[Cite as *Jordan v. Jordan*, 2026-Ohio-3610.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
DELAWARE COUNTY, OHIO

EMILY REBECCA JORDAN,	Case No. 25 CAF 11 104 and 25 CAF 11 105
Plaintiff - Appellee - Cross-Appellant	Opinion And Judgment Entry
-vs-	Appeal from the Delaware County Court of Common Pleas, Division of Domestic Relations, Case No. 22 DRA 10 0656
ROBERT THOMAS JORDAN,	
Defendant - Appellant - Cross-Appellee	Judgment: Affirmed
	Date of Judgment Entry: September 15, 2026

BEFORE: William B. Hoffman; Robert G. Montgomery; Kevin W. Popham, Judges

APPEARANCES: DOUGLAS W. WARNOCK and KATHERINE M. SNIDER, for Plaintiff-Appellee-Cross-Appellant; EUGENE B. LEWIS and JACOB W. SMITH, for Defendant-Appellant-Cross-Appellee; and EIMEAR M. BAHNSON, Guardian Ad Litem

Montgomery, J.

{¶1} Husband and Appellant, Robert Jordan, appeals from the judgment of the Delaware County Court of Common Pleas, Domestic Relations Division, asserting three assignments of error. Wife and Cross-Appellant, Emily Jordan, also appeals from that same judgment, asserting four assignments of error. For the reasons below, we AFFIRM in all respects.

STATEMENT OF THE CASE

{¶2} The instant appeal arises from the divorce case between Plaintiff/Appellee/Cross-Appellant Emily Rebecca Jordan ("Wife") and

Defendant/Appellant/Cross-Appellee Robert Thomas Jordan ("Husband"). Husband and Wife were married on June 4, 2010. The duration of the parties' marriage was from June 4, 2010, to October 11, 2023. Three children were born as issues of the marriage: Ava Leigh Jordan, born September 13, 2012; Sydney Mae Jordan, born May 19, 2014; and Kinley Brooke Jordan, born August 25, 2019. Appellee filed her Complaint for Divorce on October 24, 2022.

{¶3} The matter preceded to trial on October 11, 2023, and lasted for several days. Testimony was presented from Wife, Husband, nine lay witnesses, and five expert witnesses. Two hundred and four (204) exhibits from Wife and Husband were admitted into evidence. On February 1, 2024, the magistrate issued a Magistrate's Decision, with numerous findings of fact and conclusions of law, and ultimately granting the parties a divorce due to incompatibility. Both parties filed objections and supplemental objections. On October 16, 2025, the trial court overruled all objections and issued its Judgment Entry and Decree of Divorce. The Divorce Decree made other final orders, including the allocation of parental rights and responsibilities, division of property, and spousal support.

BACKGROUND FACTS

{¶4} The trial court determined the following relevant facts, as found by the Magistrate and subsequently set forth in the Divorce Decree. At the time of trial, both Wife and Husband were 45 years old, employed, and in good health. Wife is originally from West Virginia, where she obtained a Doctor of Dental Surgery from West Virginia University in 2004. Wife and Husband dated during Wife's residency, and she relocated to Ohio to practice as a dentist in the Columbus area. Wife earned her Doctor of Dental Surgery degree and an additional Master of Science degree.

{¶5} Husband is from Ohio and obtained his bachelor's degree in Health and Sports Management from Miami University in 2001. In 2009, Husband moved into Wife's home that she purchased on June 17, 2008. Husband did not contribute any funds for Wife's purchase of the Westbrooke Place home. Wife and Husband were married on June 4, 2010. They had three children during the marriage. At the time of trial, Ava was 11 years old; Sydney was 9 years old; and Kinley was 4 years old.

{¶6} Wife described herself as the primary manager of the household and primary caregiver of the three children. Multiple witnesses, including nannies and neighbors, confirmed that Wife appeared to be the primary caregiver and was indeed a good mom. Wife scheduled the children's appointments, activities and play dates, managed nannies and babysitters, did the grocery shopping, and prepared meals. Several witnesses confirmed Wife's primary role in parenting the children. To assist with childcare, the parties hired nannies for the children, but they also used outside care. Even during 2020 and COVID, the parties had in-home care for the children while Husband worked remotely, and Wife's dental practice had slowed due to the public health emergency.

{¶7} Husband was less active in the overall household management and child rearing, and that was a major point of tension between the parties. However, Husband's witnesses testified that Husband was involved in transporting the children to their sporting activities, getting them to and from school, and he did supplemental grocery shopping during the week. It appeared that after Wife filed for divorce, Husband made more effort to be involved with the children. Husband and Wife both testified they agreed to the children's extracurricular activities, educational, and medical decisions. Further, despite their busy lives, Husband and Wife were quite social with neighbors, friends, and family for many years.

{¶8} Wife testified that Husband's excessive use of alcohol negatively impacted their marriage and their children. Wife and other witnesses testified to Husband's excessive use of alcohol and related incidents. Husband admitted to excessive drinking and that it was a factor in their marital dysfunction but denied alcohol dependency or requiring treatment. In 2015, the parties sought marriage counseling with Dr. William Adrion where the initial issue presented to the counselor was Husband's use of alcohol. The parties' last marriage counseling session with Dr. Adrion was in 2020 and Dr. Adrion last saw Husband in 2021. Dr. Adrion found that alcohol was a central component in Husband's life, and he was using it to mute his temper. Dr. Adrion recommended that Husband remove alcohol from the home and abstain from drinking. He also recommended a 30-day inpatient stay, to which Husband declined.

{¶9} Per the evidence, Husband was involved in at least two alcohol-related incidents that involved police intervention. One incident occurred during a Hilton Head vacation in September 2021. Husband testified that while on the trip, he learned of the sudden death of a high school friend. Due to the death of his friend and what he perceived as the lack of support from Wife and the other vacationers, Husband isolated himself and drank to excess. Husband and Wife had an argument at the pool that involved the oldest child, resulting in the police being called. The Hilton Head police escorted Husband from the beach house and Husband flew back to Ohio alone.

{¶10} The second alcohol-related incident involving police occurred on September 20, 2022. Wife and the children were visiting her family in West Virginia. The manager of Sam's Bar, located on State Route 23 in Delaware County, testified that Husband came into the bar in the evening and ordered a beer and bourbon drink. The manager stated that she heard Husband call her a racial slur, after which Husband was told to leave the bar.

The manager witnessed Husband leave the bar and proceed to walk across State Route 23, which is a four-lane highway with a speed limit of 55 mph, and go into a field across the highway. There was no crosswalk or stop light where Husband crossed the highway. Concerned for his well-being, the manager called the Delaware County Sheriff, who reported to the bar and commenced a search for Husband at approximately 9:30 p.m. To assist in the search for Husband, the Delaware County Sheriff utilized a Columbus Police Department helicopter.

{¶11} On September 21, 2022, at 4:00 a.m., Wife saw Husband on the marital residence's security cameras. She called the police to inform them, who reported to the home and charged Husband with disorderly conduct, a minor misdemeanor, a violation of R.C. 2917.11(B)(1). Husband told the police that he attempted to walk home from the bar but got stuck in weeds and bushes. Husband entered a plea of no contest to the charge of disorderly conduct, was found guilty, and sentenced to pay a $150 fine.

