

[Cite as *Blackledge v. Blackledge*, 2004-Ohio-2086.]

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

FANNIE MAE BLACKLEDGE	:	JUDGES:
	:	Hon: W. Scott Gwin, P.J.
Plaintiff-Appellant	:	Hon: William B. Hoffman, J.
	:	Hon: John W. Wise, J.
-vs-	:	
	:	Case No. 03-CA-44
DALE JOHN BLACKLEDGE	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Licking County Court of Common Pleas, Domestic Relations Division, Case No. 01-DR-01424

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: April 20, 2004

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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*Gwin, P.J.*

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{¶1} Plaintiff Fannie Mae Blackledge appeals a judgment of the Court of Common Pleas, Domestic Relations Division, of Licking County, Ohio, which entered a

decree of divorce and divided the marital property between appellant and defendant-appellee Dale J. Blackledge. Appellant assigns five errors to the trial court:

{¶2} “THE TRIAL COURT COMMITTED ERROR PREJUDICIAL TO THE APPELLANT, ABUSING ITS DISCRETION, BY FAILING TO MAKE AN AWARD OF SPOUSAL SUPPORT TO APPELLANT.

{¶3} “THE TRIAL COURT COMMITTED ERROR PREJUDICIAL TO THE APPELLANT, ABUSING ITS DISCRETION, BY HOLDING THAT THE APPELLANT HAD VIOLATED THE JUNE 24, 2002 STIPULATIONS WITH RESPECT TO THE DIVISION OF PERSONAL PROPERTY.

{¶4} “THE TRIAL COURT COMMITTED ERROR PREJUDICIAL TO THE APPELLANT, AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, BY LISTING THE APPELLANT’S LONGABERGER BASKET COLLECTION AS AN ASSET WITH AN ASSIGNED VALUE OF \$4,504 AND COUNTING THAT AS PART OF HER PROPERTY TOTAL.

{¶5} “THE TRIAL COURT COMMITTED ERROR PREJUDICIAL TO THE APPELLANT, ABUSING ITS DISCRETION, BY HOLDING THAT THE APPELLANT WAS NOT ENTITLED TO AN AWARD OF ATTORNEY’S FEES AS PUNISHMENT FOR THE WAY SHE DIVIDED THE PERSONAL PROPERTY.

{¶6} “THE TRIAL COURT COMMITTED ERROR PREJUDICIAL TO THE APPELLANT, AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, BY THE WAY IT CALCULATED THE DISTRIBUTION OF APPELLEE’S PERS PENSION.”

{¶7} In its judgment entry of May 8, 2003, the trial court made various findings of fact. The parties were married on December 20, 1963, and the two children born of

the marriage are both emancipated. The parties stipulated to some of the property division. The parties stipulated appellant-wife should receive the marital residence free and clear. The parties stipulated each should keep the vehicle they are driving, the bank accounts in his or her name, and their IRA's. Each party was to retain his or her individual life insurance policy, including the accumulated cash surrender value, and each would receive one-half of any stock yet to be distributed.

{¶8} The trial court found appellant wife earned approximately \$14,560 per year and appellee-husband received retirement benefits from PERS in the amount of \$35,678.76 per year. Appellee-husband also had two part-time jobs for approximately \$2,172 per year.

{¶9} From the record, it is apparent the two most valuable marital assets are the marital home and appellee's pension.

{¶10} In its judgment entry, the trial court summarized the distribution of property between the parties. The court found before distributing the pensions, appellant-wife's share of the marital property was \$164,904. Appellee-husband's share of the marital distribution was \$30,390.

{¶11} The appellee's PERS pension had a present value of \$486,480. The PERS survivorship had a value of \$91,196.

{¶12} The portion of appellant-wife's Social Security benefits earned during the marriage had a present value of \$77,546.12. Appellee's PERS pension was in pay-out status, that is, he had retired and was receiving benefits. Appellant-wife testified she was currently employed, and intended to retire at age 62 in eight months. Appellant-wife would turn 62 on January 9, 2004. Appellant testified when she retired, she would

receive \$444 per month from Social Security. Appellee-husband also had Social Security retirement benefits with a present value of \$12,199. Appellee testified he received \$72 a month from Social Security.

