[Cite as *Jones v. Jones*, 2021-Ohio-1498.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

TUMANYA JONES,	:	
Plaintiff-Appellee,	:	Case No. 20CA3
vs.	:	
NICHOLAS JONES,	:	DECISION & JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Nicholas Jones, Lebanon, Ohio, pro se appellant.

Tumanya Jones, Beavercreek, Ohio, pro se appellee.

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 4-19-21
ABELE, J.

{¶ 1} This is an appeal from a Highland County Common Pleas Court judgment that granted a divorce to Tumanya Jones, plaintiff below and appellee herein, and Nicholas Jones, defendant below and appellant herein. Appellant assigns the following errors for review:

> FIRST ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT COMMITTED REVERSIBLE ERROR TO THE PREJUDICE OF DEFENDANT WHEN IT FAILED TO ALLOW THE DEFENDANT'S REQUEST FOR CREDIT FOR PAYMENTS MADE UNDER TEMPORARY ORDERS."
>
> SECOND ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHILE ABUSING ITS DISCRETION WHEN ENTERING CONFLICTING INSTRUCTIONS REGARDING MONTHLY SPOUSAL SUPPORT PAYMENT ORDERS WITHIN THE DIVORCE DECREE."

THIRD ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR TO THE PREJUDICE OF THE DEFENDANT WHEN IT ABUSED ITS DISCRETION AND DECIDED ON MOTIONS FOR CONTEMPT AGAINST THE WEIGHT OF EVIDENCE AND PRIOR TO REVIEWING THE JUVENILE COURTS [SIC] COMPLETED PROCEEDINGS."

FOURTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED TO THE PREJUDICE OF THE DEFENDANT WHEN IT INSTRUCTED THE PAYMENT OF TAXES AND THE ALLOCATION OF THE TAXABLE RATES. IN A FINAL DIVORCE DECREE D. JAN 27, 2020, IT FAILED TO INCLUDE BEYOND 2018, WHILE ALL PROPERTIES HAD NOT YET BEEN DISPERSED."

FIFTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED IN NOT CONSIDERING AND AWARDING REASONABLE ATTORNEY FEES TO THE DEFENDANT FROM THE DATE OF THE PLAINTIFF'S FIRST APPEAL."

SIXTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT OMITTED MATERIAL AGREEMENT OF THE PARTIES TO INCLUDE PENALTY LANGUAGE FOR REFUSAL OF AN OFFER TO SELL ASSETS."

SEVENTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR TO THE PREJUDICE OF DEFENDANT WHEN IT ABUSED ITS DISCRETION AND BARRED COURT ORDERED FAMILY COUNSELOR FROM BEING CALLED AS A WITNESS BY EITHER PARTY IN THIS CASE."

EIGHTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR TO THE PREJUDICE OF THE DEFENDANT WHEN IT FAILED TO

SET A LENGTH OF TIME FOR THE PARTIES TO UNDERGO FAMILY COUNSELING WHICH THE COUNSELOR COULD HAVE MODIFIED OR ALTERED HAD HE BEEN ALLOWED TO REPORT TO THE COURT."

NINTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO RESPOND TO PLAINTIFF'S TESTIMONY OF CHANGE IN CHILD SUPPORT CIRCUMSTANCES DURING A HEARING PRIOR TO THE FINAL HEARING."

TENTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED WHEN IT PERMITTED THE MINOR CHILD TO RECORD PARENTING TIME WITH THE DEFENDANT."

{¶ 2} This appeal arises from a contentious divorce proceeding that the parties have litigated for more than 4 years. On December 20, 2016, approximately ten years after the parties married, appellee filed a complaint for divorce. Appellant later filed a counterclaim for divorce. At the time appellee filed her complaint for divorce, the parties had one minor child who has since become emancipated.

{¶ 3} The trial court held multiple hearings regarding the parties' divorce. The court held the final hearing over the course of three days in October and November 2017. After the final hearing, the trial court entered an order that divided some of the parties' personal property, modified its temporary parenting time order, and set a briefing schedule to resolve the remaining disputes.

{¶ 4} On December 20, 2017, appellant filed a motion to show cause against appellee. Appellant asserted that appellee violated court order by failing to: (1) transport the minor child to counseling, (2) schedule make-up parenting time; and (3) notify appellant of medical

appointments. On January 8, 2018, appellant filed a second motion to show cause and contended that appellee failed to comply with the order to provide parenting time on Christmas day.