{¶12} The Guardian ad Litem ("GAL") submitted her Pre-Trial Report and Recommendation on October 4, 2023. In her report, the GAL recommended shared parenting with a nearly equal parenting time schedule. Wife was to be the residential parent for school placement purposes. As to decision-making, the GAL recommended that if the parents could not reach a decision in the areas of education, children's activities, and the children's health, the parties were to independently consult issue-related professionals, such as a coach or teacher. If no decision could be made, the parties could submit the issue to the Court for a final decision. The GAL finally recommended in her report that Husband use Soberlink two times a day.

{¶13} At trial, the GAL testified regarding her report and investigation. She found the children to be well adjusted to their home, neighborhood, and school. The GAL recommended a main priority was that the children remain in their current school system. The three children were involved in multiple activities during the week, including travel soccer, gymnastics, and swimming. While the parents testified that they had tried to protect the children from their marital dysfunction, the GAL testified that the children were aware of their parents' marital issues and had witnessed their arguments. The two older children were in counseling, to which the GAL recommended the parties continue. The GAL further recommended counseling for Husband and Wife.

{¶14} The GAL noted the parties' division of responsibilities, with each feeling they did more than the other. Wife did a significant part of managing the household and while the GAL observed that Husband contributed, he often let Wife take the lead. The GAL felt Husband would be a successful parent if he maintained his sobriety. The GAL reaffirmed Husband's use of Soberlink twice a day for one year and upon a failed test, the children would be returned to Wife until a negative test. The GAL reiterated her recommendation of shared parenting; however, the GAL testified at trial that a true 50/50 was not the best right away. Tr. 1920. The GAL recommended a step-up parenting time schedule for Husband to ease the transition for the children and allow Husband time to adjust.

{¶15} The GAL did not recommend the use of "OurFamilyWizard" for communication because the parties had demonstrated they could agree on decision-making through text or email. The GAL did not feel that one party should be designated a final decisionmaker, but suggested that if the parties could not agree, the parties could enlist a third-party decision-maker to avoid any return to Court. She recommended the parties use a joint online calendar to keep track of the children's busy schedules.

Wife's Dental Practice and Income

{¶16} Wife is a successful solo practitioner dentist with her own practice, known as Rebecca T. Jordan, DDS LLC ("dental practice"). She performs general dentistry but also has multiple specialties within her dentist practice. Wife specializes in prosthodontics, frenectomies, and the fitting of Advanced Lightwire Functionals ("ALF") appliances. To perform prosthodontics, after earning a Doctor of Dental Surgery (DDS) in 2004, Wife earned an additional Master of Science in 2007. Prosthodontics include complex dental implants. Frenectomies are lip and tongue-tie procedures, mostly performed on infants. Infants diagnosed with tongue or lip ties can experience challenges with breastfeeding and speech development. Wife is one of only seven preferred providers of tongue and lip ties. An ALF appliance is a growth appliance to help with airway difficulties associated with lip and tongue ties. Since starting to perform frenectomies in 2014, Wife has developed a good reputation for her skills, with patients coming from out of state for her services. Wife does very little marketing for her dental practice and relies mostly on word-of-mouth recommendations.

{¶17} Wife presented the expert report and testimony of Rebekah A. Smith, Director of Forensic and Dispute Advisory Services with GBQ Consulting. Smith gave her opinion as to the valuation of the dental practice, valuation of RTJ Real Estate LLC, and an assessment of Wife's income for support purposes. Smith testified that based on the income approach, the equity value of the Dental Practice was $1,165,000. Smith then applied the Multi-attribute Utility Model ("MUM") analysis to quantify and weigh the personal and enterprise goodwill of the Dental Practice in order to determine the fair market value.

{¶18} Based on the MUM analysis, Smith valued the total "goodwill" of the Dental Practice at $862,000, with 57.1 % of the goodwill characterized as "personal goodwill" attributable to Wife individually, and 42.9% of the goodwill was characterized as "enterprise goodwill" attributable to the Dental Practice itself. Smith subtracted the personal goodwill from Wife's equity value in the business, with adjustments, to determine the fair market value as $579,796 (enterprise goodwill plus the adjusted net value of the Dental Practice's assets).

{¶19} Regarding Wife's income, expert Smith considered the concept of "double-dipping," or "double-counting" and explained that if income from the business was used to value the business, that business income could not also be used for support purposes. Smith applied the enterprise goodwill percentage of 42.9% to determine the amount of business income that should be excluded to avoid double-dipping. Thus, without double counting, Smith found that Wife's income averaged over a five-year period was $475,336. Smith explained that she used a five-year average because COVID impacted medical practices in 2020, the Dental Practice became busier in 2023, and while Wife was the only dentist at the Dental Practice in the earlier years, a part-time dentist worked at the Dental Practice beginning in 2023.

{¶20} Husband presented the expert report and testimony of Justin L. Cherfoli, the managing director of Stout Risius Ross, LLC, for his opinion regarding the valuation of the Dental Practice. Husband relied on Cherfoli's report issued on October 6, 2023, which considered the valuation of the Dental Practice as of June 30, 2023. Based on the fair market valuation of the Dental Practice, Husband's expert opined that the fair market value of equity was $1,019,000. While the determination of the fair market value of equity of the Dental Practice by both experts was very close, Cherfoli testified that his valuation did not examine or allocate personal goodwill. Cherfoli testified there was no need to allocate personal goodwill based on the capitalized cash flow method of valuation. He further explained that he adjusted compensation for the owner to a market value, which is what another dentist would be paid to make the same contributions to the practice as Wife made.

{¶21} In other words, Cherfoli's method eliminates personal goodwill because Wife's contributions are being paid for in the assumed market salary. Cherfoli assumed 35% of Wife's collections would be her market compensation, which is the market level of compensation. Using this percentage, he assumed Wife's projected compensation to be $450,000. Cherfoli opined that the MUM method was too speculative.

{¶22} Regarding Husband's income, in August 2018, Husband was hired by Abercrombie & Fitch as a Senior Procurement Specialist. He earned approximately $75,000. Husband's employment was terminated on July 30, 2021. Husband started new employment with American Signature, Inc. in 2021 where he earned approximately $90,000. The company eliminated his position in April 2023. On September 18, 2023, Husband found new employment with Lutheran Social Services as a Procurement Manager earning an annualized salary of $77,500,80. At trial, Wife argued that Husband was voluntarily underemployed. Wife presented the report and testimony of vocational expert, Dr. Bruce Growick, regarding Husband's employability and earning capacity. Dr. Growick opined that Husband should be able to secure employment in Central Ohio in the occupational field of Purchasing Agent or Buyer earning $87,650 per year, about $10,000 more than what he was earning at the time of trial.

