *State v. Thompkins*, 1997-Ohio-52, ¶ 25.

Marital Versus Separate Property

{¶ 43} In divorce proceedings, the trial court must review the parties' property and determine what property constitutes "marital property" and what property constitutes "separate property." R.C. 3105.171(B). "Marital property" includes "[a]ll real and personal property that currently is owned by either or both of the spouses." R.C. 3105.171(A)(3)(a)(i). There is a rebuttable presumption that any property or an interest in property that either spouse owns is marital property and is subject to equal division. *Fisher v. Fisher*, 2004-Ohio-7255, ¶ 4 (2d Dist.); *Baker v. Baker*, 2024-Ohio-678, ¶ 10 (2d Dist.); R.C. 3105.171(C)(1). "The presumption may be rebutted by evidence showing that an item of property is instead the separate property of one of the two spouses." *Fisher* at ¶ 4. The trial court is required to distribute separate property to the spouse it belongs to. R.C. 3105.171(D).

{¶ 44} Relevant to this appeal, the definition of "separate property" includes all real and personal property and any interest in property that is found to be "[a]n inheritance by one spouse by bequest, devise, or descent during the course of the marriage." R.C. 3105.171(A)(6)(a)(i). "Separate property" also includes "any real or personal property or interest in real or personal property that was acquired by one spouse prior to the date of the marriage." R.C. 3105.171(A)(6)(a)(ii).

{¶ 45} "Passive income and appreciation acquired from separate property by one spouse during the marriage" is also separate property. R.C. 3105.171(A)(6)(iii). "Passive income" is defined as "income acquired other than as a result of the labor, monetary, or in-kind contribution of either spouse." R.C. 3105.171(A)(4). In contrast, "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" is marital property. R.C. 3105.171(A)(3)(a)(iii).

{¶ 46} “[A]ny reduction in the amount of a mortgage during the marriage by payment with marital funds contributes to the equity in the property and becomes marital property.” *Smith v. Smith*, 2008-Ohio-799, ¶ 10 (10th Dist.). However, trial courts are not permitted to speculate as to marital appreciation or mortgage principal reduction amounts without supporting evidence. *Id.*, citing *Patterson v. Patterson*, 2006-Ohio-1786 (12th Dist.), and *Cyrus v. Cyrus*, 1995 WL 699924 (9th Dist. Nov. 29, 1995).

{¶ 47} “The commingling of separate property with other property of any type does not destroy the identity of the separate property as separate property, except when the separate property is not traceable.” R.C. 3105.171(A)(6)(b). “[T]raceable refers to evidence demonstrating a connection between property currently owned and some antecedent article of separate property. Such proof overcomes the effect of commingling, by which separate property may be ‘transmuted’ into marital property.” *Maloney v. Maloney*, 2005-Ohio-1368, ¶ 22 (2d Dist.). “Separate property can lose its nonmarital quality when it cannot be clearly traced because of extensive and repeated commingling.” *Bauer v. Bauer*, 2020-Ohio-425, ¶ 31 (12th Dist.).

{¶ 48} “The burden of proving that property is separate is on the proponent of the claim to prove by a preponderance of the evidence.” *Fiamengo v. Fiamengo*, 2016-Ohio-4720, ¶ 29 (2d Dist.); *Bergman v. Bergman*, 2013-Ohio-715, ¶ 31 (2d Dist.). “Because traceability presents a question of fact, we must give deference to the trial 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.” *Maloney* at ¶ 23.

Germantown Residence Sale Proceeds

{¶ 49} Amanda claims that the trial court should have found that a portion of the sale proceeds from Jeffery’s Germantown residence was marital property to which she was

entitled. There is no dispute that Amanda never lived at the Germantown residence, that Jeffery acquired the residence before the parties were married, and that Jeffery was the only person responsible for the mortgage on the residence. There is also no dispute that Jeffery sold the property during the parties' marriage in July 2022 and received \$205,746.35 from the sale.

{¶ 50} Because Jeffery acquired the Germantown residence before the parties' marriage, it was Jeffery's separate property. R.C. 3105.151(A)(6)(a)(ii). Amanda, however, testified that between August 2020 and July 2022, mortgage payments on the Germantown residence were made from marital income. Her testimony invoked the rule that "any reduction in the amount of a mortgage during the marriage by payment with marital funds contributes to the equity in the property and becomes marital property." *Smith*, 2008-Ohio-799 at ¶ 10 (10th Dist.).

{¶ 51} The evidence established that Jeffery took out a \$153,200 mortgage on the Germantown residence in May 2020. Plaintiff's Ex. 1(C). Amanda testified that she did not know how much the mortgage payments were, and she presented no evidence establishing how much, if any, of the mortgage principal was reduced by the mortgage payments made between August 2020 and July 2022. This lack of evidence is a problem because a trial court is not permitted to speculate as to the amount of mortgage principal reduced by mortgage payments. *Smith* at ¶ 10, citing *Patterson*, 2006-Ohio-1786 (12th Dist.), and *Cyrus*, 1995 WL 699924 (9th Dist. Nov. 29, 1995).

{¶ 52} In *Patterson*, a wife purchased real property prior to marrying her husband and then used marital funds to pay the mortgage on the property after the marriage. During their divorce proceedings, no evidence was presented regarding the reduction of mortgage principal with marital funds. *Patterson* at ¶ 29-31. As a result, the trial court refused to

speculate on the extent of the husband's marital interest and awarded the real property to the wife as her separate property. *Id.* at ¶ 31. On appeal, the Twelfth District Court of Appeals concluded that the trial court did not err in that regard. Although the appellate court recognized that marital funds had been used to pay the mortgage on the real property, it agreed that the trial court could not have speculated on the value of the husband's marital interest in the property. *Id.* at ¶ 36.

{¶ 53} A similar scenario occurred in *Smith*, where a husband owned a home for seven years before marrying his wife, and the husband used marital funds to pay part of the mortgage payment after the marriage. Like *Patterson*, there was no evidence presented as to how much the mortgage payments reduced the mortgage principal during the marriage. The Tenth District Court of Appeals noted that “[i]t is often difficult for a trial court to equitably divide assets when the evidence presented is deficient.” *Smith*, 2008-Ohio-799, at ¶ 14 (10th Dist.). The court explained that “[w]hile it is generally true that any reduction in the amount of a mortgage during the marriage by payment with marital funds contributes to the equity in the property and becomes marital property . . . , there was no evidence as to how much [the mortgage payments at issue] reduced the mortgage principal during these times. A trial court is not permitted to speculate as to the marital appreciation or mortgage principal reduction amounts without evidence to support such.” *Id.* at ¶ 10, citing *Patterson* and *Cyrus*.

