[Cite as *Miller v. Miller*, 2009-Ohio-3330.]

STATE OF OHIO, JEFFERSON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

DIANNE MILLER,	)	
	)	CASE NO. 08 JE 26
PLAINTIFF-APPELLANT/	)	
CROSS-APPELLEE,	)	
	)	
- VS -	)	O P I N I O N
	)	
KENNETH MILLER,	)	
	)	
DEFENDANT-APPELLEE/	)	
CROSS-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Common Pleas Court, Case No. 05DR279.
JUDGMENT:	Affirmed.
APPEARANCES:	
For Plaintiff-Appellant/ Cross-Appellee:	Attorney Francesca Carinci Suite 904-911, Sinclair Building Steubenville, Ohio 43952
For Defendant-Appellee/ Cross-Appellant:	Attorney Mary Corabi 424 Market Street Steubenville, Ohio 43952

JUDGES:
Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: June 29, 2009

VUKOVICH, P.J.

¶{1} Both plaintiff-appellant/cross-appellee Dianne Miller and defendant-appellee/ cross-appellant Kenneth Miller appeal from the final divorce decree that was entered in the Jefferson County Common Pleas Court. Dianne's appeal concerns the property division award and she raises multiple issues concerning the division. She argues that the magistrate and trial court erred when it determined that the marital residence was not her separate property in its entirety. Also concerning the residence, she contends that the magistrate and trial court should have provided a rationale as to why it chose to accept Kenneth's expert's valuation of the marital residence instead of hers. As well, she asserts it was error for the magistrate to consider two mortgages taken out on the property in determining whether the property was marital or separate property. She also argues the court erred in determining that Kenneth's truck was separate property and in determining that the pole barn was income producing. In addition to those contentions, she contends that the magistrate erred in some of its findings and the trial court by extension erred in adopting those findings over her objections, namely: the value of the pole building; the value of the Harley Davidson motorcycle acquired during the marriage; the determination that Kenneth added the proceeds of the sale of his house to the "marital pot"; and the finding that there was extensive landscaping done to the property and renovations to the attached garage.

¶{2} Kenneth's appeal concerns the trial court's award of spousal support. He contends that the trial court abused its discretion in awarding $500 for 30 months because Dianne does not need that amount.

¶{3} For the reasons expressed below, we find no merit with either parties' arguments; both appeals lack merit. As such, the judgment of the trial court is affirmed.

STATEMENT OF FACTS AND CASE

¶{4} Kenneth and Dianne were married June 11, 1993. After approximately 13 years of marriage, Dianne filed for divorce and sought spousal support. No children were born of the marriage, thus the only issues to be decided in the divorce proceedings were property division and spousal support. The matter was heard before a magistrate on March 26, 2007.

¶{5} At that hearing, the testimony revealed that at the time they married, Dianne owned the residence and real estate on Stewart Street in Steubenville, Ohio, free and clear without any debt. Kenneth owned another residence, but debt was attached to that residence. (Tr. 76, 158-159). The parties moved into Dianne's residence on Stewart Street (hereafter referred to as the Stewart Street property) and eventually Kenneth's residence was sold. (Tr. 76, 159).

¶{6} During the marriage, the parties built a 40X60 pole building on the Stewart Street property, which was financed primarily from a line of equity taken out on that property. (Tr. 137). This pole building was used mostly by Kenneth and his friends to build and/or restore cars. It fit 16 cars, the concrete floor was 12 inches thick, it had a paint room, was wired and had plumbing, there were three 8X8 storage lofts, it had a bathroom and bar, and a drive-on-lift was installed. (Tr. 166-169). In constructing this pole building, new septic tanks had to be installed and landscaping had to be done. (Tr. 170, 215).

¶{7} No improvements were made to the inside of the house at the Stewart Street property, but around the time the pole building was built some changes were made to the attached garage. For instance, windows, a service door and garage doors were installed. (Tr. 171, 173, 211). Also, the garage floor was redone and the driveway was updated and extended down to the pole building. (Tr. 172, 173).

¶{8} Each party had an expert testify as to whether the pole building added any value to the Stewart Street property. Dianne's expert testified using a comparative market analysis that the house was worth $135,000 and the pole building added only about $30,000 to the property and thus, according to him, the listing price for resale of the property would be $165,000. (Tr. 14, 15, 19). Kenneth's expert, on the other hand, did an appraisal and determined that with the pole building, the value of the property was $250,000 - $180,000 for the house and $70,000 for the pole building. (Tr. 55).

¶{9} Testimony was also provided as to a truck Kenneth purchased a couple months before Dianne filed the action for divorce. The truck cost $26,000 - $18,000 was loaned from a friend and $8,000 was taken from the home equity line of credit. (Tr. 95).

¶{10} There was also testimony concerning a blue Nova that was acquired during the marriage. However, shortly after the divorce action was filed, Kenneth

traded the Nova for a Harley Davidson Motorcycle and a paint job. (Tr. 99-100). Kenneth testified that the Harley was worth $8,000 to $10,000 and the paint job was valued at $3,000. (Tr. 180-181).

¶{11} In addition to testimony concerning property division, there was also testimony concerning spousal support. Dianne testified that she was asking for $400 per month for four years. (Tr. 111). Kenneth indicated that supposal support was not warranted.

¶{12} Following the hearing, on July 2, 2007, the magistrate issued its decision. Kenneth then filed a motion for clarification, which was granted and an amended decision was rendered on July 8, 2007. Thereafter, the trial court ordered the magistrate to submit a memorandum of law in support of the decision, which was done on January 11, 2008. In that decision, the magistrate divided the property, divided the debt and awarded spousal support.

¶{13} The magistrate found that at the time of the marriage the fair market value of the Stewart Street property was $53,000. It determined that Dianne's separate interest of $53,000 appreciated at a rate of 5% per year, which meant that by the time of the divorce her separate interest had appreciated in value to $99,939. It then used Kenneth's expert's appraisal for the value of the Stewart Street property at the time of the divorce which included the pole building as $250,000. It found that the appreciation from $99,939 to $250,000 was not passive and was marital. Thus, when Dianne's separate property of $99,939 was subtracted from the present day valuation, the magistrate found that $150,061 was subject to marital distribution. Dianne was awarded the Stewart Street property, which included the pole building, and it was found that the pole building could be income producing with a projected rental income of $6,000.

¶{14} It also found that Kenneth's truck acquired during the marriage was separate property as was the debt associated with it. It went on to indicate that the truck was Kenneth's separate asset and there was no marital benefit demonstrated at trial. As for the Harley Davidson motorcycle, the magistrate deemed it a martial asset and valued it at $10,500.

¶{15} The magistrate then computed the marital assets and debts and determined that in order to equalize the property division, Dianne was required to pay

Kenneth $22,242.53. Spousal support was considered next and Kenneth was then ordered to pay Dianne $500 per month for 30 months.