{¶23} After considering all the evidence presented at the multiple-day trial, the Magistrate made the following findings and conclusions relevant to this appeal:

1. The Magistrate found it was in the best interest of the children that both parties be named residential parents and legal custodians of the minor children. The Magistrate awarded the parties equal parenting time;
2. The magistrate found the Dental Practice had a fair market equity value of $1,165,000, as established by Wife's expert Smith. The Magistrate then determined that of the $1,165,000 equity value, $140,124, was the adjusted net value of the Dental Practice's assets. The magistrate also determined the Dental Practice’s goodwill and distinguished between enterprise goodwill and personal goodwill. Enterprise goodwill was marital property and subject to division, valued at $439,672. The Magistrate found that the personal goodwill attributable to Wife was valued at $585,204, and such was Wife's separate property not subject to division. The Magistrate’s conclusion was that the marital portion of the Dental Practice subject to division was $579,796 ($439,672 enterprise goodwill plus $140,124);
3. The Magistrate determined that in making an award of spousal support, case law from the Fifth District Court of Appeals required the Court to consider income from all sources, including the income derived from property subject to property division. Accordingly, including the enterprise goodwill income of 42.9%, the Magistrate concluded that Wife's income averaged over a five-year period was $545,646 for child and spousal support calculation purposes;
4. While Wife contended at trial that Husband was voluntarily underemployed, the Magistrate found Wife failed to meet her evidentiary

burden based on a review of Husband's employment history. The Magistrate determined Husband's income was $77,500.80 for child and spousal support calculation purposes;

5. The Magistrate then considered the issue of spousal support. Pursuant to the factors set forth in R.C. 3105.18(C)(1), the Magistrate found it was equitable for Wife to pay Husband spousal support in the amount of $5,500 per month for a period of 48 months, through wage withholding (the trial court increased the duration to 56 months);
6. The Magistrate found it was equitable for each party to pay their own attorney fees; however, because Wife had paid fees in the amount of $41,553 from a marital account prior to the divorce decree, the Magistrate found it was equitable to treat such payments as a pre-decree distribution in the property division.

{¶24} Both parties filed numerous objections to the Magistrate's decision. After carefully considering said objections, the case law, the evidence, and the arguments, the trial court overruled all objections and issued a detailed 82-page Judgment Entry and Divorce Decree. Both parties timely filed an appeal. Husband, as Appellant, asserts three assignments of error that this Court will address first. Wife, as Cross-Appellant, asserts four assignments of error that this Court will address after addressing Husband's asserted errors.

<u>HUSBAND-APPELLANT'S THREE ASSIGNMENTS OF ERROR</u>

{¶25} "I. THE TRIAL COURT ERRED IN CONCLUDING THAT THE VALUE OF THE PERSONAL GOODWILL OF APPELLEE'S DENTAL PRACTICE WAS NOT MARITAL PROPERTY."

{¶26} "II. THE TRIAL COURT ERRED IN DETERMINING THE VALUE OF APPELLEE'S DENTAL PRACTICE."

{¶27} "III. THE TRIAL COURT ERRED IN DETERMINING APPELLEE'S INCOME."

OVERALL STANDARD OF APPELLATE REVIEW

{¶28} Both parties appeal several of the trial court determinations, all entailing the same standard of appellate review. Appellate review of a trial court's judgment in a divorce action is under an abuse of discretion standard. *Holcomb v. Holcomb*, 44 Ohio St.3d 128, 131 (1989). Abuse of discretion implies that the trial court's attitude was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St. 3d 217 (1983). We must look at the totality of the circumstances and determine whether the trial court acted unreasonably, arbitrarily or unconscionably. *Jackson v. Jackson*, 2004-Ohio-816, ¶ 18 (5th Dist.).

1. Marital Property and Value of Goodwill

{¶29} In his first assignment of error, Husband argues the trial court erred in determining that the value of Wife's personal goodwill is not marital property subject to division. According to Husband, any real or personal property, whether tangible or intangible, can only be classified as marital property (not separate property) and is subject to division.[1]

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[1] Wife asserts that Husband misstates the issue on appeal in the first assignment of error; claiming that the issue is the valuation of Wife's dental practice as a whole and whether such valuation is supported by competent, credible evidence. Wife argues that:

> [w]hile the Magistrate classified personal goodwill as Becky's separate property (Mag. Dec., p. 18), the trial court did not. The Judge rejected, and certainly did not rely on or adopt, a rigid classification of personal goodwill. Rather, the trial court simply used it as a reduction in the total value of the business. (Divorce Decree, p. 41). The trial court specifically rejected a separate vs. marital and designation of goodwill as asset. Wife's Brief, p. 7.

{¶30} Both Husband and Wife's experts applied the income approach, specifically the capitalized cash flow method, to determine the fair market value of Wife's 100% interest in the Dental Practice. Wife's expert Smith also conducted a valuation of Wife's personal goodwill in the Dental Practice using MUM. After calculating Wife's personal goodwill, Smith concluded that Wife's 100% interest in the Dental Practice had a fair market value of $302,506, while Cherfoli opined the fair market value was $1,019,000. The primary distinction between the experts' conclusions is the value of Wife's personal goodwill in the Dental Practice. The Magistrate and the trial court determined that Wife's personal goodwill was not marital property.

{¶31} In dividing marital property, the trial court is bound to follow R.C. 3105.171, which requires the court to "divide the marital and separate property." Thus, a trial court must identify the marital property, value it, and then equitably divide it. R.C. 3105.171(B). The statute prescribes no specific method of valuation or distribution. R.C. 3105.171(C)(1). *James v. James*, 101 Ohio App.3d 668, 680-81 (2d 1995).

{¶32} A trial court's classification of what is separate and marital property will not be reversed absent a showing of an abuse of discretion. *Cockerman v. Cockerman*, 2017-Ohio-5563, ¶ 21 (5th Dist.). Thus, we review a trial court's classification of property under a manifest weight of the evidence standard, meaning the appellate court will affirm if some competent, credible evidence supports the classification. *Taub v. Taub*, 2009-Ohio-2762, ¶ 15. If there is some competent, credible evidence to support the trial court's decision, there is no abuse of

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However, later in the decision, the trial court does mention that the reduction in value is based on Wife's personal goodwill, which is not marital property. Thus, because Husband asserts the specific issue on appeal, and the trial court adopted the Magistrate's valuation, and reduced the total value of the business, we will address the issue asserted by Husband and whether personal goodwill is marital property.

discretion. *Middendorf v. Middendorf*, 82 Ohio St.3d 397 (1989), citing *Ross v. Ross*, 64 Ohio St.2d 203 (1980). The mere fact that a property division is unequal, does not, standing alone, amount to an abuse of discretion. *Koegel* v. *Koegel*, 69 Ohio St.2d 355 (1982); *Berish* v. *Berish*, 69 Ohio St.2d 318 (1982).

{¶33} Similarly, in determining the value of marital property, the trial court has broad discretion. *See Berish, supra*. As such, "[t]he valuation of marital assets is typically a factual issue that is left to the discretion of the trial court." *Roberts v. Roberts*, 2008-Ohio-6121, ¶ 18 (10th Dist.), citing *Berish, supra*. This Court's role is to determine whether there is relevant, competent, and credible evidence upon which the fact finder could base his or her judgment. *Tennant v. Martin-Auer*, 2010-Ohio-3489, ¶ 16 (5th Dist.), citing *Cross Truck Equipment Co. v. Joseph A. Jeffries Co.*, 1982 Ohio App. LEXIS 15233 (5th Dist.); *Iranpour-Boroujeni v. Emami*, 2024-Ohio-2546, ¶ 88 (1st Dist.) (stating that factual issues like the classification and valuation of property are reviewed under the sufficiency-and-weight-of-the-evidence standards); *Boolchand v. Boolchand*, 2020-Ohio-6951, ¶ 9 (1st Dist.).

{¶34} In Ohio, marital property is generally any property acquired during the marriage and owned by either spouse. R.C. 3105.171(A)(3)(a)(i). R.C. 3105.171(A)(3)(a) and includes the following:

> (i) All real and personal property that currently is owned by either or both of the spouses, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both during the marriage;
>
> (ii) All interest that either or both of the spouses currently has in any real or personal property, including, but not limited to, the retirement benefits of the

spouses, and that was acquired by either or both of the spouses during the marriage;

(iii) Except as otherwise provided in this section, 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; and

(iv) A participant account, as defined in section 148.01 of the Revised Code, of either of the spouses . . .