{¶ 54} Here the situation is similar to *Smith* and *Patterson*. Although Amanda testified that mortgage payments were made using marital income between August 2020 and July 2022, there was no evidence indicating how much those mortgage payments totaled or how much the payments reduced the mortgage principal. There was also no evidence indicating that Jeffery or Amanda made any labor, monetary, or in-kind contribution during the marriage that caused the property to appreciate in value. Despite Jeffery's testimony that he made

several improvements to the property, he did not indicate that those improvements were made during the parties' 33-month marriage.

{¶ 55} In summary, the durations of the mortgage and the parties' marriage were relatively short. The record lacks evidence that the mortgage principal was reduced via marital income or that the Germantown residence appreciated in value through any labor or other contribution by Amanda or Jeffery during their marriage. On this record, we find that the trial court did not lose its way or create a manifest miscarriage of justice by classifying the \$205,746.35 in sale proceeds as separate property.

{¶ 56} Amanda, however, also suggests that the sale proceeds should have been considered marital property because they were commingled with marital funds when they were deposited into Jeffery's LCNB checking account. Even if that were true, a majority of the sale proceeds remained traceable as Jeffery's separate property. The bank records admitted into evidence established that the LCNB checking account had a balance of only \$480.71 when the \$205,746.35 in sale proceeds were deposited. Shortly after depositing the sale proceeds, Jeffery transferred the following sums from the LCNB checking account.

1. \$50,000.00 transferred to Pathways Financial Credit Union savings account ("Pathway's savings account") on July 21, 2022. Plaintiff's Exs. 1(E) and 1(F).
2. \$30,000.00 transferred to LCNB National Bank investment account ("LCNB investment account") on August 9, 2022. Plaintiff's Exs. 1(H) and 12.
3. \$90,000.00 transferred to LCNB National Bank savings account ("LCNB savings account") on August 11, 2022. Plaintiff's Ex. 1(H).

{¶ 57} Jeffery specifically testified that he put the Germantown residence sale proceeds in different banks to "keep" him when he gets older. Divorce Hearing Tr. 161.

Based on the evidence, we cannot say that the trial court lost its way or created a manifest miscarriage of justice by failing to classify the foregoing accounts as marital property, because all the funds in the accounts were traceable as Jeffery's separate property from the Germantown residence sale proceeds. The trial court's decision finding that those funds were Jeffery's separate property was supported by competent, credible evidence. Therefore, the decision is not against the manifest weight of the evidence.

{¶ 58} We further note that only \$35,746.35 of the sale proceeds would have remained in the LCNB checking account after the aforementioned transfers. Amanda was added as a joint owner of the account in October 2022, approximately two months after the transfers were made. When she was added, the LCNB checking account had a balance of only \$9,935.00. The bank records indicate that the LCNB checking account was used for various marital expenses. Ten days before Amanda filed for divorce, the account balance was down to \$310.56; accordingly, the Germantown residence sale proceeds had been depleted by that time. In any event, the trial court correctly determined that the funds left in the LCNB checking account were marital property.

Trust Distributions

{¶ 59} Amanda claims that the trial court should have found that the trust distributions Jeffery received during the parties' marriage were marital property subject to division. The evidence established that after Jeffery's father died, the trust paid Jeffery \$3,000.00 for his share of a lease payment made on a portion of the trust property and \$100,000.00 for his share of the sale proceeds that were realized from selling 100 acres of the trust property. Jeffery testified that he spent the \$3,000.00 paying his bills. The bank records established that Jeffery deposited the \$100,000.00 into a FM Bank savings account that was held solely

in his name. The bank records also established that the \$100,000.00 was not commingled with marital funds.² Plaintiff's Ex. 21.

{¶ 60} Upon review, we find that the trial court did not lose its way or create a manifest miscarriage of justice by classifying the trust distributions as separate property. Separate property includes property received by one spouse "by bequest, devise, or descent during the course of the marriage." R.C. 3105.171(A)(6)(a)(i). The trust property that was leased and sold following the death of Jeffery's father in 2021, was property that had passed by bequest, devise, or decent. There was competent, credible evidence supporting the trial court's finding that the trust distributions were Jeffery's separate property. The trial court's finding is not against the manifest weight of the evidence.

HND Cattle

{¶ 61} Amanda claims that the trial court erred by finding that Jeffery was not involved in HND Cattle and by not considering the business's income stream to be a marital asset subject to division. Jeffery, however, testified that he did not own or work for HND Cattle or any other cattle business. Jeffery testified that he had previously raised beef for Amanda and himself to eat and that he would sell half of the beef he raised to cover costs. Jeffery testified that the two checks Amanda presented showing that he had received \$1,200.00 for "half beef" and \$600.00 for a "cow" in 2020 were for the beef he had sold. Jeffery testified that he no longer raised beef and that he owned only two cows, which he kept as pets for his children.

{¶ 62} When Jeffery was asked about a \$4,500.00 check that he had written to his nephew, Ricky Dixon, in December 2022 for a "cow," Jeffery explained that the money was

2. An additional \$30,000.00 was later deposited into the FM Bank savings account; however, that \$30,000.00 was traceable to the sale proceeds from the Germantown residence, which was also Jeffery's separate property.

a loan for Dixon to buy a cow and that Dixon had since paid him back. When Jeffery was asked about the \$1,100.00 check that he had received from HND Cattle in August 2022, he explained that one of his pet cows had given birth to a calf and that he had sold the calf for \$1,100.00 to his sister, Elizabeth, the owner of HND Cattle.

{¶ 63} Elizabeth testified that she was the sole proprietor of HND Cattle and that she did not employ Jeffery. Elizabeth also testified that other than paying Jeffery \$1,100.00 for the calf, she had not paid Jeffery any money in her capacity as the owner of HND Cattle. As successor trustee of the family trust, Elizabeth confirmed that the \$3,000.00 and \$100,000.00 trust distributions Jeffery received had nothing to do with HND Cattle.

{¶ 64} Amanda testified that she had heard Jeffery tell people that he dealt in cattle. She also presented text messages from December 2022 in which Jeffery admitted to working at his family's farm and helping to keep his family's farm going. Plaintiff's Ex. 32. In one text message, Jeffery wrote, "I am going to keep buying cows and doing the farm." *Id.* In another text message, Jeffery asked Amanda to use their Tahoe to go to a cattle sale. Plaintiff's Ex. 32(A).