{¶ 5} On January 12, 2018, the trial court entered a decision that resolved the remaining disputed property-division issues. The court ordered the parties to file their 2017 income tax returns "in the manner in which their income tax obligations are the least possible under the law." The court further ordered that the parties share any refund or liability in proportion to each party's total income.

{¶ 6} The trial court denied appellant's request for a credit for payments made during the pendency of the case. Appellant had asked the court to count "as part of [appellee]'s equitable distribution in terms of debts" "any payments made toward the farm until sale." In denying appellant's request, the court observed that appellant did not "propose[] any specific credit." The court additionally found "no evidence that either party should be granted any credit for any payments made under the temporary orders in the division of property set forth herein."

{¶ 7} On January 18, 2018, the trial court entered "temporary orders regarding contempt motions, child support, spousal support and property division." The court noted that events had transpired between the date of the final hearing and the court's January 12, 2018 decision that raised "a serious question * * * whether it is in the best interests of the child that either party be designated as residential parent and the case should be certified to the juvenile court, or if the Court should reconsider which parent is to be designated as residential parent due to [appellee]'s conduct which the Court has previously found constitutes parental alienation and the conduct of the child." The court thus "reopened" the case with respect to the allocation of parental rights and responsibilities and issued temporary orders regarding the parties' parenting time rights. The court

additionally ordered the parties to complete an eight-week co-parenting course. The court stated that it would conduct a hearing to allocate parental rights and responsibilities after the parties completed the co-parenting course. The court also indicated that it would delay ruling on the contempt motions until after it received a report of the parties' co-parenting course progress.

{¶ 8} On February 12, 2018, appellee filed a notice of appeal. However, this court dismissed the appeal for lack of a final, appealable order.

{¶ 9} On May 14, 2018, the trial court found appellee in contempt for her failure to transport the child to counseling sessions. The court did not, however, find appellee in contempt with respect to the denial of parenting time. The court noted that the child refused to visit appellant and that appellee complied with the court's order "to take steps to punish the child if he refused to go to visitation." The court pointed out to appellant that appellee had "filed unruly charges with the Sheriff's department."

{¶ 10} On May 16, 2018, the trial court entered a final decree of divorce. The court noted that it had "reopened the record for the sole purpose of allocating parenting time." The court designated appellee the residential parent and awarded appellant parenting time. The court incorporated its previous decisions and granted the parties a divorce.

{¶ 11} Appellee appealed the trial court's decision. This court, however, determined that the court's decision did not constitute a final, appealable order because the parties' life insurance policies had not been divided.

{¶ 12} On October 31, 2019, the trial court entered a decision that granted each party his or her own life insurance policy. The court thereupon directed appellee to prepare a final decree that incorporated all of the court's previous decision. The court also stated that "[i]f the parties

have reached any agreements that are different than the previously filed decisions or orders of the Court, they shall be identified in the final decree and will be adopted by the Court provided the parties and counsel have signed off on them." The court indicated, however, that it would "not consider any objections or additions that relate to any proposed modification of the Court's prior decisions or orders."

{¶ 13} On January 27, 2020, the trial court entered an amended final decree of divorce that incorporated its previous decisions. The court noted that the parties agreed to the division and disposition of the real estate during the 2017 final hearing and agreed to a division of their retirement accounts. The court stated that it had entered additional decisions regarding the division of personal property and in 2018, filed a final decision regarding all remaining disputed issues. The trial court designated appellee the residential parent of the minor child (even though at the time of the court's January 2020 decision, the child had become emancipated). The court allocated parenting time to appellant and ordered appellant to pay $796.18 per month for child support beginning March 1, 2018. The court also awarded appellee $750 for spousal support. This appeal followed.[1]