¶{16} Following the Magistrate's conclusions of law, both parties filed objections. Dianne filed nine objections which correspond directly with the first nine assignments of error raised in this appeal. The trial court only found merit with the objection concerning the valuation of the Harley Davidson. The trial court explained that the Harley Davidson should have been valued at $11,000, not $10,500. This was because the testimony established that the Harley's Davidson, valued at $8,000 to $10,000 and the paint job valued at $3,000 were traded for the Nova. Thus, Kenneth received $11,000 to $13,000 in exchange for the Nova. It assigned the $11,000 figure.

¶{17} Kenneth raised two objections – one as to spousal support and one as to the determination that the marital residence was not in its entirety marital property. The trial court found no merit with either objection.

¶{18} On August 19, 2008, the trial court entered the final divorce decree. The divorce was granted on grounds of incompatibility. The magistrate's findings and division of property were all adopted, except for the valuation of the Harley Davidson, which was changed from $10,500 to $11,000. Thus, instead of Dianne being ordered to pay Kenneth $22,242.53 to equalize the division of property, she was ordered to pay $21,992.53. The award of spousal support was upheld. Dianne and Kenneth both timely appeal from the trial court's judgment.

STANDARD OF REVIEW

¶{19} Prior to addressing Dianne's assignments of error, we note that the appropriate standard of review in a divorce proceeding is an abuse of discretion standard. *Cherry v. Cherry* (1981), 66 Ohio St.2d 348. An abuse of discretion connotes more than a mere error of judgment; it implies that the court's attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When applying this standard of review, we may not freely substitute our judgment for that of the trial court. *In re Jane Doe I* (1991), 57 Ohio St.3d 135, 137-138; *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169. Instead, we must view a property division in its entirety, consider the totality of the circumstances, and determine whether the trial court abused its discretion when dividing the parties' marital assets and liabilities. *Briganti v. Briganti* (1984), 9 Ohio St.3d 220, 222.

¶{20} However, "[w]hen the parties contest whether an asset is marital or separate property, the presumption is that the property is marital, unless proven otherwise. *Sanor v. Sanor,* 7th Dist. No. 01CO37, 2002-Ohio-5248, at ¶53. The burden of tracing separate property is upon the party claiming its existence. *DeLevie v. DeLevie* (1993), 86 Ohio App.3d 531, 536. An appellate court applies a manifest weight of the evidence standard of review to a trial court's designation of property as either marital or separate. *Barkley v. Barkley* (1997), 119 Ohio App.3d 155, 159. Therefore, the judgment of the trial court will not be disturbed upon appeal if supported by some competent, credible evidence. *Fletcher v. Fletcher,* 68 Ohio St.3d 464, 468, 1994-Ohio-0434." *Spier v. Spier*, 7th Dist. No. 05MA26, 2006-Ohio-1289, ¶38.

¶{21} With the above law in mind, the assignments of error are now addressed.

FIRST ASSIGNMENT OF ERROR

¶{22} "THE MAGISTRATE ERRED WHEN SHE FAILED TO FIND THAT THE MARITAL RESIDENCE IS THE SEPARATE PROPERTY OF APPELLANT/WIFE IN ITS ENTIRETY."

¶{23} The trial court determined that the Stewart Street property was owned by Dianne in 1993 when she and Kenneth got married and thus, was her separate property. It then stated that the value of the property in 1993 was $53,000 and determined from the testimony that the property appreciated at 5% per year. Therefore, at the time of the divorce her interest had appreciated to $99,939, which was her separate property. The court then accepted Kenneth's expert's testimony that at the time of the divorce the property had an appraised value of $250,000. Thus, from those numbers – the present value minus the appreciation of the separate property - it determined that the marital portion of the property was $150,061.

¶{24} There are two arguments that Dianne makes under this assignment of error. First and most central to this assignment of error, she argues that the trial court erred in determining that the Stewart Street property was not all separate property. Next, she argues the trial court abused its discretion by using the "lowball" figure of $53,000 as the value of the property in 1993 and using "highball" figure of $250,000 as the value of the property at the time of the divorce.

¶{25} R.C. 3105.171 governs marital and separate property. It states in pertinent part:

¶{26} “(3)(a) ‘Marital property’ means, subject to division (A)(3)(b) of this section, all of the following:

¶{27} "(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 of the spouses during the marriage;

¶{28} “(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;

¶{29} “(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;

¶{30} “* * *

¶{31} “(b) ‘Marital property’ does not include any separate property.

¶{32} “(4) ‘Passive income’ means income acquired other than as a result of the labor, monetary, or in-kind contribution of either spouse.

¶{33} “* * *

¶{34} “(6)(a) ‘Separate property’ means all real and personal property and any interest in real or personal property that is found by the court to be any of the following:

¶{35} “* * *

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

¶{37} “(iii) Passive income and appreciation acquired from separate property by one spouse during the marriage;

¶{38} “* * *

¶{39} “(b) The commingling of separate property with other property of any type does not destroy the identity of the separate property as separate property, except when the separate property is not traceable.” R.C. 3105.171.

¶{40} When looking at the definition of marital property and separate property, clearly the Stewart Street property at the time of the marriage was separate property. It is undisputed by the parties that Dianne owned that property prior to the marriage and that it was owned debt free.

¶{41} That said, while it is undisputed that during the marriage the parties did not make any improvements to the house on that property other than a new roof,

which was paid for by home owner's insurance, it is also clear that improvements were made to the attached garage and that the pole building was built on that property. Therefore, the improvements made to the property by the addition of the pole building and its improvements therein and improvements to the attached garage, suggest that a portion of the appreciation is marital.

¶{42} Both experts, although using different evaluation methods (which will also be discussed in the fourth assignment of error) testified about the value that the pole building added to the property. Dianne's expert, Mr. Gary Cain, stated that the suggested market price for resale at the time of the divorce was $165,000. (Tr. 14). He explained that the house was worth $135,000 and the pole building was worth $30,000. (Tr. 15). Although, he also testified that the pole building "somewhat" detracted from the price of the property, he still put a positive value on the building. (Tr. 13). Kenneth's expert, Mr. Dale Featheringham, appraised the property at $250,000 – the house being worth $180,000 and the pole building being valued at $70,000. (Tr. 55). Therefore, there is evidence from both experts that the pole building added value to the property.

¶{43} Likewise, there was testimony concerning the improvements that the building of the pole building added to the property. First off was the building itself, which was 40X60 and could fit 16 cars, had a concrete floor, had three lofts for storage, had a paint room, was wired and had plumbing (including a bathroom), had two heating systems and a phone system. (Tr. 166-172). Second, to build this pole building, the septic system for the property was updated by replacing the old tanks with new septic tanks, which cost approximately $20,000. (Tr. 215). Furthermore, landscaping had to be done; two trees were removed and 30 to 40 loads of crushed shale were hauled in. (Tr. 170). A driveway to the building was also done by improving and extending the then current driveway from the house. (Tr. 172). In order to do this, a dozer was used and 10 loads of slag were brought in. (Tr. 172).