{¶ 65} From this evidence, the trial court determined that Jeffery had worked at his family farm breeding cattle at least through 2022. However, the trial court found no evidence that Jeffery was financially compensated for his work, except for the sporadic checks for the calf and the beef. Upon review, we find that the trial court did not lose its way or create a manifest miscarriage of justice in reaching that conclusion. Amanda presented no evidence establishing that Jeffery owned any interest or assets in HND Cattle or that he had received any income or regular wages from HND Cattle. The trial court was free to credit Elizabeth's and Jeffery's testimony regarding HND Cattle. Simply because the trial court found

Elizabeth's and Jeffery's testimony credible does not mean that its decision finding that Jeffery lacked any interest or assets in HND Cattle was against the weight of the evidence.

{¶ 66} Amanda's fourth assignment of error is overruled.

Second Assignment of Error

{¶ 67} Under her second assignment of error, Amanda claims that the trial court erred by failing to find that Jeffery had committed perjury and financial misconduct and by failing to sanction him for such alleged conduct. We disagree.

Perjury

{¶ 68} Perjury is defined in R.C. 2921.11(A) as knowingly making a false statement under oath when the statement is material. Similarly, R.C. 2921.13, the statute governing falsification, prohibits any person from knowingly making a false statement when the statement is made in any official proceeding or when the statement is sworn or affirmed before a notary public or another person empowered to administer oaths. R.C. 2921.13(A)(1) and (6).

{¶ 69} Amanda claims that Jeffery committed perjury because the evidence established that he swore in his interrogatory responses that he lived with his sister, Elizabeth, but testified differently at the final divorce hearing. Jeffery testified that he lived at 4217 South Preble County Line Road, West Alexandria, Ohio, the location of his family farm. In contrast, Jeffery's responses to Amanda's first set of interrogatories stated that he resided with Elizabeth at 4319 South Preble County Line Road, West Alexandria, Ohio.

{¶ 70} When confronted with this discrepancy, Jeffery testified that he used Elizabeth's residence as his mailing address and that his interrogatory response stating he lived there, too, was a mistake that he was not aware of when he swore to his interrogatory responses. During Jeffrey's testimony, he was adamant that he did not live with Elizabeth.

Jeffery's responses to Amanda's second set of interrogatories supported his testimony. In those responses, he identified the family farm address, not Elizabeth's address, as his residence. Elizabeth also specifically testified that Jeffery had never lived with her. Elizabeth testified that she lived in her late father's house, which was next to the house where Jeffery lived with her son, Ricky.

{¶ 71} In addition to the discrepancy about Jeffery's residential address, Amanda claims that Jeffery lied in his responses to her first set of interrogatories because he had indicated that no one lived with him at the family farm address, whereas his responses to her second set of interrogatories indicated that Ricky occasionally lived with him. We note that the first interrogatory requested Jeffery to provide an extensive amount of personal information, including, but not limited to, his current address and the names of anyone who lived with him. Jeffery provided all the information requested by the interrogatory except for the names of any individuals who lived with him. Jeffery did not specifically aver that he did not live with anyone; rather, he simply omitted one piece of information that was requested in a lengthy interrogatory. Regardless, in his responses to Amanda's second set of interrogatories, Jeffery identified his nephew, Ricky, as someone who occasionally lived with him at the family farm address.

{¶ 72} Amanda relies on these inconsistent interrogatory responses to support her claim that Jeffery committed perjury through his sworn statements and hearing testimony. She also relies on Elizabeth's testimony indicating that Ricky lived at the farm full time as opposed to occasionally. In objecting to the magistrate's decision, Amanda claimed that the inconsistencies were material because they evidenced an attempt by Jeffery to inflate his claimed living expenses and to conceal his connection with his family's farm. The trial court,

however, determined that Jeffery did not knowingly misrepresent his living situation and overruled Amanda's objection on that matter.

{¶ 73} Civil judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.*, 54 Ohio St.2d 279 (1978), syllabus. When reviewing the manifest weight of the evidence, the appellate court ""weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way ."" (Bracketed text in original.) *Eastley*, 2012-Ohio-2179, at ¶ 20, quoting *Tewarson*, 141 Ohio App.3d at 115 (9th Dist. 2001), quoting *Thompkins*, 1997-Ohio-52, at ¶ 25. "[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts." (Bracketed text in original.) *Id.* at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, fn. 3 (1984), quoting 5 Ohio Jur.3d, Appellate Review, § 60, at 191-192 (1978).

{¶ 74} In this case, the trial court was free to credit Jeffery's testimony explaining the reasons for the inconsistencies in his interrogatory responses. After weighing all the evidence and reasonable inferences and considering the credibility of the witnesses, we find that there was competent, credible evidence in the record for the trial court to conclude that Jeffery did not knowingly misrepresent his living situation and that the trial court did not lose its way or create a manifest miscarriage of justice in that regard. Without a knowing misrepresentation or false statement, there is no perjury and thus no basis to sanction Jeffery.

{¶ 75} Amanda has raised other perjury claims in her appeal that were not raised in the trial court. “It is settled law that issues raised for the first time on appeal and not having been raised in the trial court are not properly before this court and will not be addressed.” *Clyburn v. Clyburn*, 2025-Ohio-1759, ¶ 15 (2d Dist.), quoting *State v. Schneider*, 1995 WL 737910, *1 (2d Dist. Dec. 13, 1995). Therefore, we will not address Amanda’s other perjury claims.

Financial Misconduct

{¶ 76} “If a spouse has engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, nondisclosure, or fraudulent disposition of assets, the court may compensate the offended spouse with a distributive award or with a greater award of marital property.” R.C. 3105.171(E)(4)

{¶ 77} “The financial misconduct statute should apply only if the spouse engaged in some type of wrongdoing (i.e., wrongful scienter). “Typically, the offending spouse will either profit from the misconduct or intentionally defeat the other spouse’s distribution of marital assets.” Financial misconduct involves some element of profit or interference with another’s property rights.” *Taylor v. Taylor*, 2013-Ohio-2341, ¶ 58 (2d Dist.), quoting *Feldmiller v. Feldmiller*, 2012-Ohio-4621, ¶ 18 (2d Dist.), quoting *Mantle v. Sterry*, 2003-Ohio-6058, ¶ 32 (10th Dist.) In other words, “the required misconduct must portray a form of wrongdoing undertaken for the purpose of profiting the offending spouse and/or defeating the other spouse’s share of marital assets.” *Feldmiller* at ¶ 22. “Thus, ‘[f]inancial misconduct requires more than dishonest behavior.” *Hall v. Bricker*, 2024-Ohio-1339, ¶ 45 (10th Dist.), quoting *Bucalo v. Bucalo*, 2005-Ohio-6319, ¶ 30 (9th Dist.). “[A] court must ‘look to the reasons behind the questioned activity or the results of the activity and determine whether the wrongdoer profited from the activity or intentionally dissipated, destroyed, concealed, or

fraudulently disposed of the other spouse's assets.” *Hamrick v. Hamrick*, 2024-Ohio-2517, ¶ 25 (9th Dist.), quoting *Bucalo* at ¶ 30.