[1]Initially, we note that both parties are acting pro se in this appeal. Because we prefer to review a case on its merits rather than dismiss it due to procedural technicalities, we generally afford considerable leniency to pro se litigants. *E.g., Viars v. Ironton*, 4th Dist. Lawrence No. 16CA8, 2016–Ohio–4912, 2016 WL 3670171, ¶ 25; *Miller v. Miller*, 4th Dist. Athens No. 14CA6, 2014–Ohio–5127, 2014 WL 6488876, ¶ 13; *In re Estate of Pallay*, 4th Dist. Washington No. 05CA45, 2006–Ohio–3528, 2006 WL 1875899, ¶ 10; *Robb v. Smallwood*, 165 Ohio App.3d 385, 2005–Ohio–5863, 846 N.E.2d 878, ¶ 5 (4th Dist.); *Besser v. Griffey*, 88 Ohio App.3d 379, 382, 623 N.E.2d 1326 (4th Dist.1993); *State ex rel. Karmasu v. Tate*, 83 Ohio App.3d 199, 206, 614 N.E.2d 827 (4th Dist.1992). "Limits do exist, however. Leniency does not mean that we are required 'to find substance where none exists, to advance an argument for a pro se litigant or to address issues not properly raised.'" *State v. Headlee*, 4th Dist. Washington No. 08CA6, 2009-Ohio-873, 2009 WL 478085, ¶ 6, quoting *State v. Nayar*, Lawrence App. No. 07CA6, 2007-Ohio-6092, at ¶ 28. Furthermore, we will not "conjure up questions never squarely asked or construct full-blown claims from convoluted reasoning." *Karmasu*, 83 Ohio App.3d at 206. We will, however, consider a pro se litigant's appellate brief so long as it "contains at least some cognizable assignment of error." *Robb* at ¶ 5; *accord Coleman v. Davis*, 4th Dist. Jackson No. 10CA5, 2011–Ohio–506, 2011 WL 345772, ¶ 14 (considering pro se litigant's brief when it contains "some semblance of compliance" with appellate rules of practice and procedure). In the case sub judice, we believe that appellant's brief does contain some cognizable assignments of error that we will consider on the merits.

I

{¶ 14} In his first assignment of error, appellant asserts that the trial court erred by failing to grant his request for credit for payments made under temporary orders. He asks that we reverse and remand the judgment with instructions to include credit for appellant's payments made under the temporary orders.

{¶ 15} We first observe that trial courts enjoy broad discretion when dividing marital property in a divorce proceeding. *E.g., Holcomb v. Holcomb*, 44 Ohio St.3d 128, 131, 541 N.E.2d 597 (1989); *Elliott v. Elliott*, 4th Dist. Ross No. 05CA2823, 2005-Ohio-5405, 2005 WL 2523205, ¶ 17. Accordingly, an appellate court will not reverse a trial court's decision regarding the allocation of marital property absent an abuse of that discretion. *Elliott* at ¶ 17. An "abuse of discretion" means that the court acted in an "'unreasonable, arbitrary, or unconscionable'" manner or employed "'a view or action that no conscientious judge could honestly have taken.'" *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 67, quoting *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 23. Moreover, a trial court generally abuses its discretion when it fails to engage in a "'sound reasoning process.'" *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). Additionally, "[a]buse-of-discretion review is deferential and does not permit an appellate court to simply substitute its judgment for that of the trial court." *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34. A court that is reviewing whether a trial court abused its discretion when dividing marital property must view the property division in its entirety and consider the totality of the circumstances. *Briganti v. Briganti*, 9 Ohio St.3d 220, 222, 459 N.E.2d

896 (1984); *accord Byers v. Byers*, 4th Dist. Ross No. 09CA3124, 2010-Ohio-4424, ¶ 19; *Elliott* at ¶ 17.

{¶ 16} A trial court that is dividing marital property does have discretion to consider payments that a party made under temporary orders. *Elliott* at ¶ 21 (stating that "payments made by a party pursuant to temporary orders can constitute part of a trial court's equitable property division"); *Brown v. Brown* (Sept. 8, 1998), Highland App. No. 97CA0948; s*ee also Utt v. Utt*, 7th Dist. Columbiana App. No. 02CO47, 2003–Ohio–6720, at ¶ 13. Thus, giving a party credit for payments made under temporary orders is not mandated.

{¶ 17} In the case sub judice, we are unable to conclude that the trial court's decision that appellant is not entitled to credit for payments made under the temporary orders constitutes an abuse of discretion. The trial court noted that although appellant requested credit, appellant failed to specify a particular amount. Moreover, the court determined that the evidence failed to show that either party is entitled to a credit. We find nothing in the record to indicate that the court abused its discretion by denying appellant's request for a credit. *See generally Blankenship v. Blankenship*, 3rd Dist. Hancock No. 5-01-36, 2002-Ohio-693, 2002 WL 255127, *2 (concluding that trial court did not abuse its discretion by denying husband's request for credit against temporary orders when husband did not present any evidence to establish amount of credit).

