

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MARK W. LOWMAN

C.A. No. 31669

Appellant

v.

KATHLEEN A. NELLIGAN

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DR-2020-11-2832

Appellee

DECISION AND JOURNAL ENTRY

Dated: August 19, 2026

SUTTON, Judge.

{¶1} Plaintiff-Appellant Mark W. Lowman appeals the judgment of the Summit County Court of Common Pleas, Domestic Relations Division. For the reasons that follow, this Court affirms in part and reverses in part.

I.

Relevant Background Information

{¶2} Mr. Lowman and Defendant-Appellee Kathleen A Nelligan were married on October 15, 1988. After a legal separation, Mr. Lowman filed a complaint for divorce and the marriage was terminated by a decree of divorce on November 9, 2021. The decree incorporated the parties’ separation agreement which had been entered into by the parties in 2016, in connection with their legal separation. In the divorce decree, Mr. Lowman was ordered to pay Ms. Nelligan \$6,250.00 per month in spousal support and the trial court expressly reserved jurisdiction over the duration, termination, and amount of spousal support pursuant to the parties’ separation agreement.

The separation agreement also provided, “[Mr. Lowman’s] retirement shall constitute a change of circumstances” for purposes of modifying or terminating spousal support.

{¶3} On December 28, 2021, Mr. Lowman moved to modify or terminate his spousal support obligation on the basis of his retirement. That same month, Mr. Lowman also stopped paying his spousal support obligation to Ms. Nelligan. On November 17, 2022, a hearing on Mr. Lowman’s motion was held before a magistrate. The facts are largely undisputed. Ms. Nelligan suffers from a traumatic brain injury. Her medical condition, expenses, assets, and liabilities had remained the same since the decree of divorce was entered. Mr. Lowman’s circumstances, however, had changed. Specifically, his income was substantially less than when he had signed the separation agreement in 2016. The separation agreement, which set forth Mr. Lowman’s \$6,250.00 spousal support obligation, was incorporated into the 2021 divorce decree.

{¶4} In a July 5, 2023 magistrate’s decision, the magistrate terminated Mr. Lowman’s spousal support obligation. Ms. Nelligan filed objections to the magistrate’s decision. The trial court sustained Ms. Nelligan’s objection concerning the termination of spousal support, finding that a modification of spousal support rather than termination was appropriate. The trial court then modified Mr. Lowman’s monthly spousal support obligation from \$6,250.00 to \$2,000.00 retroactive to December 28, 2021, the date Mr. Lowman filed his motion to modify or terminate spousal support. In doing so, the trial court took into consideration that Mr. Lowman’s income was still substantially higher than Ms. Nelligan’s, that Mr. Lowman receives monthly social security, pension, and annuity payments totaling \$4,721.00, and Ms. Nelligan receives a pension in the amount of \$592.00 per month. The trial court also took into consideration Mr. Lowman’s substantially reduced income, from over \$150,000.00 per year when spousal support was originally calculated, to \$56,652.00 per year. The trial court also stated that Ms. Nelligan suffered from a

traumatic brain injury that prevents her from being employed. The record also shows that Ms. Nelligan is unable to work as a result of her brain injury and historically did not work outside of the home during the marriage. Citing the substantial difference that still exists between the parties' incomes, the trial court found spousal support was still appropriate, especially given the length of the parties' marriage. The trial court further stated, "[t]he [c]ourt shall retain jurisdiction to modify the amount of spousal support but NOT the duration of spousal support[,] and [s]pousal support shall terminate upon the death of either party or the remarriage of [Ms. Nelligan]." (Emphasis in original).