¶{44} Dianne testified that the down payment for the pole building was paid for by the proceeds of the sale of real property (a farm that was subdivided) that was acquired by Dianne and Kenneth during the marriage. (Tr. 79). She explained that the remainder was financed by National City Bank by a loan and then by a line of equity on the Stewart Street property. (Tr. 79-80). Kenneth testified that while there

was a mortgage on the property, he contributed to the payment of that mortgage. (Tr. 226).

¶{45} In addition to the pole building adding value to the property, there was also testimony concerning the improvements that were made to the attached garage during the marriage. Kenneth stated that the improvements consisted of:

¶{46} "We put wiring in it and light and new concrete on the floor and put windows in it and two garage doors and an entry door because it was just a barn before." (Tr. 171).

¶{47} He explained that he and his stepfather poured and finished the concrete for the attached garage. (Tr. 172). He also explained that the garage did not have windows and he put those windows in. (Tr. 173). However, he admitted that the windows, garage doors and entry door that he put in were not new but rather used and were given to him by a friend. (Tr. 214). Dianne admitted that the windows, doors and concrete were an improvement to the attached garage. (Tr. 238).

¶{48} In addition to testimony concerning the improvements made to the property and its valuation at the time of the divorce, there was also testimony that property in Jefferson County appreciated at a rate of 3-5% per year and that the property in question was valued at $53,000 in 1993, at the time of the marriage (which will be discussed below). (Tr. 17).

¶{49} Consequently, considering the above, there was competent credible evidence presented at trial that a portion of the Stewart Street property was the separate property of Dianne. There was also competent credible evidence that a portion of that property was improved during the marriage by contributions from each party. It has been explained that "if the separate property of one spouse appreciates during the marriage due to the labor, monetary, or in-kind contribution of either spouse, the appreciation should be characterized as marital property. R.C. 3105.171(A)(3)(a)(iii). However, if the appreciation is attributable to a source outside their control, such as inflation or a change in fair market value, it should be characterized as separate property. *Roberts v. Roberts* (Feb. 18, 1993), Highland App. No. 92 CA 800." *Harrington v. Harrington*, 4th Dist. No. 08CA6, 2008-Ohio-6888, ¶12. See, also, *Murphy v. Murphy*, 4th Dist. No. 07CA35, 2008-Ohio-6699, ¶21 (explaining that the trial court abused its discretion when it did not find the value of the home at the beginning and end of the marriage and also noting that there was no

showing of how much the increased value of the residence was attributable to inflation and what was attributable to improvements); *Lynch v. Lynch*, 12 Dist. No. CA2008-02-028, 2008-Ohio-5837, ¶12-13 (stating that the trial court did not abuse its discretion in finding that the home was a mixed asset, both marital and separate, because there was testimony concerning appreciation due solely to improvements). Given that there was testimony that established the value of the property at the time of the marriage and at the time of the divorce, and that there was testimony as to how much the property appreciated, there was sufficient evidence to determine what portion of the property remained separate and what portion was marital. Consequently, we find no error in the trial court's determination that the Stewart Street property was a mixture of separate and marital property.

¶{50} Dianne's second argument under this assignment of error concerns the trial court's determination that the Stewart Street property was valued at $53,000 in 1993, (at the time of the marriage) and the use of Kenneth's expert's valuation of $250,000 for the value of the property at the time of the divorce.

¶{51} Starting with the $53,000 valuation at the time of the marriage, the only testimony concerning the value of the property at that time came from the Jefferson County's Chief Deputy Auditor, Lewis Piergallini. He testified that the taxable value of the property in 1993, was $18,550 and that is 35% of "whatever the true market would be at the time as based by the appraiser." (Tr. 68). He then concluded that that would mean the true market value in 1993 would have been $53,000. (Tr. 68). However, it was explained that the appraisal was done for tax purposes, not for purposes of divorce proceedings. (Tr. 69). Yet, it was also explained that tax value could also be used to determine market value. (Tr. 69).

¶{52} Neither party's expert, Mr. Cain or Mr. Featheringham, testified what the value of the property would have been in 1993. However, Mr. Cain, Dianne's expert, did testify as to the resale value of the house in 1999 as being $110,000. (Tr. 10). This would mean that in 1993, using a 5% per year appreciation rate, the house would have had a market resale value of approximately $82,000.

¶{53} Thus, the evidence presented at trial offers two different values for the property in 1993. As there is nothing in the record to show that one evaluation is more competent than the other, we cannot find the trial court abused its discretion by using

the $53,000 figure. The trial court and the magistrate were free to use either testimony as there was nothing to show one was more credible than the other.

¶{54} Similarly, the use of Mr. Featheringham's valuation of the property at the time of the divorce was not an abuse of discretion. The testimony revealed that the valuation done by Mr. Cain and Mr. Featheringham were different types of valuations. Mr. Cain's was a comparative market analysis, not an appraisal. (Tr. 19). From the testimony, it appears that with the comparative market analysis, Mr. Cain was looking at similar properties and seeing what they sold for and with that information he determined what the Stewart Street property would sell for. (Tr. 19-24). Thus, he was determining a fair market value; he stated that the suggested price for resale of the property was $165,000. (Tr. 24).

¶{55} Mr. Featheringham, on the other hand, did an appraisal of the property. He explained that there are three "approaches" in an appraisal – a cost approach, a market approach, and an income approach. (Tr. 51). In doing his appraisal, Mr. Featheringham only used the cost and market approach; he did not use the income approach because that approach is only used on income-producing property and this property was not an income-producing property. (Tr. 51-52). He appraised the house and the pole building separately; he used the cost approach for the building and the market approach for the house. (Tr. 52).

¶{56} In using the cost approach to determine the value of the pole building, he took the square footage of the building and multiplied it by a replacement cost dollar amount to get a total value and then depreciated that value based on the age and wear and tear of the building. (Tr. 52). The replacement cost dollar amount is taken from a standardized book for appraisals – Marshall and Swift. (Tr. 52). Using that approach he valued the pole building at $70,000.

¶{57} He then used the market approach to appraise the house by looking at comparables and adjustments. (Tr. 53). He then explained that the reason he appraised the pole building and the house separately was because there was nothing on the market comparable to the Stewart Street property; he could not find a comparable property that had both a similar pole building and a similar house. (Tr. 53). He also stated that to determine the value in that situation, it is appropriate to use both the cost and market approaches together. (Tr. 53).