{¶ 78} “The complaining spouse bears the burden of proving financial misconduct.” *Best v. Best*, 2011-Ohio-6668, ¶ 18 (10th Dist.). “The trial court has discretion in determining whether financial misconduct occurred, and an appellate court will only reverse that determination if it is against the manifest weight of the evidence.” *Id.*; accord *Leary v. Leary*, 2026-Ohio-1396, ¶ 87 (2d Dist.). “On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether in resolving conflicts in the evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered.” *Leary* at ¶ 87, citing *Eastley*, 2012-Ohio-2179, at ¶ 20.

{¶ 79} In this case, Amanda requested the trial court to grant her a distributive award under R.C. 3105.171(E)(4) for various allegations of financial misconduct by Jeffery. The trial court, however, found that Amanda did not satisfy her burden of proof on the matter. For the following reasons, we find that the trial court's decision is not against the manifest weight of the evidence.

1. Concealing/Transferring Germantown Residence Sale Proceeds

{¶ 80} Amanda claims that Jeffery committed financial misconduct by concealing the Germantown residence sale proceeds. The alleged financial misconduct concerns Jeffery's transfers of the sale proceeds to different bank accounts and his omission of those accounts from his financial disclosure affidavit that he filed with the trial court on May 22, 2023.

{¶ 81} The financial disclosure affidavit is a form that required Jeffery to state his current yearly income and expenses. Plaintiff's Ex. 1(A). The Germantown residence sale

proceeds did not constitute yearly income, and the financial disclosure affidavit did not require Jeffery to disclose any information about his bank accounts. In any event, in answering Amanda's first set of interrogatories, Jeffery disclosed all the bank accounts in question and their current balances. Plaintiff's Ex. 5 (Interrogatory Nos. 11-12). He also disclosed the sale of the Germantown residence in his answers to Amanda's second set of interrogatories. Plaintiff's Ex. 9 (Interrogatory No. 17). Therefore, the evidence establishes that Jeffery did not conceal the bank accounts or the Germantown residence sale proceeds.

{¶ 82} Amanda also claims that Jeffery committed financial misconduct by "liquidating" certain bank accounts that contained the Germantown residence sale proceeds while the divorce was pending. Amanda claims this conduct violated the trial court's May 1, 2023 temporary restraining order. The temporary restraining order prohibited Jeffery from "selling, giving away, withdrawing, transferring, or encumbering any funds, account, share, stock, bond, or other existing or later-acquired interest of either party in any asset, business, corporation, partnership, employer, pension fund, bank, trust, or financial institution."

{¶ 83} Upon review, the record establishes that Jeffery transferred all the funds in his LCNB investment account into his FM Bank savings account. He also emptied the funds in his Pathways savings account. Jeffery engaged in this activity while the temporary restraining order was in effect. Jeffery did violate the temporary restraining order.

{¶ 84} We do not condone Jeffery's violation of the temporary restraining order. However, that act alone did not constitute financial misconduct. To establish financial misconduct, Amanda had the burden to prove that Jeffery committed a wrongdoing that interfered with her property rights and that Jeffery profited from the wrongdoing or the wrongdoing stemmed from an intentional act meant to defeat her share of the marital assets. *Hamrick*, 2024-Ohio-2517, at ¶ 20 (9th Dist.).

{¶ 85} In this case, the funds that were transferred from the LCNB investment account and the Pathway savings account all came from the Germantown residence sale proceeds, which were Jeffery's separate property. Because all the funds in those accounts were Jeffery's separate property, Amanda never had any claim to them. These sums also did not qualify as income; therefore, they had no effect on Jeffery's child support obligation. Jeffery's transferring the funds in those accounts in violation of the temporary restraining order did not interfere with Amanda's property rights, did not profit him at Amanda's expense, and did not intentionally defeat Amanda's share of the marital assets. For the foregoing reasons, we find that there was competent credible evidence supporting the trial court's finding that Jeffery did not engage in financial misconduct.

2. Concealing FM Bank Savings Account

{¶ 86} Amanda claims that Jeffery committed financial misconduct by failing to disclose his FM Bank savings account, which is the account into which he deposited his \$100,000.00 trust distribution. In August 2023, he transferred \$30,000.00 from his LNCB investment account into the FM Bank savings account. As of October 2023, the FM Bank savings account had a balance of \$132,402.46. Plaintiff's Ex. 12(B).

{¶ 87} Jeffery disclosed the FM Bank savings account in his answers to Amanda's first set of interrogatories in June 2023, when the account had a balance of \$100,395.20. Plaintiff's Ex. 5 (Interrogatory No. 11). Accordingly, Jeffery did not conceal the FM Bank savings account as alleged by Amanda. Jeffery's interrogatory responses also disclosed the LCNB investment account from which he later transferred \$30,000.00 into the FM Bank savings account. *Id.* (Interrogatory No. 12). We find it significant that Jeffery disclosed the FM Bank savings account, the LCNB investment account, and the accounts' current

balances in his June 2023 interrogatory responses. Those disclosures suggest that Jeffery was not attempting to conceal the funds at issue.

{¶ 88} That said, the evidence established that Jeffery received annual interest income from the FM Bank savings account. Such interest is passive income and Jeffery's separate property. R.C. 3105.171(A)(6)(a)(iii). Jeffery should have disclosed the annual interest income on his financial disclosure affidavit. Nothing in the record, however, indicates that Jeffery's failure in that regard was more than a mere oversight. There is no evidence indicating that Jeffery intentionally omitted the interest income for a wrongful purpose, i.e., to reduce his support obligations. Jeffery's disclosures of the \$100,000.00 trust distribution and the FM Bank savings account in which the interest accrued from those funds suggest that the omission was a mere oversight and not an intentional wrongdoing. The weight of the evidence supports finding no financial misconduct in that regard.

3. Failure to Account for \$90,000.00 Cash Withdrawal

{¶ 89} Amanda claims that Jeffery committed financial misconduct by failing to account for a \$90,000.00 cash withdrawal that he had made from his LCNB checking account on August 11, 2022. The evidence established that Jeffery transferred the \$90,000.00 to the LCNB savings account held solely in his name. The bank records established that the \$90,000.00 was part of the Germantown residence sale proceeds. As discussed in our analysis of Amanda's marital property claims, that sum was traceable as Jeffery's separate property. This suggests that the \$90,000.00 transfer was not made with any wrongful intent to deprive Amanda of her property rights or to defeat her share of the marital assets.