"Personal property" includes both tangible and intangible property. R.C. 3105.171(A)(5). "Marital Property" does not include separate property. R.C. 3105.171(A)(4). Separate property is defined in R.C. 3105.171(A)(6)(a) and includes:

(i) An inheritance by one spouse by bequest, devise, or descent during the course of the marriage;

(ii) Any real or personal property or interest in real or personal property that was acquired by one spouse prior to the date of marriage;

(iii) Passive income and appreciation acquired from separate property by one spouse during the marriage;

(iv) Any real or personal property or interest in real or personal property acquired by one spouse after a decree of legal separation issued under section 3105.17 of the Revised Code;

(v) Any real or personal property or interest in real or personal property that is excluded by a valid antenuptial or postnuptial agreement;

(vi) Compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets; and

(vii) Any gift of any real or personal property or of an interest in real or personal property that is made after the date of marriage and that is proven by clear and convincing evidence to have been given to only one spouse.

{¶35} The Ohio Supreme Court has not yet addressed the issue of whether personal goodwill associated with a spouse's professional practice constitutes "marital" property, "separate" property, or not property at all, in a divorce proceeding. The Court did generally address goodwill in connection with the dissolution of professional practices, in *Spayd* v. *Turner, Granzow & Hollenkamp*, 19 Ohio St. 3d 55 (1985). In *Spayd,* the Ohio Supreme Court stated:

> The comprehensive definition of 'goodwill' is 'the advantage or benefit, which is acquired by an establishment, beyond the mere value of the capital, stock, funds, or property employed therein, in consequence of the general public patronage and encouragement, which it receives from constant or habitual customers, on account of its local position, or common celebrity, or reputation for skill or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.' Story, Commentaries on the Law of Partnership (6 Ed. 1868) 170, Section 99. See, also, *Metro. Natl. Bank v. St. Louis Dispatch Co*. (1893), 149 U.S. 436; 38 American Jurisprudence 2d (1968) 912, Good Will, Section 1.

{¶36} From an economic standpoint, goodwill is the value of a business or practice that exceeds the combined value of the physical assets. *Kahn v. Kahn*, 42 Ohio App.3d 61, 63 (2d Dist. 1987) (analyzing goodwill in the valuation of professional practice in divorce proceeding after the *Spayd* decision and finding such valuation marital property; the court did not distinguish between personal and enterprise goodwill); *Mieskoski v. Mieskoski*, 1987 Ohio App. LEXIS 7208, *4-5 (8th Dist.) (including goodwill generally in the business as marital property); *but see Flexman v. Flexman,* 1985 Ohio App. LEXIS 7061, *10 (2d Dist.) (holding that the goodwill of a sole proprietorship is <u>not</u> an asset subject to equitable division); *Young v. Young,* 1999 WL 254426 (5th Dist. Apr. 19, 1999) (affirming the trial court's diminished valuation of the husband's business in a divorce action, based upon his role and direct impact in the business).

{¶37} For example, here, the trial court determined the initial value of Wife's dental practice as a whole was $1,165,000. However, the trial court ultimately determined a fair market value of $579,796, after using a reduction for Wife's personal goodwill in the amount of $585,204.

{¶38} Other State's high courts have addressed the issue and in so doing, distinguish between personal goodwill and enterprise (aka professional) goodwill. For example, very recently, in *Sneed v. Johnston*, the North Carolina Supreme Court reversed the lower court's determination that "personal goodwill" was marital property and subject to division.[2] *Sneed v. Johnston*, 2026 N.C. LEXIS 937. In reversing, the Court stated:

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[2] Similar to Ohio's statute, North Carolina's equitable distribution "requires the trial court to conduct a three-step process: (1) classify property as being marital, divisible, or separate property; (2) calculate the net value of the marital and divisible property; and (3) distribute equitably the marital and divisible property." N.C.G.S. § 50-20.

In this divorce case, the trial court had to classify the goodwill of the law firm started by plaintiff Jason M. Sneed during his marriage to defendant Charity A. Johnston. Although the trial court distinguished between the law firm's enterprise goodwill and personal goodwill, it classified both forms of goodwill as marital property and awarded defendant half the total value thereof. The Court of Appeals affirmed the trial court's order, while also asserting that "our courts have consistently declined" to divide goodwill into categories. *Sneed v. Johnston*, 293 N.C. App. 650, 659, 902 S.E.2d 28 (2024).

For the reasons explained below, today we join the ranks of those state appellate courts which have distinguished enterprise goodwill from personal goodwill and have held that the personal goodwill of a professional practice cannot be treated as marital property. Accordingly, we reverse the decision of the Court of Appeals to the extent that it holds otherwise and remand this case for entry of an equitable distribution order consistent with our decision.

Id. at *2.[3]

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[3] The *Sneed* Court examined cases across States. Of those state courts that specifically distinguished between personal and enterprise goodwill, and whether such is "marital property" or "separate" property, many States conclude "that personal goodwill is <u>not</u> marital property, but that enterprise goodwill is marital property." *Sneed*, *supra*, at *14-16, citing *May v. May*, 214 W.Va. 394 (2005); *see also*, *e.g.*, *Gaskill v. Robbins*, 282 S.W.3d 306, 315 (Ky. 2009) (classifying personal goodwill as nonmarital); *Howell v. Howell*, 31 Va. App. 332 (2000) (categorizing personal goodwill as "separate property in a divorce action"); *Butler v. Butler*, 541 Pa. 364 (1995) (holding enterprise goodwill to be the only type of goodwill that should be included when valuing a business for equitable distribution in divorce action); *Thompson v. Thompson*, 576 So. 2d 267, 270 (Fla. 1991) (emphasizing that only the business asset of enterprise goodwill is divisible upon divorce); *Taylor v. Taylor*, 222 Neb. 721 (1986) (opining that, while personal goodwill "is not a marketable asset distinct from the individual," enterprise goodwill is "a business asset with value independent of the presence or reputation of a particular individual" and should therefore be characterized as marital property for distribution purposes).

{¶39} The Court distinguished between personal goodwill and enterprise goodwill, quoting the South Carolina Supreme Court as follows:

> Enterprise goodwill is that which exists independently of one's personal efforts and will outlast one's involvement with the business. Enterprise goodwill is based on the intangible, but generally marketable, existence in a business of established relations with employees, customers and suppliers. Enterprise goodwill attaches to a business entity and is associated separately from the reputation of the owners. The asset has a determinable value because the enterprise goodwill of an ongoing business will transfer upon sale of the business to a willing buyer.
>
> In contrast, personal goodwill is associated with individuals. It is that part of increased earning capacity that results from the reputation, knowledge and skills of individual people. The implied assumption is that if the individual were not there, the clients would go elsewhere. Accordingly, the goodwill of a service business, such as a professional practice, consists largely of personal goodwill.
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> *Id.* at *7-8, quoting *Moore v. Moore*, 414 S.C. 490 (S.C. 2015).

{¶40} Stated differently, "[e]nterprise goodwill is based on the intangible, but generally marketable, existence in a business of established relations with employees, customers and suppliers * * *." *Frazier v. Frazier*, 737 N.E.2d 1220, 1225 (Ind. App. 2000); *Yoon v. Yoon,* 711 N.E.2d 1265, 1268 (Ind. 1999) (Enterprise goodwill 'is based on the intangible, but generally marketable, existence in a business of established relations with employees, customers and suppliers). Personal goodwill is the goodwill that depends on the continued presence of a particular individual and is a personal asset, and any value that attaches to a business as a result of this "personal goodwill" represents nothing more than the future earning capacity of the individual and is not divisible. *May, supra,* at 404.