{¶ 18} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

II

{¶ 19} In his second assignment of error, appellant asserts that the trial court erred by entering conflicting instructions regarding his monthly spousal support payment. Appellant notes

that in the January 12, 2018 decision, the court ordered appellant to pay spousal support "directly to [appellee] by bank deduction order from [appellant]'s personal checking account or any other account that he may designate." Appellant observes that the court's January 27, 2020 decision states, however, that "spousal support payments * * * are to be made through the Ohio Child Support Payment Center." Appellant thus claims that the court's January 12, 2018 directive conflicts with its January 27, 2020 decision and he asks this court to reverse and remand the trial court's judgment with instructions to remove the obligation to pay spousal support through the child support enforcement agency.

{¶ 20} We initially note that until a trial court enters a final divorce decree, all prior orders are interlocutory orders. As such, a trial court retains inherent authority to reconsider its interlocutory orders any time before it enters a final judgment. *Nilavar v. Osborn*, 137 Ohio App.3d 469, 499, 738 N.E.2d 1271 (2nd Dist. 2000); *Phillips v. Mufleh*, 95 Ohio App.3d 289, 293, 642 N.E.2d 411 (6th Dist. 1994).

{¶ 21} We also recognize that reviewing courts ordinarily will not reverse a trial court's judgment that modifies an interlocutory order absent an abuse of discretion. *See Picciuto v. Lucas Cty. Bd. Commrs.*, 69 Ohio App.3d 789, 796, 591 N.E.2d 1287 (6th Dist. 1990). We again point out that an abuse of discretion standard is a deferential standard:

> "[t]he term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations. In order to have an 'abuse' in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias."

Huffman v. Hair Surgeon, Inc., 19 Ohio St.3d 83, 87, 19 OBR 123, 126–127, 482 N.E.2d 1248 (1985).

{¶ 22} In the case sub judice, after our review we do not believe that the trial court's modification of the method of payment for appellant's spousal support obligation constitutes an abuse of discretion.

{¶ 23} R.C. 3121.44 generally requires spousal support payments to "be made to the office of child support in the department of job and family services as trustee for remittance to the person entitled to receive payments." R.C. 3121.441(A), however, gives trial courts discretion to allow "the obligor to make the spousal support payments directly to the obligee," rather than to the department of job and family services. *Dingey v. Dingey*, 5th Dist. Muskingum No. CT2020-0006, 2020-Ohio-5340, 2020 WL 6790981, ¶ 38. "The decision is clearly discretionary," and case law does not "suggest that a trial court must conduct an analysis of an obligor's possible failure to comply with a direct payment order." *Id.*

{¶ 24} In the case at bar, we are unable to conclude that the trial court's order that appellant make spousal support payments through the child support enforcement agency, rather than permitting appellant to make the payments directly to appellee, constitutes an abuse of discretion. The trial court retained discretion to modify its previous interlocutory order that directed appellant to make the payments directly to appellee. We note that other courts have determined that a trial court remains free to "change its mind and order that spousal support be paid through CSEA in its divorce decree without regard to what it had provided in [a prior interlocutory order]." See, e.g., *Spillane v. Spillane*, 12th Dist. Butler No. CA2019-12-206, 2020-Ohio-5052, 2020 WL 6266923, ¶ 38.

{¶ 25} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error.

III

{¶ 26} In his third assignment of error, appellant asserts that the trial court erred by deciding the contempt motion without awaiting the outcome of the juvenile court proceedings.

{¶ 27} We first note that although appellant attached filings from the juvenile court proceedings to his appellate brief, those same filings do not appear to be part of the record transmitted on appeal. "[A] bedrock principle of appellate practice in Ohio [is] * * * that an appeals court is limited to the record of the proceedings at trial." *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110, 818 N.E.2d 1157, ¶ 13. Thus, "[a] reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter." *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus. The Ohio Supreme Court has consistently enforced this holding. *E.g., Morgan*; *State v. Dixon*, 101 Ohio St.3d 328, 2004-Ohio-1585, 805 N.E.2d 1042, ¶ 62; *State v. Thomas*, 97 Ohio St.3d 309, 2002-Ohio-6624, 779 N.E.2d 1017, ¶ 50; *see Saunders v. Holzer Hosp. Found.*, 176 Ohio App.3d 275, 2008-Ohio-1032, 891 N.E.2d 1202, fn.3 (4th Dist.) ("A reviewing court should consider only the evidence that the trial court had before it."). Consequently, we may not consider the filings that appellant attached to his appellate brief.