{¶ 90} The timing of the \$90,000.00 transfer also does not suggest any wrongful intent, because the transfer occurred before Amanda was added as a joint owner of the

LCNB checking account. The transfer was eight months before Amanda filed for divorce, which was necessarily before the May 1, 2023 temporary restraining order went into effect. Given the timing of the transfer, Jeffery's disclosure of all his LCNB bank accounts in his interrogatory responses, and the status of the \$90,000.000 as Jeffery's separate property, the weight of the evidence supports the trial court's finding of no financial misconduct.

4. Concealing \$100,000.00 Trust Distribution

{¶ 91} Amanda claims that Jeffery committed financial misconduct by failing to disclose the \$100,000.00 trust distribution on his financial disclosure affidavit. Amanda also claims that Jeffery received multiple other trust distributions that he should have disclosed as income on the financial disclosure affidavit. The record, however, does not support Amanda's claim that there were several other trust distributions. The evidence regarding the trust distributions only established that the trust paid Jeffery \$3,000.00 for a lease payment, which he spent on bills, and \$100,000.00 in sale proceeds, which he deposited into his FM Bank savings account.

{¶ 92} The financial disclosure affidavit required Jeffery to state his yearly income and expenses. Plaintiff's Ex. 1(A). As we discuss in more detail below in our analysis of Amanda's fifth assignment of error, the trust distributions were nonrecurring income and thus did not qualify as yearly income. There was no reason for Jeffery to disclose the trust distributions on the financial disclosure affidavit. In any event, Jeffery disclosed the \$100,000.00 trust distribution and the FM Bank savings account in which he deposited the \$100,000.00 in his interrogatory responses. Plaintiff's Ex. 5 (Interrogatory Nos. 11 and 23). For the foregoing reasons, there is competent credible evidence supporting the trial court's finding of no financial misconduct.

5. Concealing HND Cattle Income

{¶ 93} Amanda claims that Jeffery committed financial misconduct by concealing tens of thousands of dollars in annual income generated by HND Cattle. As discussed in our analysis of Amanda’s marital property claims, the evidence established that Jeffery did not own any interest or assets in HND Cattle or receive any income or wages from HND Cattle. Accordingly, Jeffery’s failure to disclose any income from HND Cattle does not amount to financial misconduct because there was no income for him to disclose.

{¶ 94} For all the foregoing reasons, the financial misconduct and perjury claims raised under Amanda’s second assignment of error lack merit.

{¶ 95} Amanda’s second assignment of error is overruled.

Third Assignment of Error

{¶ 96} Under her third assignment of error, Amanda claims that the trial court’s judgment on her objections to the magistrate’s decision is against the manifest weight of the evidence because the court found Jeffery’s testimony about his income, assets, and living situation credible despite there being “overwhelming evidence of his perjury and fraud.”

{¶ 97} “The credibility of witnesses and the weight to be given to their testimony is a matter for the trier of facts to resolve.” *Jenkins v. Jenkins*, 2012-Ohio-4182, ¶ 19 (2d Dist.), citing *State v. DeHass*, 10 Ohio St.2d 230 (1967). “Because the factfinder . . . has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder’s determinations of credibility.” *Id.*, quoting *State v. Lawson*, 1997 WL 476684, *4 (2d Dist. Aug. 22, 1997). Therefore, “[t]he decision whether, and to what extent, to credit the testimony of particular

witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness.” *Id.*, quoting *Lawson* at *4.

{¶ 98} “[A] judgment is not against the manifest weight of the evidence simply because the trier of fact believed one side’s testimony over the other’s.” *Peterson v. Booth*, 2023-Ohio-1301, ¶ 29 (2d Dist.). “An appellate court should not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of facts lost its way in arriving at its verdict.” *In re C.M.*, 2006-Ohio-3741, ¶ 41 (2d Dist.).

{¶ 99} Amanda claims that the evidence firmly established that Jeffery intentionally lied about his income, assets, and living arrangements. In our analysis above of Amanda’s second assignment of error, we discussed these allegations and determined that the weight of the evidence supported the trial court’s finding of no material misrepresentation or financial misconduct by Jeffery. The trial court’s decision crediting Jeffery’s testimony on these matters does not render its judgment against the manifest weight of the evidence, because it is not patently apparent that the trial court lost its way or created a manifest miscarriage of justice when ruling on Amanda’s objections.

{¶ 100} Amanda’s third assignment of error is overruled.

Fifth Assignment of Error

{¶ 101} Under her fifth assignment of error, Amanda challenges the child support order on grounds that it was calculated using incomplete, fraudulent income information. Amanda also claims that the trial court erred by failing to retroactively modify the temporary child and spousal support orders that were based on the incomplete and fraudulent income information.

Standard of Review

{¶ 102} We review child support decisions for abuse of discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144 (1989); *Morrow v. Becker*, 2013-Ohio-4542, ¶ 9. “Abuse of discretion’ has been defined as an attitude that is unreasonable, arbitrary, or unconscionable.” *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). The Supreme Court of Ohio has stressed that “most instances of abuse of discretion will result in decisions that are simply unreasonable.” *Id.* “A decision is unreasonable if there is no sound reasoning process that would support that decision.” *Id.*

Income Calculation

{¶ 103} “To calculate the amount of child support owed, the domestic-relations court must first determine the annual income of each parent.” *Ayers v. Ayers*, 2024-Ohio-1833, ¶ 13, citing R.C. 3119.021(A). The child support statute defines “income” as:

(a) For a parent who is employed to full capacity, the gross income of the parent;

(b) For a parent who is unemployed or underemployed, the sum of the gross income of the parent and any potential income of the parent.

R.C. 3119.01(C)(10).

{¶ 104} As relevant here, “gross income” includes “the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable, and includes income from . . . dividends; . . . interest; trust income; . . . social security benefits, including retirement, disability, and survivor benefits that are not means-tested; . . . and all other sources of income.” R.C. 3119.01(C)(13).

{¶ 105} “Gross income” does not include “[n]onrecurring or unsustainable income or cash flow items.” R.C. 3119.01(C)(13)(e). “‘Nonrecurring or unsustainable income or cash flow item’ means an income or cash flow item the parent receives in any year or for any number of years not to exceed three years that the parent does not expect to continue to receive on a regular basis.” R.C. 3119.01(C)(14). “Determination of whether a particular type of income is ‘nonrecurring or unsustainable’ requires a close review of the specific facts in a given case.” *Wolf-Sabatino v. Sabatino*, 2014-Ohio-1252, ¶ 28 (10th Dist.).