{¶13} The trial court totaled the value of the marital pensions, and found in order to equalize the total assets given to each party, appellant-wife should receive 20.1% of appellee's PERS, which amounts to \$597.62 per month. The court found this division would then be essentially equal.

{¶14} The trial court found pursuant to R.C. 3105.18 no award of spousal support was warranted.

#### I and V

{¶15} Appellant argues the trial court's treatment of the marital property was improper, as was its refusal to award appellant spousal support.

{¶16} In *Bisker v. Bisker*, 69 Ohio St. 3d 608, 635 N.E. 2d 308, the Ohio Supreme Court held a vested pension plan accumulated during the marriage was a marital asset which must be considered in the division of marital assets. In *Neville v. Neville*, 99 Ohio St. 3d 275, 2003-Ohio-3624, 791 N.E. 2d 434, the Ohio Supreme Court extended this principle to include Social Security benefits. Thus, we find the trial court was correct in reviewing the values of the various pensions, and dividing them between the parties.

{¶17} Appellant argues the trial court should not have offset an imbalance in the tangible marital property against appellee's PERS total balance, because the two types of property must be handled separately, with some sort of provision so appellant must buy-out appellee's interest before receiving a quit-claim deed. Appellant cites no cases

in support of this principle, and this court knows of none. The parties stipulated to the valuation of the various pensions, and stipulated appellant should receive the marital home.

{¶18} The concerns appellant voices regarding how the tangible and intangible properties might be divided are best considered during negotiations between the parties. The trial court is not required to order appellant to buy out appellee's share of the equity in the marital home.

{¶19} Regarding appellant's argument the trial court should not have included the survivorship interest of appellant's PERS in the computations, the report to which appellant stipulated valued the survivor option, and explained why the additional value must be considered. We find appellant cannot now raise the issue of whether the survivorship interest was properly considered.

{¶20} After the trial court divided the marital property between the parties, it turned to the issue of spousal support. The trial court found after considering all the factors enumerated in R.C. 3105.18, an award of spousal support was not warranted.

{¶21} Appellant argues the trial court should have explained its reasoning in applying the statutory factors to the facts of the case. However, appellant did not move the trial court for findings of fact and conclusions of law. Pursuant to Civ. R. 52, a judgment entry may be general where the parties have not specifically requested findings of fact and conclusions of law, see *Bunten v. Bunten* (1998), 126 Ohio App. 3d 443, 710 N.E. 2d 757.

{¶22} We find the trial court did not err in its division of the marital assets, nor did it err when it declined to award spousal support to appellant.

{¶23} The first and fifth assignments of error are overruled.

#### II and III

{¶24} Both of these assignments of error deal with rather specific items of marital property. In *Briganti v. Briganti* (1984), 9 Ohio St. 3d 220, the Ohio Supreme Court cautioned against piece meal appeals of property divisions. Instead, the Supreme Court directed us to review the property division in its entirety to determine whether the trial court abused its discretion.

{¶25} Our review of the trial court's discussion and computation of the property division leads us to conclude the overall division of property was equitable. Accordingly, we find no abuse of discretion.

{¶26} The second and third assignments of error are overruled.

#### IV

{¶27} Finally, appellant argues the trial court committed prejudicial error when it found it might have considered awarding appellant a portion of attorney fees, but it found appellant's behavior had caused appellee to incur additional legal expenses. The court concluded it was inappropriate to make an award of attorney fees to either party.

{¶28} Our standard of reviewing the trial court's decision concerning awards of attorney fees is the abuse of discretion standard, see *Rand v. Rand* (1985), 19 Ohio St. 3d 356. The Supreme Court has repeatedly defined the term abuse of discretion as implying the trial court's attitude is unreasonable, arbitrary, or unconscionable, see, e.g., *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 450 N.E. 2d 1140.

{¶29} We find the trial court did not abuse its discretion in failing to award attorney fees to either party under the facts and circumstances of this case.

{¶30} The fourth assignment of error is overruled.

{¶31} For the foregoing reasons, the judgment of the Court of Common Pleas, Domestic Relations Division, of Licking County, Ohio, is affirmed.

Judgment affirmed

Hoffman and Wise, JJ., concur