¶{58} Dianne contends that the comparative market analysis, not an appraisal, was the most appropriate valuation method to use in this instance. She cites *Kevdzija v. Kevdzija*, 166 Ohio App.3d 276, 2006-Ohio-1723, to support her claim. *Kevdzija,* however, does not clearly support her position. The *Kevdzija* court explained that the Ohio Supreme Court has stated that the sale price of real property is the best evidence when the property is purchased in an arms length transaction. Id. at ¶24. Here, the property was not purchased in an arms length transaction. Dianne specifically testified that her ex-husband built the house in 1981 and she acquired the property in the dissolution of that marriage. (Tr. 76-78). Thus, there is no arms-length sale price, let alone a recent one, to go from as there was in *Kevdzija*. In fact, the *Kevdzija* case cited to the Ohio Supreme Court which stated that "when an actual sale is not available, 'an appraisal becomes necessary.'" Id. citing *Dublin Senior Community Ltd. Partnership v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 455, 459, quoting *Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412.

¶{59} Furthermore, nothing in the law clearly indicates that for the situation at hand, a comparable market analysis is the better valuation method to use instead of an appraisal or vice versa. Rather, case law provides that a trial court has some latitude in the means it uses to determine the value of a marital asset; it is neither required to use a particular valuation method nor precluded from using any method. *Kevdzija v. Kevdzija*, 166 Ohio App.3d 276, 2006-Ohio-1723, ¶23. Thus, we cannot conclude that the trial court abused its discretion in using the appraisal over the comparative market analysis valuation to determine the value of the property at the time of the divorce. In conclusion, using the $53,000 amount as the 1993 starting point and the $250,000 valuation of the property in 2005 did not amount to an abuse of discretion because the testimony supported both numbers. This assignment of error lacks merit.

SECOND ASSIGNMENT OF ERROR

¶{60} "THE MAGISTRATE ERRED WHEN SHE ACCEPTED APPELLEE/ HUSBAND'S VALUE OF THE POLE BUILDING AS $70,000."

¶{61} Dianne's argument under this assignment of error, in essence, goes to the credibility of the experts and her contention that the court should have believed the value her expert placed on the pole building over that of Kenneth's expert.

¶{62} Each expert, Mr. Cain and Mr. Featheringham, placed a total value for the Stewart Street property and then each expert divided that value between the pole building and the residence. As is discussed under the first assignment of error, Mr. Cain testified that he used a comparative market analysis to assess the value of the property. It is true that he did compare the pole building to a swimming pool and in doing so he explained that to some potential buyers a swimming pool adds value, but for others it does not either because they are not interested in using it/keeping it up or it is a liability to them due to their family situation (i.e. having small children). (Tr. 15). As stated earlier, he did testify that in his opinion it somewhat detracted from the price. However, out of the $165,000 valuation for the property, he stated that the pole building contributed $30,000 to that price.

¶{63} Mr. Featheringham testified he did a true appraisal and used both the market approach and the cost approach. As stated above, he explained why he used both – because he could not find a comparable house with a comparable pole building. The market approach was used on the house due to its age and because it was the best approach to use on the home. (Tr. 51, 53). The cost approach was used on the pole building because that was the only way he could figure out its value. (Tr. 51).

¶{64} Both parties discuss the credentials of their experts. The transcript reveals that both parties had previously been determined to be experts in this field before the trial court. Furthermore, the transcript reveals the credentials of both experts are impressive. From their credentials alone it cannot be said that one expert was more credible than the other.

¶{65} In all, the choice of which expert to believe was within the sound discretion of the trial court. Thus, we cannot conclude that the trial court abused its discretion in using Mr. Featheringham's valuation of the Stewart Street property, which included his valuation of the pole building.

¶{66} Dianne also states that "to illustrate the Magistrate's error, it is helpful to look at the value that each expert placed on the value of the pole building and compare it with the amount of marital property 'credit' that the Magistrate awarded to Appellee." Dianne is asking this court to take a piece meal look at the division of property award and then determine that the valuation given to the pole building was not fair. As stated above, we have to look at the award in its entirety, not just portions of it in isolation. *Briganti*, 9 Ohio St.3d at 222. When the award of assets and

allocation of debts are looked at in their entirety, it was an equal split. (This will also be discussed in the tenth assignment of error.) Kenneth's assets were approximately $88,600, which included his pensions and other personal property, but not the portion of the Stewart Street property that was marital. The debt assigned to him, which included a credit card and loans, was approximately $17,900. Dianne's assets, which included the martial portion of the Stewart Street property and other personal property, was approximately $152,000. The debt assigned to her, which included the home equity loan taken out during the marriage on the property and a credit card, was $37,954.94. When each parties' assigned debt is subtracted from their awarded assets, Dianne's award was approximately $114,000, while Kenneth's award was approximately $70,000. To equalize the amounts, the trial court ordered Dianne to pay Kenneth approximately $21,000. Thus, according to the trial court's computation, each parties' final total value was equal.

¶{67} As the distribution in its entirety was equal and we cannot find that the use of Mr. Featheringham's valuation was not supported by competent credible evidence, there is no merit with this assignment of error.

THIRD ASSIGNMENT OF ERROR

¶{68} "THE MAGISTRATE ERRED WHEN SHE DETERMINED THAT $27,000.00 FROM THE SALE OF APPELLEE/HUSBAND'S PREMARITAL RESIDENCE WAS ADDED TO THE MARITAL POT."

¶{69} Dianne argues that the magistrate/trial court's finding that the proceeds from the sale of Kenneth's premarital home was added to the "marital pot" was incorrect. She claims that Kenneth's testimony that the proceeds were added to the "marital pot" was an attempt to make it appear that he contributed to the Stewart Street property when he did not. Dianne also argues under this assignment of error that the trial court should have recognized that her separate property interest was not destroyed by the act of signing joint mortgages. The first argument is addressed in this assignment of error, however, the second argument is addressed in the sixth assignment of error where it was also raised.

¶{70} Regarding the "marital pot" argument, Kenneth testified at trial that he shared the proceeds of the sale of his premarital house, which he estimated around $26,000, but the court stated it was $27,000, with Dianne. (Tr. 159). He also testified that the money to pay for the concrete used on the outside of the attached garage that

led to the pole building was "probably" paid for by some of the money he took to the marriage. (Tr. 214). Dianne disputes that any of the money was shared with her. She contends that Kenneth was trying to use the alleged sharing of the $27,000 from the sale of his premarital residence as proof that he contributed to the Stewart Street property. Thus, it is a credibility question for the trial court to determine; it was free to believe either party and given the evidence we should not second guess that decision.

¶{71} Regardless of whether or not Kenneth's testimony was believable as to putting the $27,000 into the marital pot, monetary support is not the only way to contribute to a residence, labor can also contribute. R.C. 3105.171(A)(3)(a)(iii). As will be discussed in depth further under the fifth and sixth assignments of error, there was testimony that Kenneth did contribute in labor to improving the Stewart Street property by working on the landscaping that was necessary to build the pole building and by making improvements to the attached garage. Furthermore, there was testimony that Kenneth paid money to the loans/home equity line of credit taken out on the Stewart Street property, which was used to build the pole building and improve the septic system. As is also discussed later, while the contribution of payments toward an existing mortgage does not convert separate property into marital property, improvements to property made with jointly borrowed funds become marital assets. *Welsh-Pojman v. Pojman*, 3d Dist. No. 3-03-12, 2003-Ohio-6708, ¶13-14. Thus, even if he did not monetarily contribute by putting the proceeds of the sale of his premarital residence into the "marital pot," he contributed by paying the mortgages/loans that were used to improve the property and he also performed work to the property which was also a contribution. This assignment of error lacks merit.