{¶41} We agree with the above cases and conclude that: (1) personal goodwill must be distinguished from enterprise goodwill; and (2) personal goodwill is not marital property subject to division. Indeed, personal goodwill is not subject to equitable distribution in divorce because it is "not a marketable asset distinct from the individual." *Id.*; *see also Yoon,* at 1269 (Ind. 1999). ("[A]ny value that attaches to a business as a result of * * * 'personal goodwill' represents nothing more than the future earning capacity of the individual and is not divisible."); *Rosenberg v. Rosenberg*, 391 So.3d 975, 976 (Fla. App. 5th Dist. 2024) ("What is evident in the case law is that personal goodwill of a professional is simply not a marital asset in Florida. Personal goodwill * * * is not a marketable asset distinct from the individual who performs services. Personal goodwill - no matter the business setting - is not a part of enterprise goodwill."); *Gaskill*, at 314-15 ("The distinction between enterprise and personal goodwill has a rational basis that accepts the reality of specific business situations. In a case such as this one, there can be little argument that the skill, personality, work ethic, reputation, and relationships developed by [wife] are hers alone * * *.").

{¶42} Husband argues "[t]here is a consensus amongst the Second, Sixth, Seventh, Tenth, and Eleventh Districts that personal goodwill is an asset that may be distributed in a divorce action or incorporated in an overall valuation of a parties' business." Husband's Brief, p. 12; see generally, *Bunkers v. Bunkers*, 2007-Ohio-561 (6th Dist.); *Kahn*, supra, However, after review, we find that those cases do not follow a "bright line rule" and certainly do not hold that "personal goodwill" is a marital asset. Instead, the cases analyze goodwill based on the specific evidence presented and affirm a determination of the trial court as not being an abuse of discretion based on said facts. As such, we do not find the cases cited by Husband to be particularly persuasive or controlling. The distinction we recognize today is particularly significant in divorce proceedings where division of marital property is not only required but must also be equitable.

{¶43} Because personal goodwill cannot continue without the individual, any value attached to personal goodwill essentially represents the future earning capacity of that spouse. *See Moore, supra.* Thus, Wife's personal goodwill is not marital property subject to division. Indeed, as the trial court recognized, "the amount calculated as personal goodwill is not an asset, but instead a reduction in the value of a closely-held business." *See* Divorce Decree, p. 41. Because competent, credible evidence exists to support the trial court's determination that the value of Wife's personal goodwill is not marital property subject to divisions, Husband's first assignment of error is overruled.

Valuation of Wife's Dental Practice as a Whole

{¶44} In the second assignment of error, Husband claims the trial court erred in its valuation of Wife's dental practice as a whole. This assigned error is related to the above discussion in Husband's first assignment of error. The standard of appellate review is the same. This Court must determine whether there is relevant, competent, and credible evidence upon which the fact finder could base his or her judgment. *Tennant*, ¶ 16.

{¶45} When determining the value of a business, a trial court is "neither required to use a particular valuation method nor [is it] precluded from using any method." *Packer v. Packer,* 2026-Ohio-1417, ¶ 33 (12th Dist.), citing *Gregory v. Kottman-Gregory,* 2005-Ohio-6558 (12th Dist.). The only requirement is that the trial court adopt a value supported by competent, credible evidence in the record. *McKenna v. McKenna,* 2019-Ohio-3807, ¶ 10 (1st

Dist.). "This standard of review is highly deferential and even 'some' evidence is sufficient to sustain the judgment and prevent a reversal." *Barkley v. Barkley,* 119 Ohio App.3d 155, 159 (4th Dist.); *O'Harra v. O'Harra,* 1988 Ohio App. LEXIS 5168, *5 (12th Dist.) (finding that as long as the record contains some competent, credible evidence to support the domestic relations court's decision, it will not be disturbed on appeal.).

{¶46} Importantly, trial courts are not bound to adopt a single expert's valuation. *Bevard v. Bevard,* 2010-Ohio-4210, ¶ 15 (5th Dist.). The court is permitted to weigh differing appraisals and arrive at their own independent valuation using the evidence presented. Indeed, the court may reject both parties' experts entirely. *Id.; James, supra*; *Anderson v. Anderson*, 2002-Ohio-1156, ¶ 15 (In divorce proceedings, "the trier of fact is not bound by the appraisal or valuation methodology used by any expert witness").

{¶47} Here, the trial court was presented with extensive evidence from each expert witness regarding the valuation of Wife's dental practice. Both Husband and Wife's experts applied the income approach, specifically the capitalized cash flow method, to determine the fair market value of Wife's interest in the Dental Practice.[4] Wife's expert Smith also conducted a valuation of Wife's personal goodwill versus enterprise goodwill in the Dental Practice using MUM. Smith testified that when performing a business valuation, she gathers information and learns about the company on all fronts. She reviews the financial information, interviews the business owner, and researches the industry. Using MUM, Smith calculated Wife's personal goodwill to be 57.1% of the Dental Practice's total goodwill. The record clearly

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[4] Fair market value is the amount for which the property would change hands between a willing buyer and a willing seller on the open market. *Dorsey v. Dorsey*, 2013-Ohio-4237 (2d Dist.)

supports the Wife's role and direct impact upon her Dental Practice due to her expertise and skill set in several areas discussed above.

{¶48} Husband's expert, Cherfoli, placed little weight and value on the specialty services and simply did not account for personal goodwill in his initial valuation. Despite not knowing what some of Wife's specialty services were, Cherfoli chose not to interview Wife regarding any of the specialty dentistry services and their significance in the value of the Dental Practice and instead relied on his experience with dentistry practices.

{¶49} Here, the trial court made specific and detailed findings regarding the Dental Practice and determined that Smith's approach was more reasonable because it considered Wife's personal goodwill in the valuation process. The Court cited *Young, supra*, wherein this Court of Appeals affirmed the trial court's diminished valuation of the husband's business in a divorce action, based upon his role and direct impact in the business. Importantly however, the trial court did not "adopt" the MUM analysis as Husband suggests. It simply recognized that the MUM analysis is an accepted practice among business valuation experts, stating "[t]he Court finds that the magistrate did not err in applying personal goodwill to value the Dental Practice and using the MUM analysis to calculate the personal goodwill value." *See* Divorce Decree, p. 39. Further:

> Wife's personal goodwill is an important and relevant consideration in determining the value of the Dental Practice and the MUM analysis provides an objective set of characteristics and attributes to determine the personal goodwill of the Dental Practice. *See Banchefsky v. Banchefsky,* 201O-Ohio-4267, ¶ 44 (10th Dist.) (The appellate court determined that the MUM analysis did not apply when the business had been sold. However, the appellate court

agreed with the trial court that the MUM analysis may be useful in determining the fair market value of a business.).

Id. at 39-40.

{¶50} Simply stated, the trial court did not abuse its discretion in giving more weight to Wife's expert, Smith, in reducing the value of the Dental Practice as a whole in consideration of Wife's personal goodwill. Ohio case law clearly holds that a trial court's acceptance of the valuation set forth by one expert over another does not render such decision arbitrary or unconscionable. *Bunkers, supra*; *Stapleton v. Stapleton,* 2022-Ohio-3018, ¶ 30 (1st Dist.).[5]

{¶51} Moreover, much of Husband's argument regarding his second assignment of error is purely an attempt to reweigh the facts, which is not the function of this court. The trial court had competent, credible evidence as to reasonable valuations of the Dental Practice and was in the best position to determine the credibility of the expert witnesses and give proper weight to said expert testimony. Accordingly, because the trial court's valuation is supported by competent, credible evidence the trial court did not abuse its discretion. Husband's second assignment of error is overruled.