{¶ 106} In this case, the trial court determined that Jeffery’s gross income consisted of annual Social Security benefits of \$25,004.00, annual GM retirement benefits of \$18,485.00, and the annual interest income that Jeffery received from his FM Bank savings account—the bank account in which he deposited his \$100,000.00 trust disbursement and \$30,000.00 of the Germantown residence sale proceeds. The evidence established that Jeffery received \$6,334.00 in interest income from the FM Bank savings account in 2024. After adding Jeffrey’s interest income, Social Security benefits, and GM retirement benefits, the trial court calculated Jeffery’s gross income to be \$49,823.00.

{¶ 107} Amanda claims that the trial court should have included the \$100,000.00 trust disbursement in its gross income calculation. We disagree. The \$100,000.00 trust disbursement was a lump sum payment that constituted nonrecurring income. Only the interest income from that sum while it is on deposit in the FM Bank savings account may be deemed gross income. See *Howell v. Howell*, 2006-Ohio-3038, ¶ 55 (2d Dist.) (holding that potential interest income from three sizable inheritances should be considered in determining a father’s income for support purposes). Here the trial court included the FM Bank savings account interest income when calculating Jeffery’s gross income.

{¶ 108} Amanda also claims that the trial court should have included income that Jeffery received from Porginsky Excavating, LLC (“Porginsky”), as part of his gross income. We again disagree. The evidence did not establish that Jeffery received any wages or regular cash flow from Porginsky. Instead, the evidence established that Jeffery received one check from Porginsky for \$6,250.00 in 2023. Plaintiff’s Ex. 28. Like Jeffery’s trust disbursements, the single payment from Porginsky was nonrecurring income.

{¶ 109} Amanda further claims that the trial court should have included income from HND Cattle as part of his gross income. But Jeffery did not own any interest or assets in HND Cattle or receive any regular income or wages from HND Cattle. Jeffery merely received a \$1,100 check from HND Cattle for the sale of a calf. That payment was nonrecurring income as well.

{¶ 110} Upon review, we find that the trial court’s calculation of Jeffery’s gross income for purposes of determining his child support obligation was reasonable and not an abuse of discretion.

Retroactive Modification of Temporary Support Orders

{¶ 111} Amanda claims that, for two years, Jeffery paid temporary support amounts that were a fraction of what he truly owed because he had provided fraudulent information about his income. She argues that the trial court abused its discretion by failing to retroactively correct the temporary support orders to reflect what he actually owed.

{¶ 112} After reviewing Amanda’s pro se objections and supplemental objections, it does not appear as though she ever requested the trial court to retroactively correct the temporary support orders. However, even if she had, this court has held that a retroactive modification of a temporary support order is only permissible in cases where assets were concealed or misrepresented and that, “in the absence of such circumstances, a subsequent

modification retroactive to a previous temporary order violates due process.” *Jackson v. Jackson*, 137 Ohio App.3d 782, 801 (2d Dist. May 6, 2000). As previously discussed, the weight of the evidence supported the trial court’s finding that Jeffery did not conceal or misrepresent his assets. Accordingly, a retroactive modification of the temporary support orders would be prohibited.

{¶ 113} Amanda’s fifth assignment of error is overruled.

Sixth Assignment of Error

{¶ 114} Under her sixth assignment of error, Amanda claims that the trial court erred by denying her motion for contempt where she presented clear and convincing evidence of Jeffery violating several provisions of the trial court’s May 1, 2023 temporary restraining order. Amanda claims that the evidence established that Jeffery violated the temporary restraining order by (1) selling marital property during the divorce and depositing the sale proceeds into secret bank accounts, (2) stalking and harassing her, and (3) changing his life insurance beneficiaries.

Standard of Review

{¶ 115} “Contempt is defined in general terms as disobedience of a court order.” *M.E.H. v. C.K.H.*, 2025-Ohio-1394, ¶ 11 (2d Dist.), quoting *State ex rel. Corn v. Russo*, 2001-Ohio-15, ¶ 19. “To establish a prima facie case of civil contempt, the moving party must prove, by clear and convincing evidence, both the existence of a court order and that the nonmoving party violated it.” *Pelfrey v. Pelfrey*, 2026-Ohio-2205, ¶ 16 (2d Dist.).

{¶ 116} “This court will not reverse a ruling on a contempt motion absent an abuse of discretion by the trial court.” *Echols v. Echols*, 2021-Ohio-969, ¶ 14 (2d Dist.), citing *State ex rel. Ventrone v. Birkel*, 65 Ohio St.2d 10, 11 (1981). “Abuse of discretion’ has been defined as an attitude that is unreasonable, arbitrary, or unconscionable.” *AAAA Ents.*,

50 Ohio St.3d at 161. Most instances of abuse of discretion occur when a trial court's decision is unreasonable, meaning that there is no sound reasoning process that would support the decision. *Id.*

{¶ 117} Review under the abuse-of-discretion standard is highly deferential. *State v. Morris*, 2012-Ohio-2407, ¶ 14. "When applying an abuse of discretion standard, the appellate court is not free to simply substitute its judgment for that of the trial court." *Shehata v. Shehata*, 2005-Ohio-3659, ¶ 11 (2d Dist.), citing *Berk v. Matthews*, 53 Ohio St.3d 161 (1990). Therefore, "[i]t is not sufficient for an appellate court to determine that a trial court abused its discretion simply because the appellate court might not have reached the same conclusion or is, itself, less persuaded by the trial court's reasoning process than by the countervailing arguments." *Morris* at ¶ 14, citing *AAAA Ents.* at 161.

Analysis

{¶ 118} The temporary restraining order at issue prohibited Jeffery from (1) "abusing, annoying, harassing, molesting, threatening or injuring" Amanda and her minor children; (2) "damaging, moving, selling, giving away, transferring, disposing of, or encumbering any existing or later-acquired interest of either party in any real or personal property"; and (3) "selling, giving away, withdrawing, transferring, or encumbering any funds, account, share stock, bond or other existing or later-acquired interest of either party in any . . . bank, trust, or financial institution."

{¶ 119} In support of her contempt motion, Amanda attached an affidavit listing the various ways in which she believed Jeffery had violated the temporary restraining order. Neither the motion nor the affidavit included any allegations regarding Jeffery selling marital property and depositing the sale proceeds into concealed bank accounts or Jeffery changing his life insurance beneficiaries. As a result, the presiding magistrate did not hear any

evidence regarding those claims during the contempt hearing and did not rule on them. Because those claims were not raised before the trial court, they may not be raised for the first time on appeal. *Clyburn*, 2025-Ohio-1759, at ¶ 15 (2d Dist.). Accordingly, we decline to address those claims.

