

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

Galen L. Chamberlin

Court of Appeals No. F-10-022

Appellant

Trial Court No. 08DV000194

v.

Joy M. Chamberlin

**DECISION AND JUDGMENT**

Appellee

Decided: April 22, 2011

\* \* \* \* \*

Jeffrey L. Robinson, for appellant.

Mark D. Wagoner, for appellee.

\* \* \* \* \*

HANDWORK, J.

{¶ 1} In this appeal from a judgment of the Fulton County Court of Common Pleas, Domestic Relations Division, appellant, Galen Chamberlin, asserts the following assignments of error:

{¶ 2} "The Court abused its discretion in not determining that the forging of the Appellant's name to a note and second mortgage to Thrivent Financial constituted financial misconduct.

{¶ 3} "The Court abused its discretion when determining spousal support by utilizing the appellant's gross income from all jobs as opposed to the gross income from his employment as an EMT.

{¶ 4} "The Court abused its discretion in requiring the Appellant to pay spousal support until he reached the age of sixty-five."

{¶ 5} Prior to addressing the merits of appellant's assignments of error, we must first address the fact that appellant failed to file a transcript of the proceedings before the magistrate when he filed objections to the magistrate's decision. Under Civ.R. 53(D)(3)(b)(iii), a party objecting to a magistrate's finding of fact, whether or not it is specifically designated as a finding of fact, shall support that objection with a "transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available." In the instant case, appellant failed to file a transcript or affidavit of evidence with his objections to the magistrate's finding of facts. Consequently, the trial court's review of the magistrate's decision was limited to an examination of the conclusions of law predicated on those facts. *Allread v. Allread*, 2d Dist. No. 2010-CA- 6, 2011-Ohio-1271, ¶ 18; *Sanders v. Wamco, Inc.*, 10th Dist. No. 10AP-548, 2011-Ohio-1336, ¶ 9.

{¶ 6} Moreover, if a party fails to comply with any of the provisions of Civ.R. 53(D)(3)(b), he or she, absent a claim of plain error, cannot assign as error on appeal the trial court's adoption of any of the magistrate's factual findings or legal conclusions. Civ.R. 53(D)(3)(b)(iv). In addition, due to the fact that the trial judge was not able to review a transcript of the proceedings before the magistrate this court is precluded from considering the transcript of those proceedings submitted on appeal. *Sanders v. Wamco, Inc.* at ¶ 10. (Citations omitted.) Accordingly, the facts set forth in this decision are derived from the filings in the court below and the "Magistrate's Decision."

{¶ 7} Appellant and appellee, Joy Chamberlin, were married on January 22, 1977, and have two adult daughters. Appellee, who was 50 years old at the time of the divorce, is employed at the Fulton County Health Center. She earned \$29,133 in 2009. At that time, Joy had \$1,301.88 in a retirement account and a SERS account valued at \$9,459.04.

{¶ 8} Appellant has three different jobs. He is a paramedic working for Mercy Health Partners. His salary from that position was \$62,372.26 in 2008 and approximately \$49,000 in 2009. This latter figure is based upon the fact that Mercy Health Partners no longer allowed appellant to work overtime. In 2008, appellant made \$628 working for the village of Archbold and, in 2009, earned \$1,453.54 working for that village. In 2008, appellant made almost \$9,000 in wages from the city of Wauseon. No figure was provided to the trial court as to earnings made by appellant from this job in 2009. At the time of the divorce, Galen had over \$70,000 in retirement accounts and a life insurance policy with a cash value of \$8,363.47. Galen purchased a motorcycle for \$3,500 in the

spring of either 2006 or 2007. When he sold it for \$3,200, he gave the money to appellee. In the spring of 2008, he purchased another motorcycle for approximately \$9,000. At the time of the divorce, he owed \$4,200 on the motorcycle and \$16,498 on a truck. The marital residence was valued at \$210,000, but had a mortgage of \$144,692.20.

{¶ 9} Joy managed the finances of the parties, and would complain about not having enough money, but would never allow Galen "to see the books." It was only after appellant filed for divorce that he received these financial records. He and Joy had financial problems in the past with credit card debt.

{¶ 10} Prior to their daughters' weddings in 2005 and 2007, appellant and appellee obtained a home equity loan in the amount of \$10,000 from First Federal Bank that was, according to Galen, "primarily used to pay for a fence around the parties' pool." In December 2007, Joy forged appellant's signature on a \$34,800 second mortgage on the marital residence with Thrivent Financial Bank ("Thrivent"). According to Joy, she used these funds to pay for the weddings of the parties' two daughters. She also asserted that some of these funds were used to eliminate some of the parties' credit card debt.