Wife's Income

{¶52} The magistrate concluded that Wife' s income was $545,646 for both child and spousal support purposes. The trial court accepted Smith's use of a five-year average of Wife's income and allowed for double dipping (aka double counting) of the Dental Practice's income

[5] The trial court further stated: "In other words, the trial court determined the value of the business by removing husband's personal goodwill. *Young* supports the position that personal goodwill is not a part of the business value, and thereby, personal goodwill is not marital property subject to division in a divorce action. While the Court agrees with the magistrate that personal goodwill is not marital property, the Court disagrees with the magistrate's finding that personal goodwill is separate property." Divorce Decree, p. 41.

generated from enterprise goodwill. On appeal, Husband argues that the use of a five-year average was improper and results in a lowered income but agrees with the allowance of double counting. Conversely, Wife agrees with the use of the five-year average to account for fluctuations in income, but disagrees with the trial court's allowance of double counting (see discussion infra, Wife's second assignment of error).

{¶53} Again, a trial court's determination of income for support purposes may only be altered if it constitutes an abuse of discretion. *Kunkle v. Kunkle*, 51 Ohio St.3d 64, 67 (1990); *Carroll v. Carroll*, 2004-Ohio-6710, ¶ 21 (5th Dist.) (holding that trial court did not abuse its discretion in determining husband's income for spousal support purposes). Wife's income calculated with double counting for the five-year period includes three years of income ranging from $361,526 to $464,320, followed by two years at $800,757 and $647,767. The fluctuations in Wife's income were due to the covid-19 pandemic, maternity leave, and normal business fluctuations. Indeed, the evidence demonstrates that Wife's income during the five-year period fluctuated up and down, as opposed to consistent increases over the five years.

{¶54} Thus, a five-year average properly accounts for normal increases and decreases in Wife's income as a business owner, and such average was reasonable and equitable. Thus, the trial court did not act arbitrarily, unreasonably, or unconscionably in determining a five-year average income that accounted for fluctuations in business. Accordingly, Husband's third assignment of error is overruled.

WIFE'S CROSS APPEAL

{¶55} Wife's cross-appeal initially asserted five assignments of error; however, the parties informed the court that her fourth asserted error was resolved and is no longer pending. Thus, we must consider and rule upon the following four assignments of error.

{¶56} "I. WHERE THERE IS OVERWHELMING EVIDENCE THAT CROSS-APPELLANT IS THE PRIMARY CAREGIVER OF THE CHILDREN, CROSS-APPELLEE HAS A SERIOUS ALCOHOL PROBLEM, CROSS-APPELLEE IS AN UNINVOLVED PARENT, AND IT IS IN THE CHILDREN'S BEST INTERESTS FOR CROSS-APPELLANT TO BE THE RESIDENTIAL PARENT AND LEGAL CUSTODIAN OF THE CHILDREN, THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED IN AWARDING SHARED PARENTING, EQUAL PARENTING TIME, AND CHILD SUPPORT PAYABLE BY CROSS-APPELLANT TO CROSS-APPELLEE."

{¶57} "II. WHERE CROSS-APPELLEE IS VOLUNTARILY UNDEREMPLOYED AND HIS INCOME SHOULD BE IMPUTED TO BE HIGHER AND CROSS-APPELLANT'S INCOME SHOULD BE LOWER TO AVOID THE ISSUE OF "DOUBLE DIPPING", THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED IN DETERMINING THE PARTIES' RESPECTIVE INCOMES FOR SUPPORT PURPOSES."

{¶58} "III. WHERE THE INCOMES USED FOR THE PARTIES IN DETERMINING SPOUSAL SUPPORT WERE NOT ACCURATE AND THERE WAS NO EVIDENCE FOR THE DURATION OF SPOUSAL SUPPORT TO BE 56 MONTHS, THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED IN AWARDING THE AMOUNT AND DURATION OF SPOUSAL SUPPORT."

{¶59} "IV. [THIS ASSIGNMENT OF ERROR WAS SETTLED BY THE PARTIES]."

{¶60} "V. THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES WHERE CROSS-APPELLEE HAS NOT PAID FOR LEGAL SERVICES AND THERE WAS NO EVIDENCE AS TO THE REASONABLNESS [SIC] OR NECESSITY THEREOF."

1) Custody and Shared Parenting

{¶61} Wife's first assignment of error argues the trial court abused its discretion in awarding shared parenting, equal parenting time, and spousal support to Husband. Wife continuously argues that based on Husband 's lack of parenting initiative and history of excessive alcohol use, it is in the children's best interests that Wife be named the residential parent and legal custodian, with some parenting time to Husband. We disagree.

{¶62} It is well settled that a trial court is given broad discretion in its determination of parental custody rights. *Booth v. Booth*, 44 Ohio St.3d 142, 144 (1989). Because trial courts have broad discretion in allocating parental rights and responsibilities, appellate courts will affirm a custody determination absent an abuse of discretion. *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 23 (1990). Abuse of discretion is a term used to indicate that a trial court's decision is unreasonable, arbitrary or unconscionable. *Reynolds v. Reynolds*, 2026-Ohio-309 (12th Dist.); *Teufel v. Teufel*, 2017-Ohio-5732 (1st Dist.) (The domestic relations court has broad discretion when determining child custody and the appellate court will not disturb the trial court's judgment if it is supported by competent, credible evidence).

{¶63} "In proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained through contact with and observation of the parties and through independent investigation can not be conveyed to a reviewing court by printed record." *Woods v. Woods*, 1997 Ohio App. LEXIS 2391, *6-7, quoting *Trickey v. Trickey*, 158 Ohio St. 9, 13 (1952). Indeed, the issue of witness credibility is primarily for the trier of fact to determine. *Davis v. Flickinger*, 77 Ohio St.3d 415, 419 (1997). "The 'rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.'" *In re J.Y.*, 2008-Ohio-3485, ¶ 33 (2d Dist.), quoting *Seasons Coal Co., Inc. v. City of Cleveland*, 10 Ohio St.3d 77, 80 (1984); *Brandt v. Brandt*, 2012-Ohio-5932 (11th

Dist.) (the trial court is in the best position to observe the witnesses, which cannot be conveyed to a reviewing court by a printed record).

> [I]t is inappropriate in most cases for a court of appeals to independently weigh evidence and grant a change of custody. The discretion which a trial court enjoys in custody matters should be accorded 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. 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. In this regard, the reviewing court in such proceedings should be guided by the presumption that the trial court's findings were indeed correct.
>
> *Teufel*, at ¶ 15, quoting *Miller v. Miller*, 37 Ohio St.3d 71, 75 (1988).