FOURTH ASSIGNMENT OF ERROR

¶{72} "THE MAGISTRATE ERRED WHEN SHE ADOPTED THE RESIDENCE AND POLE BUILDING APPRAISAL FIGURES OFFERED BY DEFENDANT'S EXPERT, WITHOUT PROVIDING ANY RATIONALE FOR DOING SO."

¶{73} Dianne argues that the magistrate and the trial court erred when it used Kenneth's expert's valuation of the residence without providing any rationale for doing so. According to Dianne, because there were discrepancies between the two valuations, the court was required to state its reasons for adopting one.

¶{74} This argument is not well founded. As stated above, a trial court has some latitude in the means it uses to determine the value of a marital asset. *Kevdzija*,

166 Ohio App.3d 276, 2006-Ohio-1723, ¶23. That said, a court may not simply adopt an intermediate figure without a supporting rationale when the parties present substantially different valuations of an asset. Id., citing *Patterson v. Patterson* (Dec. 14, 1998), 4th Dist. No. 97CA654. Thus, when there is an intermediate figure adopted by the trial court, then rationale must be provided. But, that is not what happened here. Instead, the magistrate chose the valuation of one of the experts.

¶{75} Dianne does cite two cases for the proposition that the magistrate was required to support its decision to adopt Kenneth's expert's valuation. The first case, *Rodriquez v. Rodriquez* (Apr. 13, 1990), 11th Dist. No. 89-G-1498, is distinguishable because the trial court in that instance did not adopt one party's valuation over the other; rather, it chose an intermediate figure. The Eleventh District stated in that instance that rationale must be provided for why the intermediate figure was chosen.

¶{76} The second case she cites is *Willis v. Willis* (May 16, 1997), 11th Dist. No. 96-T-5549. In *Willis*, at trial appellant introduced an appraisal of the residence ($41,500), while appellee offered her own testimony as to what houses were selling for in the area ($50,000 to $85,000). At the end of the hearing, appellee moved to strike appellant's appraisal report and indicated that her own appraisal would be submitted within 10 days to the court. The trial court did not admit appellant's appraisal but stated that it would hold it for future use if needed. Appellee then submitted its appraisal report for the residence that indicated that the residence was worth $60,000. The trial court used the $60,000 figure from appellee's appraisal. The appellate court, in ruling on whether that was the appropriate figure to use, stated:

¶{77} "We do not, however, endorse the trial court's post-hearing conduct regarding appellant's appraisal. At the hearing, the court granted appellee's attorney's motion to strike appellant's appraisal testimony from the record. Further, the court did not admit appellant's appraisal into evidence, but stated that it would be held for later use, if needed. Technically, appellant's appraisal had been denied admission into evidence. Notwithstanding that contradiction, the trial court failed to honor its statement that the parties would be reconvened if the appraisals conflicted, since it is clear that they did.

¶{78} "* * *

¶{79} "In *Kaechele v. Kaechele* (1988) 35 Ohio St.3d 93, paragraph two of the syllabus, (superseded by statute on other grounds as stated in *Barber v. Barber* [July

28, 1992], Ross App. No. 1804, unreported, 1992 WL 188492), the Supreme Court of Ohio held:

¶{80} "'2. In allocating property between the parties to a divorce and in making an award of sustenance alimony, the trial court must indicate the basis for its award in sufficient detail to enable a reviewing court to determine that the award is fair, equitable and in accordance with the law.'

¶{81} "* * *

¶{82} "In the case *sub judice,* the court's factual findings and legal conclusions regarding the marital residence, standing alone, are inadequate. The judgment entry does not explicitly recite the underlying reasons for the value the court placed on the property. We believe that the court was required to explain its choice of appellee's appraisal figure, particularly in light of the conflicting evidence. See *Banning v. Banning* (June 28, 1996), Greene App. No. 95 CA 79, unreported, at 2, 1996 WL 354930. The *Kaechele* rule was not satisfied here because the court failed to articulate the basis for the real property valuation in sufficient detail to enable this court to determine that the award is equitable. Although logic would indicate that the existence of comparables made appellee's appraisal more convincing than appellant's, such an inference is speculation on our part." Id.

¶{83} The *Willis* case does not clearly support Dianne's position. First, *Willis* is factually different from the case at hand. In *Willis* there was not a hearing on the appraisals after they were filed despite the fact that the trial court indicated there would be. That fact was relied heavily on by the appellate court in reversing the trial court's decision. However, that is not an issue in the case at hand. Second, the *Kaechele* case cited by the *Willis* court does not explicitly state that when choosing between two expert's valuations the court must provide the rationale for using that one. Rather, it merely indicates that there must be sufficient detail so that this court can review the award to determine if it is equitable. Here, after looking at the trial court judgment and the magistrate's decision, there is sufficient detail for us to review whether the trial court/magistrate erred in using Mr. Featheringham's appraisal over Mr. Cain's comparative market analysis. For all the above reasons, there is no merit with this assignment of error.

FIFTH ASSIGNMENT OF ERROR

¶{84} "THE MAGISTRATE ERRED WHEN SHE DECLARED THAT THERE HAD BEEN 'EXTENSIVE LANDSCAPING TO THE REAL ESTATE AND THAT THE ORIGINAL GARAGE AT THE MARITAL RESIDENCE WAS RENOVATED'."

¶{85} Dianne argues that the magistrate and the trial court's statement that the parties did extensive landscaping to the property was not supported by the evidence and that there was no evidence that Kenneth increased the value of the house from $53,000 to $180,000.

¶{86} Testimony at trial indicated that there was landscaping done to the property. Admittedly that landscaping was done to build the pole building. (Tr. 170). Kenneth testified that before the pole building was built, in its place was a leaking leach bed. Thus, in order to build the pole building, the septic system had to be moved and landscaping had to be done. The landscaping included removing two trees and hauling in 30 to 40 loads of crushed shale. (Tr. 170). Also, additional landscaping was done to have the driveway updated and extended to the pole building. Kenneth testified that a dozer had to come in and they hauled in ten loads of slag. (Tr. 172). Thus, there was testimony as to landscaping.

¶{87} Furthermore, while this landscaping was done in part to accomplish the building of the pole building, the testimony shows that Kenneth contributed to that landscaping. Kenneth specifically indicated that he participated in hauling and leveling the shale that was brought in for the landscaping. (Tr. 170). Moreover, this landscaping that he contributed to was to improve the existing leaking septic system, thus, common sense indicates that a non-leaking septic system would add some value to the property.