{¶ 11} Galen and Joy obtained another second mortgage in 2008 in the amount of \$56,000, which Joy averred was also used to pay credit card debt. Almost all of the parties' credit card debt was incurred by Joy, who also obtained \$6,385.86 by "borrowing against" a whole life insurance policy that was in Galen's name. Appellee also acquired a cash advance on one of her credit cards in the amount of \$8,187.64, which she claimed

was used to pay household bills during that period when appellant's work hours were "cut."

{¶ 12} In the summer of 2006, Galen told Joy "that it was his belief that their relationship had deteriorated significantly and that he was no longer attracted to her." In 2007, appellant told appellee "that he wanted out of the marriage and admitted to having had an affair." Appellant filed his complaint in divorce on December 2, 2008. He moved out of the marital residence in January 2009.

{¶ 13} Hearings on appellant's complaint were held before the magistrate on December 4, 2009, and January 15, 2010. The magistrate entered his decision on July 8, 2010. In that decision, he granted appellant's complaint for divorce on the ground of incompatibility. While noting that appellee obtained the \$34,800 loan from Thrivent by forging appellant's name on the loan document, the magistrate concluded that she and her witnesses demonstrated that this loan was "roughly the alleged cost of the weddings and the original home equity loan from First Federal Bank." The magistrate determined, however, that this did not justify the expenditures on other credit cards from the time of the Thrivent loan to the time, December 2008, when appellant and appellee obtained the \$56,000 second mortgage at First Federal Bank. He also found that Joy did not account for the \$6,385.86 taken from Galen's life insurance policy. Therefore, the magistrate found that Joy engaged in financial misconduct, and awarded appellant \$17,500 more in marital assets.

{¶ 14} As to spousal support, appellant argued that, because no individual should be required to work more than one job in order to pay spousal support, the trial court should consider only his employment as an emergency medical technician in determining the amount and duration of that support. The magistrate, however, in addressing each of the factors found in R.C. 3105.18(C)(1), determined that the nature of appellant's employment as an emergency medical technician allows "him the opportunity to sleep or rest during his shift depending on the circumstances." The magistrate further opined that, due to the shifts that they work, it is quite customary for persons employed as paramedics or full time firefighters "to have additional jobs because their principal employment allows them additional time to participate in additional employment." The magistrate also expressed an opinion that it would be difficult for appellant to argue that he was forced to obtain additional employment due to appellee's "spending habits" because appellant claimed he was unaware of the debt owed by the parties.

{¶ 15} Based upon the foregoing, the magistrate based his award of spousal support on appellant's 2009 income from Mercy Health Care Partners and from the 2008 income earned with the Wauseon Fire Department, for a total of \$57,000. He then turned to a consideration of the duration of support, holding:

{¶ 16} "As can be seen from the Findings of Fact, Defendant [appellee] does not have substantial retirement benefits and even after an equal division of the existing assets, she will still not have substantial retirement benefits. Presently, Defendant is approximately 50 1/2 years old and is approximately 16 years from being in a position of

receiving full Social Security benefits of which the Court received no evidence from either party. Plaintiff is approximately 54 1/2 years old and is most likely 12 years from receiving full Social Security benefits. The marriage in this matter \* \* \* is approximately 31 years."

{¶ 17} The magistrate then decreed that in consideration of all the evidence in this case, appellant was required to pay appellee \$600 per month in spousal support for 16 years beginning on November 1, 2010, or the first month after she vacates the marital residence. Appellant filed timely objections to the magistrate's decision in which he asserted that his request for an accounting was not directed at expenditures from the Thrivent loan. Rather, he argued that appellee failed to properly account for \$34,800 in credit card debt other than to say it was spent "on the weddings" or to account for the prior second mortgage of \$10,000 with First Federal Bank. Appellant argued that based upon the division of marital assets by the magistrate he would be required to refinance both the first and second mortgages on the marital residence; thus, his monthly payments would "consume the bulk of his paycheck." Appellant also objected to both the award and duration of spousal support. Nevertheless, as noted above, he failed to file a transcript of the proceedings held before the magistrate.

{¶ 18} The trial court entered its final judgment in this cause on September 30, 2010. Citing *Beaverson v. Beaverson*, 6th Dist. No. 2007-Ohio-3560 and Civ.R. 53(D)(3)(b)(iii), the trial judge found that due to appellant's failure to file a transcript, he was required to accept the magistrate's findings of fact, and could examine only the legal

conclusions based on those facts. Upon such review, the judge adopted the magistrate's decision, but reduced the duration of the spousal support award from 16 to 12 years.

{¶ 19} In his first assignment of error, appellant complains that the trial court abused its discretion in failing to find that appellee committed financial misconduct by forging his name on the \$34,800 note and mortgage. Appellant specifically challenges the magistrate's Finding of Fact No. 10, which discusses the amounts spent from the \$34,800 for his daughters' weddings. According to the magistrate, appellee accounted for all but \$477.93 of this money. Appellant argues, however, that the magistrate was required to "speculate" as to the actual amount of moneys spent upon these weddings because appellee could only estimate that each wedding cost \$15,000 or \$16,000.