{¶64} When awarding custody in a divorce proceeding, the trial court must consider the best interest of the child or children. *L.S.* v. *C.S.,* 2024-Ohio-206, ¶ 14 (5th Dist.). This requires the court to consider all relevant factors, including, but not limited to those listed in R.C. 3109.04(F)(1). *Rickman v. Rickman,* 2016-Ohio-132, ¶ 36 (5th Dist.). The statute provides:

> 1) In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:
>
> (a) The wishes of the child's parents regarding the child's care;

(b) If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;

(c) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;

(d) The child's adjustment to the child's home, school, and community;

(e) The mental and physical health of all persons involved in the situation;

(f) The parent more likely to honor and facilitate court approved parenting time rights or visitation and companionship rights;

* * *

{¶65} Similarly, regarding shared parenting, pursuant to R.C. 3109.04(D)(1)(b), a trial court may not approve a shared parenting plan unless it first determines that the plan is in the best interests of the child. *Brandt*, at ¶ 13. Again, the court must consider the best interest of the child based upon all relevant factors, including those set forth in R.C. 3109.04(F)(1) and (2). *Sturtz v. Wise-Stine,* 2023-Ohio-4866, ¶ 18 (5th Dist.). Such factors include the ability of the parents to cooperate and make joint decisions regarding the children; the ability of each parent to encourage the sharing of love, affection, and contact between the children and the other parent; any history or potential for abuse; the geographic proximity of the parents to one another; and, if applicable, the recommendation of the children's guardian ad litem. R.C. 3109.04(F)(2)(a)-(e). While a court must consider all relevant factors, it is not required to individually address or cite to each factor. *L.S.,* ¶ 14. Finally, no single factor is dispositive, and the court may weigh the relevant factors in determining how they apply to the child's best interest. *Id*.

{¶66} Wife contends that because the trial court named her and Husband as legal custodians and granted 50/50 shared parenting time, it must have been operating under an incorrect presumption of equal parenting time. Although Wife is clearly frustrated with the trial court's decision, we must first clarify that no such presumption exists in Ohio, nor do we believe the trial court improperly relied on said presumption.[6]

{¶67} Under Ohio law parents stand equally before the Court as to the allocation of parental rights and responsibilities and neither has a right over the other. *Milliron v. Milliron*, 1982 Ohio App. LEXIS 15105, *6 (5th Dist.); R.C. 3109.03; R.C. 2111.08.[7] Indeed, the Magistrate heard nine days of testimony and <u>thoroughly</u> considered the statutory factors. The trial court reviewed the Magistrate's decision and then independently considered the best interest factors for both custody and shared parenting, including the objective recommendation from the GAL who in fact supported equal time and shared responsibility.

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[6] It is true that opinions from the Eighth District have stated there is a "strong presumption" that shared parenting is favored under the statute, rebuttable by evidence that shared parenting is *not* in the best interest of the child." *See generally Dietrich v. Dietrich*, 2008 Ohio 5740, ¶ 5 (8th Dist.); *Qingwei Kong v. Kong*, 2010 Ohio 3180, ¶ 6 (8th Dist.). However, "that presumption has not been adopted by any other appellate district in a child custody case. We also agree that there is no support for this proposition, express or implied, in the statute itself. In fact, R.C. 3109.04(D)(2) recognizes that the court can, in its discretion, find it is in the child's best interest for *neither* parent to enjoy the status of residential parent or legal guardian. Such an express provision obliterates the suggestion that shared parenting is somehow presumed. Of course, shared parenting may be viewed as a preferred option * * *" *Brandt*, ¶ 16.

[7] "When husband and wife are living separate and apart from each other, or are divorced, and the question as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children is brought before a court of competent jurisdiction, they shall stand <u>upon an equality as to the parental rights and responsibilities</u> for the care of their children and the place of residence and legal custodian of their children, so far as parenthood is involved." R.C. 3109.03 (emphasis added).

{¶68} As observed by the Magistrate and the trial court, "it was apparent from Wife's testimony that by the end of their marriage, Husband could do no right in Wife's opinion," no matter what he did or the progress he made. Judgment Entry – Decree of Divorce, pp. 26-27. The trial court independently weighed the statutory factors and determined that it was the children's best interest to have both parents equally involved in their lives.[8] An appellate court is simply not permitted to reweigh the evidence or substitute its judgment for that of the trial court. *Wilburn v. Wilburn*, 2006-Ohio-5820 (9th Dist.), ¶ 13.

{¶69} Moreover, the trial court found it significant that both Husband and Wife testified, which was corroborated by the GAL, that they were able to communicate and agree as to medical, school, and extracurricular decisions for the children. During the pendency of the divorce proceedings, Wife and Husband resided together in the marital home. Wife testified that in the morning, she would give Husband time with the children in the kitchen. On February 20, 2024, Husband was ordered to vacate the marital residence by March 31, 2024, and beginning immediately thereafter, the parties were required to follow the two-week rotating parenting time schedule. The court noted that neither party notified the Court that since March 31, 2024, the parties have not been able to communicate or cooperate.

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[8] Specifically, regarding Husband's use of alcohol, the trial court stated the following:

> The Court finds that the magistrate weighed Husband's credibility as to his past alcohol use and current sobriety with consideration of the children's best interests by ordering Husband to use Soberlink for a period of one year. Husband was required to test twice a day during his parenting time for six months and then test once a day during his parenting time for six months. The results of testing were to be provided directly to Wife and Parenting Coordinator. In case of a negative test, the magistrate ordered that the children would be returned to Wife and Husband would be required to submit to five consecutive days of negative tests before the Husband's parenting time could resume.
>
> *Id*. at 27-28.

{¶70} In the final analysis, contrary to Wife's various assertions, there is no indication the trial court failed to consider the multiple, nonexclusive factors set forth in R.C. 3109.04(F)(1) and (F)(2). Throughout multiple, lengthy days of testimony, the Magistrate considered what would be in the best interests of the children. Upon review of the Magistrate's decision, the trial court gave proper deference to the Magistrate's observations, credibility determinations, and overall insight. Thus, a review of the record in its entirety demonstrates that there is competent, credible evidence to support the trial court's determination. As such, the trial court did not abuse its discretion. Wife's first assignment of error is overruled.

2) Income determinations for Spousal Support

{¶71} In the second assignment of error, Wife claims that because Husband was "voluntarily underemployed," his income should have been determined to be higher, and Wife's income should have been determined to be lower to avoid double dipping. Again, the trial court did not abuse its discretion in making the respective income determinations for spousal and child support purposes.

Husband's Income - Voluntarily Underemployed

{¶72} Wife asserts Husband was voluntarily underemployed, due to substance abuse and his inability to hold a job, and the trial court should have determined his income to be higher. "When considering the relative earning abilities of the parties in connection with an award of spousal support, Ohio courts may hold a person accountable for the amount a person *could have* earned if he or she made the effort. *Seaburn v. Seaburn,* 2005-Ohio-4722, ¶ 32 (5th Dist.). "Ohio courts often impute income to parties who are voluntarily underemployed or otherwise not working up to their full earning potential," and R.C. 3105.18(C) specifically requires the imputing of income. *Seaburn,* ¶ 33; *Kess v. Kess,* 2018-Ohio-1370, ¶ 65 (5th Dist.); *Lykins* v. *Lykins,* 2018-Ohio-2144, ¶ 43 (12th Dist.).

{¶73} The evidence demonstrates that from 2018 through May 2021, Husband was employed as a Senior Procurement Specialist at Abercrombie & Fitch and earned between $73,000 to $76,000 a year, with no bonuses or commissions. Husband was terminated for unsatisfactory performance and communication issues. Within a month of his termination, Husband was employed at American Signature, lnc., as a Senior Procurement Buyer, earning $90,000 a year, with no bonuses or commissions. Husband worked in this position from June 2021 to April 2023, during the pending divorce action, when his position was eliminated by the company. Husband testified that he immediately began searching for a job. *Id*. He submitted resumes through LinkedIn, Monster and Indeed, and reached out to colleagues and recruiters. *Id*. In early September, Husband ultimately received two offers – one from Ascena Retail earning $100,000, and one from Lutheran Social Services, earning $77,500.80. The offer from Ascena was quickly rescinded, so Husband accepted the job with Lutheran.