{¶ 28} Generally, a trial court possesses broad discretion when it considers a contempt motion. *Burchett v. Burchett*, 4th Dist. Scioto No. 16CA3784, 2017-Ohio-8124, ¶ 19; *State ex rel. Cincinnati Enquirer v. Hunter*, 138 Ohio St.3d 51, 2013–Ohio–5614, 3 N.E.3d 179, ¶ 29, citing *Denovchek v. Trumbull Cty. Bd. of Commrs.*, 36 Ohio St.3d 14, 16, 520 N.E.2d 1362 (1988) ("the primary interest involved in a contempt proceeding is the authority and proper functioning of the court, [and therefore] great reliance should be placed upon the discretion of the [court]").

Consequently, absent an abuse of discretion, an appellate court will ordinarily uphold a trial court's contempt decision. *E.g., Burchett* at ¶ 19; *Welch v. Muir*, 4th Dist. No. 08CA32, 2009–Ohio–3575, ¶ 10. We again note that the term "'abuse of discretion' [means] an 'unreasonable, arbitrary, or unconscionable use of discretion, or * * * a view or action that no conscientious judge could honestly have taken.'" *State v. Kirkland*, 140 Ohio St.3d 73, 15 N.E.3d 818, 2014–Ohio–1966, ¶ 67, quoting *State v. Brady*, 119 Ohio St.3d 375, 2008–Ohio–4493, 894 N.E.2d 671, ¶ 23.

{¶ 29} In the case at bar, we do not believe that the trial court's decision to decline to find appellee in contempt for the failure to schedule missed parenting time, the failure to take the child to visit appellant on Christmas day in 2017, or the failure to notify appellant of the child's medical appointments abused its discretion. The court conducted a lengthy hearing regarding the contempt motion and heard testimony from appellee, appellant, and the parties' minor child. The court found that the child refused to attend visits with appellant and that appellee subsequently filed unruly charges against the child. The court thus determined that appellee took appropriate action in response to the child's refusal to attend visitation. Under these circumstances, we are unable to conclude that the court abused its discretion by declining to find appellee in contempt.

{¶ 30} Accordingly, based upon the foregoing reasons, we overrule appellant's third assignment of error.

IV

{¶ 31} In his fourth assignment of error, appellant asserts that the trial court erred by failing to include in the January 2020 final divorce decree instructions regarding the filing of the parties' 2019 and 2020 income taxes. Appellant contends that because the parties remained married until the January 2020 final divorce decree, the court should have directed the parties to file tax returns

in a manner to maximize tax benefits. Appellant additionally argues that the trial court should have also ordered the parties to equally share any tax refund or liability, rather than ordering them to share any refund or liability in proportion to their income.

{¶ 32} We first note that appellant did not cite any authority to support his argument that the trial court should have addressed the filing of the parties' 2019 and 2020 tax returns in its January 2020 decision. We could, therefore, reject his fourth assignment of error on this basis alone. *See In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 271, 2011–Ohio–2638, 951 N.E.2d 751, ¶ 14 (failure to cite legal authority or present an argument that a legal authority applies on these facts and was violated * * * is grounds to reject [a] claim); *Robinette v. Bryant*, 4th Dist. Lawrence No. 14CA28, 2015–Ohio–119, 2015 WL 223007, ¶ 33 ("It is within our discretion to disregard any assignment of error that fails to present any citations to cases or statutes in support."). The only authorities that appellant cites within his fourth assignment of error--*Batten v. Batten*, 5th Dist. Fairfield No. 09-CA-33, 2010-Ohio-1912, 2010 WL 1732716, ¶ 21, and R.C. 3105.171(A)(2)--do not support his argument that the trial court should have entered directions for filing the parties' 2019 and 2020 tax returns. *Batten* states:

> R.C. 3105.171(A)(2) provides that, except when the court determines that it would be inequitable, the date of the final hearing is usually the date of termination of the marriage. *Combs v. Combs*, Stark App. No.2008CA00169, 2009–Ohio–1683, ¶ 21. Thus, R.C. 3105.171(A)(2) creates a statutory presumption that the proper date for the termination of a marriage, for purposes of the division of marital property, is the date of the final divorce hearing. *Bowen v. Bowen* (1999), 132 Ohio App.3d 616, 630, 725 N.E.2d 1165. However, the trial court has broad discretion in choosing the appropriate marriage termination date and this decision cannot be disturbed on appeal absent an abuse of discretion. *See Berish v. Berish* (1982), 69 Ohio St.2d 318, 321, 432 N.E.2d 183.