{¶5} Mr. Lowman has appealed, raising four assignments of error for our review. We have grouped some assignments of error to facilitate our analysis.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED BY SUSTAINING [MS. NELLIGAN'S] OBJECTION AND MODIFYING, RATHER THAN TERMINATING, SPOUSAL SUPPORT, DESPITE FINDING NO ERROR OF LAW IN THE MAGISTRATE'S DECISION, ACKNOWLEDGING THE MAGISTRATE'S JURISDICTION, AND RECOGNIZING THE PARTIES' STIPULATED CHANGE OF CIRCUMSTANCES.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ABUSED ITS DISCRETION AND ACTED CONTRARY TO R.C. 3105.18 AND CIV.R. 53(D)(4)(d) BY SUSTAINING [MS. NELLIGAN'S] OBJECTION AND MODIFYING, RATHER THAN TERMINATING, SPOUSAL SUPPORT WITHOUT COMPETENT EVIDENCE OR PROPER CONSIDERATION OF THE PARTIES' ASSETS AND [MS. NELLIGAN'S] NEED.

{¶6} In his first and third assignments of error, Mr. Lowman argues the trial court abused its discretion by sustaining Ms. Nelligan's objection to the magistrate's decision when it modified rather than terminated his spousal support obligation. "This Court reviews a trial court's action

with respect to a magistrate’s decision for an abuse of discretion. In so doing, we consider the trial court’s action with reference to the nature of the underlying matter.” (Internal citations omitted.) *Foster v. Foster*, 2010-Ohio-4655, ¶ 6 (9th Dist.). An abuse of discretion means more than an error of judgment; it implies that the trial court’s attitude was arbitrary, unconscionable, or unreasonable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Moreover, it is well settled that the trial court is vested with broad discretion over matters of spousal support. *Poitingner v. Poitingner*, 2005-Ohio-2680, ¶ 7 (9th Dist.). “This Court reviews a trial court’s award of spousal support under an abuse of discretion standard.” *Doubler v. Doubler*, 2023-Ohio-393, ¶ 14 (9th Dist.).

{¶7} The material facts here do not appear to be in dispute. The parties agreed that Mr. Lowman’s retirement would constitute a change of circumstances for purposes of modifying spousal support. Section 5.03 of the separation agreement provides:

[s]aid spousal support obligation shall be **modifiable** and the [c]ourt **shall** retain jurisdiction over the issue of spousal support (duration, termination, and amount). Husband’s retirement shall constitute a change of circumstances.

(Emphasis in original). R.C. 3105.18(E) provides in relevant part:

if a continuing order for periodic payments of money as spousal support is entered in a divorce or dissolution of marriage action that is determined on or after January 1, 1991, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony or spousal support unless the court determines that the circumstances of either party have changed and unless one of the following applies:

(1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support.

{¶8} Mr. Lowman’s income has changed, but Ms. Nelligan’s physical condition, income, assets, and debts have remained the same since the date of the divorce decree. The parties did not agree in their separation agreement that Mr. Lowman’s spousal support obligation would

terminate upon his retirement. They agreed that his retirement constituted a change of circumstances, which allowed the trial court to consider whether terminating or modifying spousal support was appropriate and reasonable, and to determine the nature, amount, terms of payment, and duration of spousal support. *See* R.C. 3105.18(C)(1).

{¶9} To determine whether continued spousal support is appropriate and reasonable, the trial court must consider the factors set forth in R.C. 3105.18(C)(1). Here, the trial court stated in its decision on Ms. Nelligan’s objections to the magistrate’s decision that it took into consideration the terms of the separation agreement, the findings of the magistrate, the testimony of the parties, and the factors set forth in R.C. 3105.18, which provides in relevant part:

(C)(1) 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:

- (a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;
- (b) The relative earning abilities of the parties;
- (c) The ages and the physical, mental, and emotional conditions of the parties;
- (d) The retirement benefits of the parties;
- (e) The duration of the marriage;
- ...
- (g) The standard of living of the parties established during the marriage;
- (h) The relative extent of education of the parties;
- (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

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

...

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

...

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

While the trial court's consideration of each of the factors set forth in R.C. 3105.18(C)(1) is mandatory, "[t]he trial court is not required to comment on each statutory factor; rather, the record must only show that the court considered the statutory factors when making its award." *Choi v. Choi*, 2018-Ohio-725, ¶ 9 (9th Dist.), quoting *Manos v. Manos*, 2015-Ohio-2932, ¶ 13 (9th Dist.).