¶{88} Likewise, Kenneth also offered testimony that he contributed to the improvements made to the garage attached to the house. He and his stepfather installed the concrete in that garage. (Tr. 172).

¶{89} Dianne claims that Kenneth admitted that the money for the concrete for the attached garage was paid for by the equity line and that he could not remember whether any of the money came from him. These claims do not appear to be supported by the testimony. The statement that the money for the concrete came from the equity line was concerning the cost of the concrete, $6,200, in the pole building. (Tr. 167-168, 212). It is not concerning the concrete that was put in the attached

garage. Also, concerning whether or not he remembered whether any of the money for the concrete for the attached garage came from him, the testimony is as follows:

¶{90} "Q. Okay. Is it true that Susie [Dianne] paid for the concrete that was going to have to be put down in order for this garage to be built?

¶{91} "A. Where at?

¶{92} "Q. Whatever concrete had to be laid as part – to – to connect the old garage or that old house with this new building.

¶{93} "A. No, I don't remember that. That's probably some of the money that I took over with me." (Tr. 214).

¶{94} From this excerpt is appears that Dianne's counsel and Kenneth are discussing the concrete that was laid outside the attached garage to connect it to the pole building. Furthermore, there is an indication that it may have been paid for by money that he brought with him to the marriage.

¶{95} Regardless, the evidence that Kenneth and his stepfather laid the concrete in the attached garage is undisputed. His labor in doing that work is a contribution; money is not the only means to contribute to the improvement to the property. R.C. 3105.171(A)(3)(a)(iii).

¶{96} Additionally, Kenneth installed the windows, and doors (service and garage) on the attached garage. (Tr. 213-214). Admittedly, neither the windows nor the doors were new and were given to him by friends, but that does not detract from the labor of installing those. In fact, the attached garage did not have windows in it until Kenneth installed them. (Tr. 173). Thus, like above, though he may not have contributed monetarily to improve the attached garage, he did contribute through labor.

¶{97} Furthermore, Dianne admitted that the concrete, doors and windows were an improvement.

¶{98} "Q. Do you agree –

¶{99} "* * *

¶{100} "Q. – that the concrete, the garage – and the garage doors and the windows were an improvement to the garage that you had?

¶{101} "A. Yeah cause it was just an old – it's not much of anything now.

¶{102} "Q. But it looks better than it did?

¶{103} "A. Yes, uh-huh." (Tr. 238).

¶{104} Moreover, even if the attached garage did not add value to the property, clearly the pole building and the improvements associated with it (septic system and driveway) did add value (since both Mr. Cain and Featheringham attached a positive value to it in determining the valuation of the entire property). Admittedly the pole building and improvements associated with it were financed in 1999 through National City Bank by a loan or mortgage that eventually was changed to a home equity line that was taken out on the Stewart Street property. As aforementioned, Kenneth testified that any time there was a mortgage on the property he contributed to the mortgage. (Tr. 226). The Third Appellate District has explained that the contribution of payments toward an existing mortgage does not convert separate property into marital property, however, goods purchased or improvements made with jointly borrowed funds become marital assets. *Welsh-Pojman*, 3d Dist. No. 3-03-12, 2003-Ohio-6708, ¶13-14.

¶{105} Thus, despite Dianne's claim that there is no evidence that Kenneth increased the value of the Stewart Street property, there is ample evidence in the transcript that he did. This assignment of error lacks merit.

SIXTH ASSIGNMENT OF ERROR

¶{106} "THE MAGISTRATE ERRED WHEN SHE CONSIDERED MORTGAGES ALLEGEDLY TAKEN OUT IN 1994 AND 1996 FOR PURPOSES OF CONVERTING APPELLANT/WIFE'S SEPARATE PROPERTY INTO MARITAL PROPERTY. NEITHER OF THESE DOCUMENTS WAS PROVIDED IN DISCOVERY, BOTH WERE OBJECTED TO, AND NEITHER OF THEM WAS ADMITTED INTO EVIDENCE. THE MAGISTRATE SHOULD NOT HAVE CONSIDERED THEM FOR ANY REASON WHATSOEVER."

¶{107} In the one paragraph argument under this assignment of error, it appears Dianne is arguing that the magistrate and trial court considered the mortgages taken out on the property in 1994 and 1996 to convert the Stewart Street property into marital property or making a portion of that property marital property.

¶{108} First, the Stewart Street property was not converted into marital property. While a portion of that property was deemed to be marital due to the improvements that were made during the marriage, parts of that property remained separate property. Second, in determining which portion was marital and which was

separate, the court did not consider the 1994 or 1996 mortgages. While those mortgages were mentioned, there is no indication in the judgment entry that they contributed to the determination that improvements were made to the property and that those improvements were marital. The improvements were deemed to have value based on the experts' testimony. The only loan used to determine marital property was the one taken to build the pole building, improve septic system and driveway, i.e. the 1999 loan/mortgage from National City Bank that was eventually turned into a line of credit and that was used for additional marital purchases. As explained above, that loan was permitted to be considered because it was used to purchase marital goods and was used to make improvements to the property. As such, there is no merit with this assignment of error.

SEVENTH ASSIGNMENT OF ERROR

¶{109} "THE MAGISTRATE ERRED IN AWARDING APPELLEE/HUSBAND HIS 2001 TRUCK, AS A SEPARATE ASSET WHEN IT IS A MARITAL ASSET AND ERRED IN ALLOWING HIM TO PAY HIS DEBT IN MONTHLY INSTALLMENTS."

¶{110} Dianne complains that the trial court/magistrate erred when it determined that her vehicle, a 1995 GMC Jimmy, was marital property, while Kenneth's 2001 Ford F350 truck was his own separate property.

¶{111} The testimony at trial revealed that Dianne's 1995 GMC Jimmy was purchased during the marriage, sometime before 1999. (Tr. 132, 185). Kenneth's 2001 Ford F350 truck was purchased for $26,000 in September 1995, during their separation. (Tr. 95, 185). Both Kenneth and Dianne testified that in order to purchase the truck, Kenneth took out a loan on his own for $18,000 from a friend and then took the remaining $8,000 from the home equity line of credit. (Tr. 95-96, 184-185). Kenneth additionally stated that he stilled owed $20,000 on the truck and its trade-in value would be between $18,000 and $20,000. (Tr. 185).

¶{112} The magistrate found, and the trial court agreed, that the truck along with its debt was Kenneth's separate property. The court stated:

¶{113} "The debt of $18,000.00, owed to a friend of Defendant, Kenneth Miller, and $8,000.00 of the National City Bank loan is the separate debt of Defendant. The 2001 truck with a value of $22,000.00 is the separate asset of Defendant. There was no marital benefit demonstrated at trial. The truck was purchased during the separation of the parties, close in time within the filing of this action." 08/19/08 J.E.