{¶ 20} As stated previously, appellant failed to file either a transcript of the proceedings before the magistrate or an affidavit of that evidence; therefore, appellant cannot challenge any of the magistrate's findings of fact. Indeed, our review of this case is limited to a determination of whether the trial court abused its discretion in adopting the magistrate's legal conclusions. *State ex rel. Duncan v. Chippewa Twp. Trustees* (1995), 73 Ohio St.3d 728, 730; *Hensley v. Hensley*, 6th Dist. No. E-08-026, 2009-Ohio-1738, ¶ 6. Accordingly, appellant's first assignment of error is found not well-taken.

{¶ 21} In his second assignment of error, appellant argues that the trial court abused its discretion in adopting the magistrate's Conclusion of Law No. 3, which reads, in pertinent part:

{¶ 22} "That concerning issues of spousal support, and as noted above, this is approximately a 31 year marriage based upon the de facto termination date. During this marriage, the parties have lived a middle-class life style, and, at times in excess of their income. During the marriage [appellant] received the education necessary which even with reduced hours allows him to receive an income near \$50,000 a year from Mercy Health Partners and at the same time work for additional income. [Appellee] previously had a higher income, however, now works for the Fulton County Health Center earning approximately \$29,000 per year. There was no testimony indicating that she had more than a high school education, and has little likelihood of being able to increase her income.

{¶ 23} "[Appellant's] counsel argues that the Court should not look to [appellant's] additional income from his various other employments arguing that no person should be required to work more than one job. However, the nature of [appellant's] principal employment is such that he works 2-24 hour shifts one week and 3-24 hour shifts the next. This type of shift is quite customary for individuals who are employed as paramedics or full-time firefighters. It is further quite customary that these individuals have additional jobs as their principal employment allows them substantial time to participate in additional employment. Further, it is difficult for [appellant] to claim that he was forced to work these additional employments in order to pay for [appellee's] spending habits as he claimed to have been unaware of the parties' additional debt."

{¶ 24} Appellant contends that the trial court abused its discretion in adopting Conclusion of Law No. 3 because the magistrate erred by not applying *Pitzer v. Pitzer* (Oct. 22, 2001), 12th Dist. No. CA2000-01-004, and *McCoy v. McCoy* (Nov. 12, 1985), 10th Dist. No. 85AP-279, to this cause and basing the award of spousal support only upon the salary he receives as a paramedic for Mercy Health Partners. An abuse of discretion signifies that the trial court's decision on this issue was unreasonable, arbitrary, or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Consequently, to be deemed an abuse of discretion, "the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance of judgment, not the exercise of reason but instead passion or bias." *Nakoff v. Fairview Gen. Hosp.* (1996), 75 Ohio St.3d 254, 256.

{¶ 25} In both *Pitzer* and *McCoy*, each wife worked two jobs in order to earn barely enough income to pay her bills. In *McCoy*, the husband opted for an early retirement during the divorce proceedings, *id.* at 1, and, in *Pitzer*, the husband was voluntarily underemployed, *id.* at 2. The *McCoy* court ordered the husband to pay \$10 per month in "sustenance alimony," apparently for the purpose of retaining jurisdiction in the event that this figure needed to be modified at some point in the future. *Id.* at 6. As to *Pitzer*, the court, in ordering the husband to pay sustenance alimony, determined that the wife lacked the "potential to become self-supporting." *Id.* at 5. Neither of these cases

stand for the proposition posited by appellant, to wit, "a court need not consider a second job when considering the issue of spousal support."

{¶ 26} Moreover, in Conclusion of Law No. 3, the magistrate/court retains jurisdiction over both the amount and duration of the spousal support order.

Accordingly, we cannot say that the trial court's adoption of that conclusion, with an adjustment of the period of the spousal support order from 16 to 12 years, is arbitrary, unreasonable, or unconscionable. Appellant's second assignment of error is without merit.

{¶ 27} In his third and final assignment of error, appellant contends that the trial court abused its discretion in ordering him to pay spousal support until he is 65.

Actually, the trial judge ordered appellant to pay \$600 per month in spousal support for 12 years, or until he is 66 and one-half years old. In challenging the judge's support order, appellant again addresses the magistrate's factual findings. Thus, we are again only required to ascertain whether the trial court abused its discretion in adopting the magistrate's conclusion of law vis-à-vis the award of spousal support. Upon consideration of Conclusion of Law No. 3, as set forth infra, we cannot say that it is so palpably and grossly violative of fact or logic that it evidences a perversity of will, a defiance of judgment, or passion or bias. Accordingly, appellant's third assignment of error is without merit.

{¶ 28} On consideration whereof, this court finds that substantial justice was done the party complaining, and the judgment of the Fulton County Court of Common Pleas, Domestic Relations Divison, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

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.

Peter M. Handwork, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Thomas J. Osowik, P.J.  
CONCUR.

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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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