

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Julia J. Trickey

Court of Appeals No. L-09-1307

Appellee

Trial Court No. DR 2006-1424

v.

Richard C. Trickey

DECISION AND JUDGMENT

Appellant

Decided: January 14, 2011

* * * * *

Henry B. Herschel, for appellee.

Keithley B. Sparrow, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the child and spousal support orders awarded in a divorce decree issued by the Lucas County Court of Common Pleas, Domestic Relations Division. Because we conclude that the trial court properly attached a child support

worksheet and did not abuse its discretion in awarding the wife spousal support, we affirm.

{¶ 2} Appellant, Richard C. Trickey, and appellee, Julia J. Trickey, were married in 1985 and had three children as issue of the marriage. At the time appellee filed for divorce in December 2006, only one child, then age 12, remained as a minor. During the pendency of the divorce proceedings, appellant was ordered to pay temporary child support, temporary spousal support, and to pay for certain obligations of the parties.

{¶ 3} The case stretched on for nearly three years before a final decree was issued in November 2009. During that time, the parties returned to court several times to debate the modification of temporary support awards, the sale of the marital residence, and other issues. A hearing was held on January 15, 2009, to determine disputed issues, including spousal support, child support, life insurance, attorney fees and costs. In the final decree, the court entered its findings and orders pertaining to the disputed issues of spousal support and those issues settled by agreement and the disputed issues. It then awarded spousal support, child support, and divided up the assets as agreed to by the parties.

{¶ 4} Appellant now appeals from that judgment. The facts specific to the issues on appeal will be set out as needed in each of appellant's five assignments of error, which are as follows:

{¶ 5} "1. The trial court failed to calculate child support in its decision and attach to its decision a worksheet for same.

{¶ 6} "2. The trial court erred in placing responsibility for life insurance coverage when the issue was not presented either by agreement or testimony.

{¶ 7} "3. The trial court erred in preserving temporary orders when there was no testimony or agreement regarding same.

{¶ 8} "4. The trial court abused its discretion in awarding spousal support on a twenty-three year duration marriage.

{¶ 9} "5. The trial court erred in awarding spousal support in failing to consider the income available to Plaintiff/Appellee from the assets awarded to her in the divorce."

I.

{¶ 10} We will address appellant's first two assignments of error together. In his first assignment of error, appellant argues that the trial court failed to calculate child support or attach a mandatory support worksheet. In the second assignment of error, appellant contends that the trial court erred in ordering him to carry life insurance to cover the child support in the event of appellant's death prior to the child's emancipation.

{¶ 11} As appellant correctly states, in Ohio, when a child support order is issued, a child support guideline computation worksheet must be completed and made a part of the trial court's record. R.C. 3119.022. See, also, *Cutlip v. Cutlip*, 5th Dist. No. 02CA32, 2002-Ohio-5872, ¶ 7, citing *Marker v. Grimm* (1992), 65 Ohio St.3d 139, paragraph one of the syllabus. Furthermore, a child support obligation may be guaranteed by ordering the payor to secure a life insurance policy with the child named as beneficiary. See *Adams v. Adams*, 6th Dist. No. WD-09-022, 2009-Ohio-6257, ¶ 57; *Pruit v. Pruit*, 8th

Dist. No. 84335, 2005-Ohio-4424, ¶ 36; *Gillespie v. Gillespie* (June 30, 1994), 8th Dist. No. 65518.

{¶ 12} In this case, the divorce judgment entry signed and filed on November 4, 2009, does, in fact include a calculation of child support and an attached child support worksheet, referenced as Exhibit B. Exhibit B is *virtually* the same as the support worksheet attached to a magistrate's decision, dated June 13, 2008, which determined temporary child support. Appellant filed an objection to that magistrate's decision regarding the calculation of temporary spousal support. He did not challenge the child support award or the amount listed as his yearly income, \$157,000.

{¶ 13} During the January 15, 2009 hearing, a settlement agreement was read into the record. That agreement provided that the parties had reached an agreement that appellee was to be the residential parent and that the court schedule would be followed regarding visitation with appellant. Appellee's counsel noted that "we are reserving for later proceedings today the issue of spousal support, child support, life insurance, fees, costs of litigation."

{¶ 14} Later in the hearing, the court also asked appellant's counsel, "since child support is also up in the air, you're going to ask me to compute a child support number?" Appellant's counsel answered, "Yes."

{¶ 15} Thus, appellant is correct that no agreement as to the amount of child support is evidenced within the record. Consequently, the trial court's initial statement in the June 29, 2009 judgment entry that the parties "agreed on terms for the care and

support of their one remaining child, including a child support award," was technically incorrect. Nevertheless, under the facts of this case, the trial court's statement is of no effect, since the parties left the determination of child support to the trial court.

{¶ 16} In this case, the incomes used on the final worksheet were supported by the parties' testimony at the January 15, 2009 hearing and consistent with the income amounts determined by the court in its June 29, 2009 judgment entry. Moreover, the incomes of the parties and ultimate child support amount did not change from the prior unchallenged *temporary* award. Child support, unlike spousal support, is specific to the child support guidelines and worksheet, and any deviations from the guidelines must be explained. Since the incomes were consistent with the final decree findings of the court, and the worksheet is consistent with the child support guidelines, we conclude that the trial court satisfied the statutory worksheet requirement.

{¶ 17} As for the court's order regarding the obligation to secure life insurance to benefit the minor child, appellant testified at the January 15, 2009 hearing that he already carried life insurance. Appellee's counsel stated at that hearing that the matter of life insurance was an issue. Such orders are often included in a divorce decree to ensure that minor children are supported through the age of majority. As a result, we find no irregularity in the court's order that appellant carry such insurance on behalf of the minor child. Therefore, we conclude that the trial court properly included a child support worksheet and calculations and did not err in ordering appellant to maintain a life

insurance policy to guarantee child support for the minor child. Accordingly, appellant's first and second assignments of error are not well-taken.