¶{114} It is undisputed that the truck was purchased during the marriage, but while they were separated. The presumption is that property acquired during the marriage is marital unless evidence is offered to rebut that presumption. *Putman v. Putman*, 12th Dist. No. CA2008-03-029, 2009-Ohio-97, ¶22, citing *Singh v. Singh,* 11th Dist. No. CA2002-08-080, 2003-Ohio-2372, ¶6. Property acquired after separation can be deemed separate property if it is proven by clear and convincing evidence to have been acquired from non-marital funds. *Comella v. Comella*, 8th Dist. No. 90969, 2008-Ohio-6673, ¶41.

¶{115} The truck was partially acquired with marital funds. While Kenneth took out a personal loan for $18,000, he also took $8,000 from the home equity line, which was marital funds. Dianne explained why it was done this way.

¶{116} "Q. And how much does it indicate that he paid down on the truck?

¶{117} "A. He borrowed 18 on his own and then the 8 we borrowed against the equity loan. That's the 8.

¶{118} "Q. Okay. So, he had a loan somewhere that was –

¶{119} "A. A separate one and that was as much as he could get at the time and he needed the other 8. So, I said, you know, we'll do it that way." (Tr. 96-97).

¶{120} Thus, from all the evidence, possibly the truck should have been deemed marital property, not separate property. However, we cannot find that the trial court abused its discretion in finding it separate property. If it would have been marital property, the debt attached to it would have also been marital. Since the undisputed evidence showed that the truck was worth as much as was owed on it, if that property was divided equally and half the value of the truck was awarded to Dianne and half the debt associated with the truck was also awarded to her, she would gain nothing. Thus, the trial court did not abuse its discretion.

¶{121} Also under this assignment of error, Dianne argues the trial court and the magistrate were prejudiced against her and abused their discretion in ordering her to pay Kenneth his marital share of $21,992.53 within six months, but allowing Kenneth to repay the $8,000 owed on the equity line that he took out to purchase the Ford F350 truck by making payments of $300 until it is paid off.

¶{122} Typically a marital share is always ordered to be paid off within so many months of the decree. There is no case law indicating that ordering payments to be made in such a way is an abuse of discretion. As to the payment of the $8,000 for the

equity line in $300 increments, this is like a car payment. The trial court could have ordered that amount to be paid within so many months of the decree, however, it is not an abuse of discretion for the trial court to order the repayment in the manner it did. In all, this assignment of error lacks merit.

EIGHTH ASSIGNMENT OF ERROR

¶{123} "THE MAGISTRATE ERRED IN DETERMINING THAT THE POLE BARN BUILDING WAS AN INCOME PRODUCING ASSET WITH RENTAL PROJECTION OF $6,000.00 PER YEAR ONCE PLAINTIFF OBTAINS A TENANT FOR PURPOSES OF DETERMINING SPOUSAL SUPPORT."

¶{124} Under this assignment of error, the trial court and magistrate determined that the pole building was an income producing asset. Dianne contends that this finding was an abuse of discretion and the trial court/magistrate abused its discretion in reducing her spousal support on the basis that it is an income producing asset. It appears from reading Kenneth's brief that he agrees that the pole building is not an income producing asset.

¶{125} Testimony at trial was offered to show that the pole building could not be separated from the residence. Mr. Cain testified that the pole building could not be separated from the residence. In order to separate it, the utilities would have to be separated from the house including the septic system, which would be a substantial cost. (Tr. 12-13, 43). Furthermore, he indicated that he was unsure of whether the Planning Commission would even let the property be separated. (Tr. 12-13). Kenneth and Dianne also testified that the building was never intended to be rented out; it was intended only for private use and all the utilities are shared with the residence, including the septic system. (Tr. 138, 173).

¶{126} Despite the above, Mr. Cain testified that the Stewart Street property could be rented out as a storage facility that would produce an estimated $500 a month in rent for a total of $6,000 a year. (Tr. 41-42). Mr. Cain, in stating this, was explaining that he used that potential income to come up with the $30,000 value he placed on the building. (Tr. 41-42). Mr. Featheringham did not look at the income that the building could produce because it was not currently being used in that manner. (Tr. 52). Both experts, when discussing income, were discussing it in reference to how they each determined the value that the pole building had in conjunction with the residence.

¶{127} Thus, there was testimony that the building could produce income. Consequently, the magistrate and trial court did not abuse its discretion in finding as such since there was testimony as to what income it could produce if rented out for storage.

¶{128} Regardless, even if the finding that it was income producing was in error, nothing in the magistrate's or trial court's decision indicates that it reduced the amount of spousal support based on the potential of income that could be seen from the pole building. The trial court does state with Dianne's income and the rental income and the spousal support, she has enough cash to meet her living expenses. 08/19/08 J.E. The trial court, in ruling on the objection to the magistrate's decision on this issue, stated that if the projected income of the pole building was removed from the calculations Dianne would still have "sufficient income when coupled with the spousal support to meet her expenses." 07/02/08 J.E.

¶{129} In using the projected income to determine how much Dianne would have to meet her living expenses, the trial court stated that Dianne was receiving 46% of the total cash while Kenneth was receiving 54%. If her amount is decreased by the $6,000 a year projected rental income, she would receive approximately 40% of the total cash while Kenneth would receive 60%. When reviewing an award of spousal support, an appellate court will not reverse the trial court's award absent an abuse of discretion. *Faller v. Faller*, 7th Dist. No. 07MA216, 2008-Ohio-6638, ¶48, citing *Blakemore,* 5 Ohio St.3d at 219. Even if the $6,000 in projected income is removed, the forty/sixty split is not arbitrary, unreasonable or unconscionable. See *Dunham v. Dunham*, 171 Ohio App.3d 147, 2007-Ohio-1167, ¶82 (indicating forty-two fifty-eight split not unreasonable). There is no requirement that a trial court equalize the incomes of the parties after a divorce. *Ridgeway v. Ridgeway,* 7th Dist. No. 05HA570, 2005-Ohio-6444, at ¶32. This assignment of error is meritless.

NINTH ASSIGNMENT OF ERROR

¶{130} "THE MAGISTRATE ERRED IN ASSIGNING VALUES TO THE 1932 FORD COUPE AND THE HARLEY DAVIDSON MOTORCYCLE."

¶{131} Under this assignment of error, Dianne finds fault with the valuation assigned to the 1932 Ford Coupe and the Harley Davidson Motorcycle. Starting with the 1932 Ford Coupe, the magistrate valued it at $20,000 and the trial court, over objection, accepted that value. Testimony at trial indicated that it was purchased

during the marriage for $27,000, however, at the time of the divorce it was determined that this car was only worth $20,000. There was also testimony that old cars like the 1932 Ford Coupe normally appreciate, not depreciate in value. (Tr. 101).