Batten at ¶ 21.

{¶ 33} Appellant does not explain how *Batten* or R.C. 3105.171(A)(2) supports his

argument that the trial court should have included instructions for filing the parties' 2019 and 2020 tax returns in its January 2020 decision. Instead, appellant asserts that the parties "qualif[y] for three different income tax filing options." Given that appellant did not present a fully developed argument to set forth reasoning to support his assertion, we do not find a sufficient legal basis to sustain his fourth assignment of error. To the extent appellant challenges the trial court's decision that the parties should divide any tax refund or liability in proportion to their income, we are unable to conclude that this obviously equitable division constitutes an abuse of discretion.

{¶ 34} Accordingly, based upon the foregoing reasons, we overrule appellant's fourth assignment of error.

V

{¶ 35} In his fifth assignment of error, appellant asserts that the trial court erred by failing to award appellant attorney fees from the date of appellee's first appeal. Appellant claims that he should be awarded attorney fees because appellee's appeals were frivolous, served only to delay the proceedings and to deny him parenting time with the parties' minor child.

{¶ 36} We first point out that appellant did not identify in the record where the trial court denied a request to award him attorney's fees. Appellant also did not identify the place in the record where he asked the trial court to award him attorney's fees. For each assignment of error presented for review, an appellant must identify the specific parts of the record where the alleged error occurred. *See* App.R. 16(A)(3) (stating that an appellant's brief must include "[a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected"); App.R. 16(A)(7) (requiring that an appellant's brief include "[a]n argument containing the contentions of the appellant with respect to each assignment of error

presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies"). "This rule is designed 'to aid the reviewing court in determining whether any reversible error occurred in the lower court by having the complaining party specify the exact location(s) where such a determination can be made.'" *Mayfair Village Condominium Owners Assn. v. Grynko*, 8th Dist. Cuyahoga No. 99264, 2013-Ohio-2100, 2013 WL 2291876, ¶ 6, quoting *Hildreth Mfg. v. Semco, Inc.*, 151 Ohio App.3d 693, 2003-Ohio-741, 785 N.E.2d 774, ¶ 32 (3d Dist.).

{¶ 37} In general, an appellate court may disregard an assignment of error when the appellant fails to identify the relevant portions of the record upon which an assignment of error is based. *See* App.R. 12(A)(2) ("The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based * * *."); *see also Mayfair Village Condominium Owners Assn.* at ¶ 6, citing *Nob Hill E. Condominium Assn. v. Grundstein*, 8th Dist. Cuyahoga No. 95919, 2011-Ohio-2552, 2011 WL 2112734, ¶ 11 (stating that an appellate court is "not obliged to scour the record in search of evidence to support an appellant's assignment of error").

{¶ 38} In the case sub judice, appellant's failure to cite to the portions of the record that support his sixth assignment of error means that we could simply disregard the assignment of error. Furthermore, assuming, arguendo, that appellant had identified the place in the record where he had requested the trial court to award him attorney's fees following appellee's 2018 appeal, we would find no error.

{¶ 39} R.C. 3105.73 allows a trial court to award attorney's fees. The statute reads as follows:

> (A) In an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that action, a court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate.
>
> (B) In any post-decree motion or proceeding that arises out of an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that motion or proceeding, the court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' income, the conduct of the parties, and any other relevant factors the court deems appropriate, but it may not consider the parties' assets.
>
> (C) The court may specify whether the award of attorney's fees and litigation expenses under this section is payable in gross or by installments. The court may make an award of attorney's fees and litigation expenses under this section in addition to making an award of attorney's fees and litigation expenses under any other provision of the Revised Code or of the Rules of Civil Procedure.

{¶ 40} "The decision to award attorney fees in a divorce action is vested in the sound discretion of the trial court and we will not reverse it absent an abuse of that discretion." *O'Rourke v. O'Rourke*, 4th Dist. Scioto No. 08CA3253, 2010-Ohio-1243, 2010 WL 1138832, at ¶ 30, citing *Parker v. Parker*, 10th Dist. Franklin No. 05AP–1171, 2006-Ohio-4110, 2006 WL 2300797, ¶ 36.