{¶ 120} Amanda did, however, argue in the trial court that Jeffery violated the temporary restraining order by annoying and harassing her. She claimed that Jeffery (1) removed her online log-in credentials from a GM Financial automotive loan account that was used for the vehicle she drives; (2) logged in to their son's school application and changed their son's pickup instructions so that Jeffery was the sole pick-up person for each day of the week; (3) logged in to her Facebook account without her permission, conducted various searches on her family and friends, and blocked several of her business contacts; (4) physically stalked her; and (5) took certain items of personal property, i.e., a Disney World change jar and a KitchenAid mixer that Jeffery gave her for Christmas.

{¶ 121} With regard to Amanda's allegation that Jeffery removed her online log-in credentials from their GM Financial automotive loan account, Jeffery testified that he originally had made their loan payments on the account by check and that Amanda switched it to online payments. Jeffery testified that he did not have a computer and therefore could not make online payments. Jeffery's testimony indicated that Amanda's online log-in credentials had been removed because he had called GM Financial one time and asked them to take payments directly out of his checking account. He ultimately denied tampering with the GM Financial account.

{¶ 122} In support of her allegation that Jeffery had logged in to her Facebook account without permission, Amanda presented her Facebook log-in history, which showed several log-ins from Jeffery's cellphone. Amanda also presented evidence of a Facebook

alert about a denied attempt to log in to her account that was attributed Jeffery's cellphone, which occurred after she had changed her password. Amanda further presented text-message conversations between her and Jeffery in which she accused Jeffery of logging in to her Facebook account. Contrary to Amanda's claim, the text messages did not establish that Jeffery had acknowledged logging in to her Facebook account. When confronted with the Facebook log-ins at the contempt hearing, Jeffery testified that Amanda's Facebook account had been left open on his cellphone and that he had looked through her account but had not blocked or deleted any of her contacts.

{¶ 123} In support of her stalking claim, Amanda testified that despite Jeffery not living in the same area as her—New Lebanon—"he just happens to always be in New Lebanon." Contempt Hearing Tr. 34. Amanda testified that she ran into Jeffery once or twice a week at the gas station located a quarter of a mile from her house. She also testified that Jeffery had driven by her house on multiple occasions and had followed her while she was driving. Amanda posited that Jeffery possibly used a tracking device to monitor the location of her vehicle, but she admitted that she had never found any such device. Amanda testified that she was convinced her consistent run-ins with Jeffery were not a coincidence.

{¶ 124} Amanda presented videos and photographs to support her stalking claim. The videos were recorded from Amanda's cellphone. Upon reviewing the videos, we find that they could just as easily be evidence of Amanda stalking Jeffery. In four of the videos, Amanda recorded Jeffery while she was driving behind his truck. In three of the videos, Amanda recorded Jeffery from across the street while he was located at or driving by a gas station.

{¶ 125} Jeffery testified that he did not see Amanda during the incidents recorded on the videos and that he had no idea that Amanda was around him. He testified that he had to

drive through New Lebanon two or three times a day. He explained that the bank and grocery store that he frequented were in New Lebanon and that he regularly went to a gas station in that area because it had the cheapest gas. Jeffery also testified that he did not bother Amanda and that he had stopped driving down the street she lived on. The temporary restraining order did not restrict Jeffery from being present at any certain location.

{¶ 126} As for the KitchenAid mixer, Amanda testified that Jeffery had told her son that the mixer was stolen. Amanda also testified that Jeffery had told her that he took the Disney World change jar because he had planned to take the children to Disney World. Jeffery did not address the KitchenAid mixer or the Disney Word change jar during his testimony. He also did not address the allegation that he had changed A.H.'s pickup instructions on the school application. The temporary restraining order did not prohibit Jeffery from making those changes.

{¶ 127} When reviewing all the testimony and evidence presented at the contempt hearing, we cannot say the trial court's decision to deny Amanda's contempt motion was an abuse of discretion. Based on the testimony and exhibits, it was reasonable for the trial court to conclude that Jeffery had not been harassing or stalking Amanda. It was also reasonable for the trial court to conclude from the evidence that the disappearance of the KitchenAid mixer and Disney World change jar did not rise to the level of violating the temporary restraining order.

{¶ 128} Although this court may have reached a different conclusion regarding Amanda's Facebook-hacking claim, we cannot say that the trial court's decision on that matter was unreasonable so as to constitute an abuse of discretion. Jeffery testified that Amanda's Facebook account had been left open on his cellphone and that he had merely looked through her account but had not blocked or deleted any of her contacts. The trial

court apparently found Jeffery’s testimony credible, and a “domestic relations court is in a better position than this court to assess credibility.” *Baxter v. Baxter*, 2026-Ohio-3041, ¶ 6 (2d Dist.), quoting *Baronzzi v. Gamble*, 2023-Ohio-894, ¶ 38 (7th Dist.).

{¶ 129} For all the foregoing reasons, the trial court did not abuse its discretion by denying Amanda’s contempt motion.

{¶ 130} Amanda’s sixth assignment of error is overruled.

Seventh Assignment of Error

{¶ 131} Under her seventh assignment of error, Amanda challenges the trial court’s parenting time order, which designated Amanda as the primary residential parent and granted Jeffery parenting time pursuant to the Standard Order of Parenting Time with a phase-in period. Specifically, Amanda claims that the trial court failed to consider evidence establishing that Jeffery’s home was unsafe for their son and that, in Jeffery’s care, their son had been exposed to sexually-explicit content.

Standard of Review

{¶ 132} “When a judge makes a decision regarding the custody of children and when the decision is supported by a substantial amount of competent and credible evidence, the decision will not be reversed absent an abuse of discretion.” (Citations omitted.) *Winfield v. Winfield*, 2003-Ohio-6771, ¶ 30 (11th Dist.). Therefore, “[t]he issue of parenting time is a matter entrusted to the discretion of the trial court.” *Tellis v. Tellis*, 2021-Ohio-1976, ¶ 12 (2d Dist.), quoting *Szeliga v. Szeliga*, 2012-Ohio-1973, ¶ 12 (2d Dist.). “[A]bsent an abuse of that discretion, we will not reverse a trial court’s decision on parenting time.” *Id.*, quoting *Szeliga* at ¶ 12.