¶{132} Kenneth testified that he had been buying and selling cars since he was 16 and that he has even built cars and, as a result, he was familiar with the value of cars. (Tr. 164-165). He then went on to discuss the value of the 1932 Ford Coupe. He indicated that he bought the car in 2002 or 2003 and paid $27,000 for it. (Tr. 182). The condition of the car was then discussed. He explained that not only had he drove the car a lot, but that it was in need of a paint job, the interior needed to be fixed, and it needed to have fenders put on it. (Tr. 183). He avowed that if he were to sell the car in that condition it would sell for around $20,000. Given this testimony, the trial court did not abuse its discretion in valuing the car at $20,000.

¶{133} Dianne then discusses the valuation of the Harley Davidson Motorcycle. The magistrate originally valued the motorcycle at $10,500. Dianne objected to this valuation and the trial court found merit with the objection. It explained that Kenneth testified that the motorcycle was valued somewhere between $8,000 and $10,000 and that in addition to that value he received a paint job worth $3,000. Thus, it determined that the magistrate should have valued the Harley Davidson Motorcycle at $11,000 and accordingly changed the value to $11,000 for purposes of computing assets and debts. 07/02/08 J.E.

¶{134} That decision is supported by the testimony. Kenneth testified that just before the divorce action was filed he traded a blue Nova for the motorcycle that was worth $8,000 to $11,000 and a paint job that was worth $3,000. (Tr. 179, 180, 181). Thus, the value of the motorcycle would be somewhere between $11,000 to $13,000. Admittedly, the trial court did choose the lower valuation of $11,000 rather than the higher valuation of $13,000. However, as the testimony would support either finding, it cannot be concluded that the trial court abused its discretion in assigning the lower value. This assignment of error lacks merit.

TENTH ASSIGNMENT OF ERROR

¶{135} "FINDINGS OF THE COURT WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND SHOULD BE REVERSED."

¶{136} Dianne argues the entire award was against the manifest weight of the evidence. In reviewing a manifest weight argument in the domestic context, the

judgment of the trial court will not be disturbed upon appeal if supported by some competent, credible evidence. *Fletcher,* 68 Ohio St.3d at 468, 1994-Ohio-0434.

¶{137} Here, her arguments are merely an extension of the already discussed nine other assignments of error. Thus, for that reason expressed in the above assignments of error, there was competent credible evidence to support the trial court's conclusion regarding the value and division of property. Therefore, there is no merit with this assignment of error.

CROSS-ASSIGNMENT OF ERROR

¶{138} "THE COURT ABUSED ITS DISCRETION IN THE AMOUNT AND DURATION OF SPOUSAL SUPPORT."

¶{139} Kenneth's argument under this assignment of error is that there is "no need" for spousal support because Dianne has enough income without spousal support to meet her monthly expense and she is self-supporting. When reviewing an award of spousal support, an appellate court will not reverse the trial court's award absent an abuse of discretion. *Faller*, 7th Dist. No. 07MA216, 2008-Ohio-6638, ¶48, citing *Blakemore,* 5 Ohio St.3d at 219.

¶{140} At trial, Dianne requested spousal support of $400 for four years, the magistrate awarded 30 months of spousal support at $500 a month. 07/06/07 Magistrate's Amended Decision; 01/11/08 Magistrate's Conclusions of Law. Kenneth filed an objection to that determination and the trial court overruled the objection finding that the magistrate considered all relevant factors in R.C. 3109.18. 07/02/08 J.E.

¶{141} R.C. 3109.18(C)(1) states that in considering whether spousal support is appropriate and reasonable and in determining the amount and duration of the support, the trial court shall consider: (1) the parties' income, "from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;" (2) the earning abilities of the parties; (3) "the ages and physical, mental, and emotional conditions of the parties;" (4) the parties' retirement benefits; (5) the length of the marriage; (6) if the parties have children, whether it would be inappropriate for the custodian to seek employment outside the home; (7) the parties' standard of living that was established

during the marriage; (8) each parties' education; (9) each parties' assets and liabilities, "including but not limited to any court-ordered payments by the parties;" (10) each parties' contribution to the education, training, or earning ability of the other party; (11) if sought, the time and expense for the spouse who is seeking support to acquire education, training, or job experience so that that spouse will be qualified to obtain appropriate employment; (12) "the tax consequences, for each party, of an award of spousal support;" (13) lost income of either party that resulted from that party's marital responsibilities; and (14) "any other factor that the court expressly finds to be relevant and equitable." R.C. 3105.18(C)(1)(a)-(n).

¶{142} Although the trial court must consider these factors, the failure to "'specifically enumerate' those factors does not constitute reversible error." *Schalk,* 2008-Ohio-829, ¶ 28 quoting *Lee v. Lee,* 3d Dist. No. 17-01-05, 2001-Ohio-2245. However, it must make findings that enable a reviewing court to determine the reasonableness of the award of spousal support and that the relevant factors were considered. *Lee,* citing *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 96-97. See, also, *McClung v. McClung,* 10th Dist. No. 03AP-156, 2004-Ohio-240, ¶21.

¶{143} It is clear from the magistrate's decision that it considered the factors in R.C. 3105.18(C)(1), as did the trial court when awarding spousal support. It considered that the marriage was 13 years in duration, that no children resulted from the union, each party was healthy, that each party worked during the marriage, that Dianne was 54 years old had an associate's degree in accounting and made $24,960 a year and that Kenneth was 57 years old, had a high school diploma and made $19.765 per hour with overtime opportunities (in 2005 he made $60,906.04 and in 2003 he made $47,850). It also considered the property division award, the income that the pole building could produce, that there was no evidence regarding their lifestyle and the tax consequences for each party.

¶{144} Kenneth's argument is premised largely on his conclusion that the spousal support award is not needed because Dianne can meet her monthly expenses without it. "We have repeatedly held that, 'need is but one factor among many that the trial court may consider in awarding reasonable spousal support.' *Waller v. Waller,* 163 Ohio App.3d 303, 2005-Ohio-4891, ¶63; *Kennedy v. Kennedy,* 7th Dist. No. 03 CO 37, 2004-Ohio-6798, ¶14." *Hiscox v. Hiscox*, 7th Dist. No. 07CO7, 2008-Ohio-5209, ¶36.

¶{145} Considering all the factors and that need is only one factor that **may** be considered, the record supports the reasonableness of granting spousal support of $500 for thirty months. While with the spousal support she may have more than what is needed for her monthly budget, that does not render the award an abuse of discretion.

¶{146} In the last paragraph of this assignment of error, Kenneth makes an argument that the award is an abuse of discretion because Dianne requested $400 per month for four years, but was awarded $500 per month for 30 months. How this makes the award an abuse of discretion is not comprehensible. Dianne's request of $400 per month for four years (overall $19,200) is a request for more spousal support than the $500 per month for 30 months (overall $15,000) that was awarded. Thus, she received less than she requested. This assignment of error lacks merit.

¶{147} In conclusion, there is no merit with either Dianne's or Kenneth's assignments of error.

¶{148} For the foregoing reasons, the judgment of the trial court is hereby affirmed.

Donofrio, J., concurs.
DeGenaro, J., concurs.