{¶74} As determined by the Magistrate and the trial court, there is simply no evidence to suggest that Husband was "voluntarily" underemployed. Husband testified regarding his work history from 2014 through the first day of trial. Husband was consistently employed throughout the marriage and when he was either terminated or he resigned, he searched for and obtained new employment. The fact that Husband's current income is approximately $10,000 less than what Wife's vocational expert thinks it should or could be is simply insufficient to demonstrate an abuse of discretion.

Wife's Income

{¶75} Regarding Wife's income, Wife's expert applied the enterprise goodwill percentage of 42.9% to determine the amount of business income that should be excluded to avoid double-dipping. Smith found that Wife's income averaged over a five-year period was $475,336. The magistrate and trial court rejected that number and found Wife's income to be the higher value of $545,646. Regarding Wife's income and double counting, the court stated:

> The Dental Practice is being awarded to Wife. The income used to value the Dental Practice is also being used to calculate Wife's income for spousal support purposes. The Court finds it is equitable for this income stream to be counted twice due to the disparity in income between Husband and Wife. Husband's yearly income is $77,500.80. Wife's income based on double counting and averaged over five years totals $545,646. Wife's income for the same time, but not double counted, is $475,336. Wife's income is six to seven times greater than Husband's income, and the difference between the double counted and not double counted income values is $70,310, almost the same amount of Husband's yearly income.

{¶76} Wife agrees with Smith's use of the five-year average to account for fluctuations in income, but disagrees with the allowance of double counting. In *Hutta v. Hutta*, 2008-Ohio-3756, ¶ 34-35 (5th Dist.), this Court found a trial court's refusal to consider income generated by business interests retained is contrary to the express language of the R.C. 3105.18 and Ohio case law which requires the court to consider the income from all sources. *Id.*, see also *Bagnola v. Bagnola*, 2003-Ohio-5916, 966-68 (5th Dist.). In *Hutta*, this Court stated:

> R.C. 3105.18(C)(1)(a) directs the trial court to consider "[t]he income of the parties, from *all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code*" (emphasis added). In light of this statutory mandate, the income generated by the business interests retained by Appellee pursuant to the division of marital assets needed to be evaluated and considered by the trial court in determining the appropriate amount of spousal support, along with the remaining 18(C) factors.
>
> In addition, the double-dipping argument advanced by Appellee and adopted by the trial court was rejected by this Court in *Bagnola v. Bagnola,* Stark County App. No. 2003-CA-00120, 2003 Ohio 5916 (basing division of marital assets on business valuations that were based on husband's earned income from three businesses, while also basing award of spousal support on same earned income, did not result in improper 'double dipping' for wife).

{¶77} *Hutta*, ¶¶ 34-35; *see also Kraft v. Kraft*, 2009-Ohio-5444, ¶ 47 (5th Dist.) (holding same). Thus, the Fifth District instructs the court to consider *all* income from all sources. As such, the trial court did not abuse its discretion in determining Husband and/or Wife's income for support purposes.

3) Spousal Support/Alimony

{¶78} Somewhat related to the second asserted error, Wife's third assignment of error argues that the trial court improperly determined the duration of spousal support that Wife must pay to Husband. As stated above, the Magistrate recommended 48 months of payments, and the trial court increased the duration to 56 months.

{¶79} Again, the standard of review is whether the trial court abused its discretion in determining the amount and duration of spousal support. *Eaberly v. Eaberly,* 2026-Ohio-2262, ¶ 11 (5th Dist.). The goal of spousal support is to reach an equitable result. *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 96 (1988). While there is no formula to determine the amount of spousal support, the trial court is required to consider all the statutory factors listed in R.C. 3105.18(C) and must not base its determination upon any <u>one</u> of those factors taken in isolation. *J.E.S. v. A.S.*, 2026-Ohio-458, ¶ 19 (8th Dist.).

{¶80} In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, R.C. 3105.18(C)(1) directs the trial court to consider all fourteen of the following factors:

> (a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;
>
> (b) The relative earning abilities of the parties;
>
> (c) The ages and the physical, mental, and emotional conditions of the parties;
>
> (d) The retirement benefits of the parties;
>
> (e) The duration of the marriage;
>
> (f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;
>
> (g) The standard of living of the parties established during the marriage;
>
> (h) The relative extent of education of the parties;

(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

(j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;

(k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;

(l) The tax consequences, for each party, of an award of spousal support;

(m) The lost income production capacity of either party that resulted from that party's marital responsibilities; and

(n) Any other factor that the court expressly finds to be relevant and equitable.

{¶81} In addition, R.C. 3105.18(C)(2) states that in determining whether spousal support is reasonable and in determining the amount and terms of payment of spousal support, each party shall be considered to have contributed equally to the production of marital income. *Hutta,* at ¶ 27. Although trial courts must consider all the factors listed in R.C. 3105.18(C), a trial court need not acknowledge all evidence relative to each factor, and the appellate court may not assume that evidence was not considered. *Clendening v. Clendening,* 2005-Ohio-6298 (5th Dist.). The trial court must only set forth sufficient detail to enable a reviewing court to determine the appropriateness of the award. *Id.*, citing *Kaechele, supra.*

{¶82} Upon review of the trial court's detailed decision, we find the trial court satisfied the requirements to provide its facts and reasons for determining spousal support payable to Husband. Quite simply, other than Wife's opinion to the contrary, there is nothing to demonstrate that the trial court acted unreasonably or arbitrarily in making its determination. Although both parties continue to argue with each other over numerous details of the divorce decree, there can be no question that both the Magistrate and the trial court exercised due diligence and made equitable determinations as required under Ohio law based on the statutory factors. Wife's third assignment of error is overruled.

Attorney Fees

{¶83} In her final assignment of error, Wife argues that the trial court improperly ordered her to pay Husband's attorney fees. Wife contends that although the Magistrate ordered the parties to pay their own attorney fees, the Magistrate concluded that Wife's payment of attorney and expert fees ($41,533) was a pre-Decree distribution of property and in essence, made an award of attorney fees to Husband.

{¶84} Once again, as an appellate court, we generally review the overall appropriateness of the trial court's property division in divorce proceedings under an abuse of discretion standard. *Cherry v. Cherry*, 66 Ohio St.2d 348 (1981). Here, Wife paid the above amount before the divorce decree was issued. Thus, it was not an abuse of discretion for the Magistrate to place Wife's payment on her side of the balance sheet to account for the absence of these funds. The Magistrate did what was equitable based on the circumstances. It is simply not an award or payment of Husband's attorney fees and Wife's characterization to the contrary is without merit. Because there was no award of attorney fees, no analysis regarding same was required. Wife's final assignment of error is overruled.

CONCLUSION

{¶85} Based on the above opinion, Husband-Appellant first, second, and third assignments of error are overruled in their entirety. Wife-Cross Appellant's first, second, third, and fifth assignments of error are overruled in their entirety. The judgment of the Delaware County Court of Common Pleas, Division of Domestic Relations, is AFFIRMED.

{¶86} Costs to be split evenly between Appellant and Appellee.

By: Montgomery, J.

Hoffman, P.J. and

Popham, J. concur.