{¶ 41} In the case at bar, we do not believe that the trial court's decision concerning attorney fees constitutes an abuse of discretion. We find nothing in the record to indicate that the trial court acted unreasonably, arbitrarily, or unconscionably.

{¶ 42} Accordingly, based upon the foregoing reasons, we overrule appellant's fifth assignment of error.

VI

{¶ 43} In his sixth assignment of error, appellant asserts that the trial court erred by omitting a material agreement of the parties from the final divorce decree. In particular, appellant claims that the trial court should have included language stating that "if either party chose to refuse

a reasonable offer and then it sold for less than that, then they would be responsible for paying one-half of the difference to the other party." Appellant asserts that the parties agreed to this language during an October 11, 2017 hearing and that the parties intended for this clause to apply to the sale of all property, not merely to the farm equipment.

{¶ 44} We observe that the trial court's May 16, 2018 decision provides that each party receive one-half of the proceeds of the sale of the farm equipment. The court also included the following language:

> If one party agrees to a sale price and the other does not, if the piece or pieces that were the subject of the offer sell for a lower price, then the party that rejected the offer shall pay one-half of the difference in that price to the other party from the net sale proceeds for that piece or pieces of equipment.

{¶ 45} At the time of the decision, one of the properties had already been sold. The marital residence had been listed for sale for nearly twelve months, and the listing agreement was due to expire. The trial court ordered the marital property be sold "at absolute auction" if not sold before the listing agreement expired. The court ordered a third piece of real estate "sold with the Back to Health Family Chiropractic Inc. Business as ordered in the decision and order filed January 12, 2018."

{¶ 46} The trial court's January 12, 2018 decision outlined several options available to equitably divide the chiropractic business and real estate. The court stated that if the parties did not exercise options to purchase the other's interest, the real estate would then be offered for sale for $250,000 and the chiropractic practice would be offered for sale for $153,000. The court indicated that if one party accepted an offer to purchase and the other party rejected the offer, the rejecting party had "seven days from receipt of the offer to give the accepting party written notice of intent to purchase the interest of that party at the price offered." The court also stated that if the

property did not sell, the business and the real estate would be sold at auction.

{¶ 47} After our review of the totality of the trial court's decision with respect to the sale of property, we do not agree with appellant that the trial court erred by failing to include the language referenced in his assignment of error in each portion of the divorce decree that relates to the sale of real estate. Instead (1) one of the properties already had been sold, (2) the court ordered another property to be sold at auction unless sold before the listing agreement expired, and (3) the court ordered the business and business real estate to be sold at a specific price or at auction if it did not sell at the listed price. Therefore, to include language to require one party to pay the other one-half the difference if the party refused a reasonable offer and the property sold for less than the reasonable offer would have been superfluous.

{¶ 48} Accordingly, based upon the foregoing reasons, we overrule appellant's sixth assignment of error.

VII

{¶ 49} For ease of discussion, we combine our review of appellant's seventh, eighth, and tenth assignments of error.

{¶ 50} In his seventh assignment of error, appellant asserts that the trial court erred by prohibiting the court-ordered family counselor from being called as a witness. In his eighth assignment of error, appellant contends that the trial court erred by failing to set a length of time for the parties to undergo family counseling. In his tenth assignment of error, appellant argues that the trial court erred by allowing the child to record parenting time with appellant.

{¶ 51} We first observe that appellant did not identify how any of the foregoing alleged errors that the court may have committed affected the outcome of the parties' divorce proceeding.

Civ.R. 61 states that we must "disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." An error affects a party's substantial rights when the error is prejudicial, i.e., the error affected the outcome of the proceeding. *E.g., State v. Jones*, 160 Ohio St.3d 314, 2020-Ohio-3051, 156 N.E.3d 872, ¶ 18; *State v. Butcher*, 4th Dist. Athens No. 15CA33, 2017-Ohio-1544, ¶ 48; *accord Cappara v. Schibley*, 85 Ohio St.3d 403, 408, 709 N.E.2d 117 (1999) (noting that reviewing court must affirm if "the jury or other trier of the facts would probably have made the same decision" absent the error).