{¶ 133} Again, “[a] trial court abuses its discretion when it makes a decision that is unreasonable, arbitrary, or unconscionable.” (Citation omitted.) *Amesse v. Wright State*

Physicians, Inc., 2018-Ohio-416, ¶ 22 (2d Dist.), quoting *State v. Williams*, 2016-Ohio-322, ¶ 17 (2d Dist.). “The discretion which a trial court enjoys in custody matters should be afforded the utmost respect, given the nature of the proceeding and the impact the court’s determination will have on the lives of the parties concerned.” *Tellis* at ¶ 11, citing *Beismann v. Beismann*, 2008-Ohio-984, ¶ 20 (2d Dist.). “The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record.” *Id.*, citing *Miller v. Miller*, 37 Ohio St.3d 71, 74 (1988). Therefore, “[a]buse of discretion will not be found where the reviewing court simply could maintain a different opinion were it deciding the issue de novo” (Emphasis deleted.) *Williams v. Nored*, 2005-Ohio-605, ¶ 16 (2d Dist.), citing *AAAA Ents.*, 50 Ohio St.3d at 161.

R.C. 3109.04

{¶ 134} “R.C. 3109.04 establishes the process for allocating parental rights and responsibilities between the parents of a minor child.” *Bruns v. Green*, 2020-Ohio-4787, ¶ 8. “Under its provisions, the court must allocate the parental rights and responsibilities for children of divorcing parties.” *Snyder v. Snyder*, 2002-Ohio-2781, ¶ 53, citing R.C.3109.04(A). “The statute allows the trial court, in the exercise of its sound discretion, to designate one parent as the residential parent and legal custodian of the child and divide other rights accordingly, or to allocate rights to both parents under a shared parenting plan.” *Id.* “When making the allocation of the parental rights and responsibilities for the care of the children . . . , the court shall take into account that which would be in the best interest of the children.” R.C. 3109.04(B)(1). R.C. 3109.04(F)(1) instructs the trial court to consider all relevant factors and certain listed factors when making the best-interest determination.

Analysis

{¶ 135} Amanda suggests that the trial court's decision to award Jeffery standard-order parenting time with a phase-in period was not in A.H.'s best interest because Jeffery's home was unsafe and because A.H. had been exposed to sexually-explicit content while in Jeffery's care. Amanda claims that the living conditions at Jeffery's house were unsafe because A.H. slept on a toddler bed in a crowded breezeway that was occupied by Jeffery and multiple other adults.

{¶ 136} Jeffery lived at his family's farmhouse with his nephew, Ricky. Jeffery's sister, Elizabeth, described Jeffery's room as a "mini split" room that was "set up with its own heating and air." Hearing Tr. (Aug. 7, 2025), p. 149. She also testified that the room had "a door to the garage, a door to the living room." *Id.* She described it as "very clean, very good accommodations." *Id.* The photographic evidence of Jeffery's home and the child's toddler bed that Amanda presented at the final divorce hearing did not depict any unsafe conditions.

{¶ 137} Although the trial court did not discuss Jeffery's living conditions in great detail, it did take them into account, contrary to Amanda's claim otherwise. Specifically, the trial court noted that "Amanda has concerns that the child sleeps in a toddler bed in a 'breezeway' of the house" and that "Jeffery stays in the breezeway between the garage and the main part of the house, and A.H. has a toddler bed there." April 14, 2026 Trial Court Judgment, p. 18. The trial court clearly found no issue with Jeffery's living situation given that it decided to award Jeffery standard-order parenting time, which includes overnights. Moreover, the trial court considered Amanda's suggestion at the final divorce hearing that Jeffery receive standard-order parenting time after a phase-in period, which the trial court ordered.

{¶ 138} Regarding the alleged sexually-explicit content, Amanda testified that, in March 2025, A.H. came home and told her that he saw a picture of a penis on Jeffery's cellphone. She testified that when she confronted Jeffery about this, he told her that A.H. had actually seen a picture of her finger that she had broken the previous year. Amanda testified that A.H. had also told her that he saw a picture of Jeffery naked with a lady on top of him and that they were doing "s-e-x." Divorce Hearing Tr. 43. Amanda also testified to seeing inappropriate images on Jeffery's phone as well, but she admitted that the images were not pornography.

{¶ 139} Jeffery testified that he did not have pornography on his electronic devices and that he did not own a computer. He testified that A.H. played Roblox on his cellphone and tablet and that A.H. was never left alone when using his electronic devices.

{¶ 140} Amanda claims that the trial court failed to address the sexually-explicit content issue in its decision. The record, however, proves otherwise. In its decision, the trial court noted that on June 10, 2025, Amanda had filed a motion to prohibit A.H. from accessing Jeffery's electronic devices due to the allegedly inappropriate images they contained. The trial court noted that the magistrate had failed to rule on the motion and therefore deemed the motion to have been denied. The trial court stated that it had reviewed the evidence and determined that Amanda was not entitled to the relief that she had requested in the motion. When considering the parties' testimony, we cannot say that the trial court's decision in that regard was unreasonable so as to constitute an abuse of discretion.

{¶ 141} Amanda's seventh assignment of error is overruled.

Eighth Assignment of Error

{¶ 142} Under her eighth assignment of error, Amanda claims that her trial counsel provided ineffective assistance by failing to (1) adequately cross-examine Jeffery regarding

the Germantown residence sale proceeds so as to establish the marital nature of those proceeds, (2) present a legal argument as to why HND Cattle and Jeffery's allegedly concealed bank accounts were marital property, and (3) pursue a continuance of the final divorce hearing after the magistrate failed to rule on her motion to continue that proceeding.

{¶ 143} The right to effective assistance of counsel in a *criminal proceeding* is provided by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). “Conversely, in a civil case between individual litigants, there is no constitutional right to effective assistance of counsel, but instead ‘an injured party’s remedy for inefficient legal counsel is, generally, against the attorney in a suit for malpractice.’” *Partridge v. Partridge*, 1999 WL 945046, *2 (2d Dist. Aug. 27, 1999), quoting *Musa v. Gillette Communications of Ohio, Inc.*, 94 Ohio App.3d 529, 537 (8th Dist. 1994) (Nugent, J., concurring). Therefore, “[a] claim of ineffective assistance of counsel is not cognizable in civil cases as ‘there is no right to an attorney in civil cases.’” *Prausa v. Prausa*, 2026-Ohio-1894, ¶ 37 (2d Dist.), quoting *Doster v. Doster*, 2026-Ohio-303, ¶ 32 (3d Dist.). Because the divorce proceeding at issue is a civil matter between Amanda and Jeffery, there is no remedy for Amanda’s claim of ineffective assistance of counsel on appeal.

{¶ 144} Amanda’s eighth assignment of error is overruled.

Conclusion

{¶ 145} Having overruled all of Amanda’s assignments of error, the judgment of the trial court is affirmed.

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TUCKER, J., and EPLEY, J., concur.