II.

{¶ 18} In his third assignment of error, appellant claims that the trial court erred in preserving temporary orders because there was no agreement or testimony regarding that issue.

{¶ 19} Ordinarily, temporary orders in a domestic relations case "are merged within the final decree." *Colom v. Colom* (1979), 58 Ohio St.2d 245, syllabus. The right to enforce such orders "does not extend beyond the decree, unless they have been reduced to a separate judgment or they have been considered by the trial court and specifically referred to within the decree." *Id.* Consequently, where a divorce decree specifically states that a temporary order is not merged into the decree, the calculation and enforcement of any arrearages owed for temporary child support or spousal support is permitted. See *Rose v. Rose*, 5th Dist. No. 2008 CA 0065, 2009-Ohio-1479, ¶ 21; *Poiting v. Poiting*, 9th Dist. No. Civ.A. 22240, 2005-Ohio-2680.

{¶ 20} In this case, we note that on May 3, 2007, a magistrate's nunc pro tunc decision states that "the parties agree that no arrearages exist and the Lucas County Child Support Enforcement Agency shall adjust their records to reflect the same." After that time, however, until the final decree was issued in November 2009, the record does not reflect whether an arrearage for child support or spousal support had accrued. Therefore, even though no "testimony" may have been elicited to request such an order, we cannot

say that the trial court abused its discretion in preserving the parties' rights to examine that issue.

{¶ 21} Accordingly, appellant's third assignment of error is not well-taken.

III.

{¶ 22} We will address appellant's fourth and fifth assignments of error together.

Appellant first argues that the trial court abused its discretion in awarding spousal support for a 23 year marriage and second, failed to consider income available from assets awarded to appellee as spousal support.

{¶ 23} An appellate court reviews a trial court judgment awarding spousal support under an abuse of discretion standard. *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67; *Bowen v. Bowen* (1999), 132 Ohio App.3d 616, 626. The term abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 24} R.C. 3105.18(C)(1) provides:

{¶ 25} "In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors:

{¶ 26} "(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;

{¶ 27} "(b) The relative earning abilities of the parties;

{¶ 28} "(c) The ages and the physical, mental, and emotional conditions of the parties;

{¶ 29} "(d) The retirement benefits of the parties;

{¶ 30} "(e) The duration of the marriage;

{¶ 31} "(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;

{¶ 32} "(g) The standard of living of the parties established during the marriage

{¶ 33} "(h) The relative extent of education of the parties;

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

{¶ 35} "(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;

{¶ 36} "(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;

{¶ 37} "(l) The tax consequences, for each party, of an award of spousal support;

{¶ 38} "(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

{¶ 39} "(n) Any other factor that the court expressly finds to be relevant and equitable."

{¶ 40} "Even though a trial court has broad discretion in awarding spousal support, its determination of whether spousal support is 'appropriate and reasonable' the nature, amount, duration and terms of payment of spousal support is controlled by the factors in R.C. 3105.18(C)(1). *Schultz v. Schultz* (1996), 110 Ohio App.3d 715, 724 * * *; *Carmony v. Carmony*, 6th Dist. No. L-02-1354, 2004-Ohio-1035, at ¶ 10." *Crites v. Crites*, 6th Dist. Nos. WD-04-034 and WD-04-042, 2004-Ohio-6162, ¶ 26-27. Although a trial court need not enumerate each R.C. 3105.18(C)(1) factor, it must demonstrate that it considered all the "relevant factors." *Stockman v. Stockman* (Dec. 15, 2000), 6th Dist. No. L-00-1053.

{¶ 41} Additionally, when awarding spousal support, "the trial court's judgment must contain sufficient detail to enable a reviewing court to determine that the spousal support award is 'fair, equitable and in accordance with the law.'" *Crites*, supra, ¶ 27, quoting *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 97. See, also, *Schoren v. Schoren*, 6th Dist. No. H-04-019, 2005-Ohio-2102, ¶ 11.

{¶ 42} At the January 15, 2009 hearing, appellee requested \$4,600 per month in spousal support for ten years. In its June 29, 2009 judgment entry, the court noted that appellee is a 49-year-old woman, married to appellant for 23 years, with a college degree

and real estate license since 1998. The court imputed income to appellee at \$52,284, based upon her recent employment at a vocational school, even though she had chosen not to renew her contract there. We also note that appellee was designated as the residential parent of the remaining minor child who was 15 at the time of the decree.

{¶ 43} The court found that appellant is a 58-year-old man in good health, also with a college degree, working as a furniture manufacturer's sales representative. The court averaged appellant's documented yearly income totals from 2005, 2006, and 2007 to arrive at an income range of \$155,000 to \$160,000.

{¶ 44} The court then discussed the parties' upscale standard of living during the marriage, the real estate valued at over one million dollars, cash accounts of \$300,000 and retirement plans valued near \$600,000. The court further stated, "Based upon the income differential between the parties of approximately \$100,000, the length of the marriage, and the standard of living of the parties, the Court finds it is reasonable and appropriate to award [appellee] spousal support in the amount of \$3,000 per month for a period of nine years, beginning the date of trial."

{¶ 45} This award was \$1,600 less than appellee requested and still less than the temporary spousal award. Although there is no reference to each party's individual assets in making the spousal support award, those assets were specifically listed in the decree. Consequently, we conclude that the trial court sufficiently considered such assets and did not abuse its discretion in its determination of the amount and duration of spousal support.

{¶ 46} Accordingly, appellant's fourth and fifth assignments of error are not well-taken.

{¶ 47} The judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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