{¶ 52} In the case at bar, appellant did not explain how the ultimate outcome of the divorce proceeding would have been different if the trial court had allowed the court-ordered family counselor to be called as a witness, had set a length of time for the parties to undergo family counseling, and had prevented the child from recording parenting time with appellant.

{¶ 53} We additionally point out that "the duty of every judicial tribunal [is] to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect." *Fortner v. Thomas*, 22 Ohio St.2d 13, 14, 257 N.E.2d 371 (1970); *e.g., Cyran v. Cyran*, 152 Ohio St.3d 484, 2018-Ohio-24, 97 N.E.3d 487, ¶ 9. Courts should "not * * * give opinions upon moot questions or abstract propositions, or * * * declare principles or rules of law which cannot affect the matter in issue in the case before it." *Miner v. Witt*, 82 Ohio St. 237, 238, 92 N.E. 21 (1910); *accord Fortner*, 22 Ohio St.2d at 14, 257 N.E.2d 371; *In re Proposed Charter Petition*, 4th Dist. Athens No. 18CA30, 2019-Ohio-5445, 2019 WL 7560868, ¶ 14. An issue becomes moot when it is or has "become fictitious, colorable, hypothetical, academic or dead." *Culver v. Warren*, 84 Ohio App. 373, 393, 83 N.E.2d 82 (7th Dist. 1948), quoted with approval in *State ex rel. Cincinnati Enquirer v. Hunter*, 141 Ohio St.3d

419, 2014-Ohio-5457, 24 N.E.3d 1170, 2014 WL 7116058, ¶ 4; *accord In re L.W.*, 168 Ohio App.3d 613, 2006-Ohio-644, 861 N.E.2d 546, ¶ 11 (10th Dist.); *Grove City v. Clark*, 10th Dist. Franklin No. 01AP-1369, 2002-Ohio-4549, 2002 WL 2025334, at ¶ 11.

{¶ 54} In the case sub judice, the child is emancipated. We therefore can order no practical relief to remedy appellant's complaint that the foregoing errors affected the quality or quantity of his parenting time. We additionally reject appellant's invitation to apply an exception to the mootness doctrine. We recognize that courts may address an otherwise moot issue "'where the issues raised are 'capable of repetition, yet evading review.'" *State ex rel. Beacon Journal Publishing Co. v. Donaldson*, 63 Ohio St.3d 173, 175, 586 N.E.2d 101 (1992); quoting *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165, 527 N.E.2d 807, paragraph one of the syllabus (1988). This exception applies, however, "only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Id.*; citing *Spencer v. Kemna*, 523 U.S. 1, 17–18, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998). Further, "there must be more than a theoretical possibility that the action will arise again." *James A. Keller Inc. v. Flaherty*, 74 Ohio App.3d 788, 792, 600 N.E.2d 736 (10th Dist.1991).

{¶ 55} In the case at bar, we are not convinced that the exception to the mootness doctrine applies. The facts before this court do not suggest that (1) the challenged actions are too short in their duration to be fully litigated before cessation or expiration, or (2) there is a reasonable expectation that appellant will be subject to the same action again. Thus, we do not agree with appellant that the issues raised are capable of repetition yet evading review.

{¶ 56} Accordingly, based upon the foregoing reasons, we overrule appellant's seventh, eighth, and tenth assignments of error.

VIII

{¶ 57} In his ninth assignment of error, appellant asserts that the trial court erred by failing to hear appellee's testimony regarding a change in circumstances. Appellant contends that appellee testified during an October 30, 2019 hearing that the child had been receiving child support payments and that she had "not received a cent of that child support." We note, however, that when appellee made this statement, the trial court stated that it did not "have any evidence on [the issue]" and that it could not "make an order to modify * * * unless there is evidence." Moreover, appellant did not file a motion to modify or argue to the trial court that a modification was warranted. Therefore, appellant did not preserve the issue for appellate review. *See In re Application of Columbus S. Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, 8 N.E.3d 863, ¶ 41 (explaining that an issue that an appellant has failed to properly preserve for appeal will not be considered); *Wheatley v. Marietta College*, 4th Dist. No. 14CA18, 2016-Ohio-949, 48 N.E.3d 587, ¶ 94 (stating that "a litigant who fails to raise an argument before the trial court forfeits the right to raise that issue on appeal").

{¶ 58} Accordingly, based upon the foregoing reasons, we overrule appellant's ninth assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Hess, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.