{¶10} Here, the trial court stated it considered the statutory factors and discussed some of the factors relevant to the parties' current circumstances when modifying Mr. Lowman's spousal support obligation rather than terminating it. These factors included the parties' incomes, assets, and Ms. Nelligan's brain injury. The trial court also took into consideration Mr. Lowman's substantially reduced income after his retirement and the still substantial difference in the relative incomes of the parties. The record also shows that Mr. Lowman is older than Ms. Nelligan by approximately 11 ½ years, that Ms. Nelligan is not yet age-eligible for social security retirement benefits, and Mr. Lowman is no longer providing her health insurance.

{¶11} Mr. Lowman also argues the trial court abused its discretion by sustaining Ms. Nelligan's objection without finding that the magistrate committed an error of fact or law. However, when the trial court reviewed the magistrate's decision to terminate spousal support together with the statutory factors, the trial court found that a modification, not termination, was

appropriate. Inherent within the trial court's decision is a determination that the magistrate did not properly consider the relevant statutory factors and therefore committed an error.

{¶12} We have reviewed the record in this matter, including the testimony and exhibits admitted at the November 17, 2022 hearing on Mr. Lowman's motion to modify or terminate spousal support, and we cannot say the trial court abused its discretion in sustaining Ms. Nelligan's objection to the magistrate's decision concerning the termination of spousal support nor can we say the trial court abused its discretion in modifying Mr. Lowman's spousal support obligation to \$2,000.00 per month instead of terminating his spousal support obligation altogether.

{¶13} Accordingly, Mr. Lowman's first and third assignments of error are overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY MAKING ITS MODIFICATION OF SPOUSAL SUPPORT RETROACTIVE TO DECEMBER 28, 2021, THEREBY CREATING APPROXIMATELY \$88,000 IN ARREARS WITHOUT ANY FINDING OF ABILITY TO PAY OR BASIS FOR RETROACTIVITY.

{¶14} In his second assignment of error, Mr. Lowman argues the trial court abused its discretion in making its modification of spousal support retroactive to December 28, 2021, and creating a \$88,000.00 arrearage amount. The magistrate found, "[Mr. Lowman] stopped paying his monthly spousal support of \$6,250.00 [in] December 2021." Mr. Lowman did not object to this finding and does not appear to dispute this fact. Thus, the arrearage was created by Mr. Lowman's failure to pay spousal support as ordered. The arrearage would have actually been more had the trial court not lowered Mr. Lowman's monthly spousal support payment to \$2,000.00 instead of the \$6,250.00 originally ordered.

{¶15} Nevertheless, Mr. Lowman argues the trial court was required to make an explicit "ability-to-pay" finding before determining that Mr. Lowman owed an \$88,000.00 arrearage and

cites our case *Johns v. Johns*, 2009-Ohio-5798 (9th Dist.) in support of this argument. In *Johns*, the “ability-to-pay” issue was addressed in the context of whether the appellant was in contempt for failing to pay his spousal support obligation. *Id.* at ¶ 17. We determined in that case the trial court did not err in finding the appellant in contempt because the appellant’s defense of “impossibility to pay” was without merit. *Id.* at ¶ 19. The case before us does not involve a contempt finding. Therefore, Mr. Lowman’s reliance on *Johns* for this argument is misplaced.

{¶16} Mr. Lowman also argues that the trial court did not make the findings required for modification of spousal support and therefore the \$88,000.00 arrearage must be vacated and cites *Johns* and *Mandelbaum v. Mandelbaum*, 2009-Ohio-1222, in support of this argument. Those cases concerned whether the trial court could modify spousal support in the absence of findings pursuant to *R.C. 3105.18(F)* that a substantial change in circumstances had occurred and the change was not contemplated by the parties at the time of the divorce decree. *Mandelbaum* at paragraph two of the syllabus, *Johns* at ¶ 9-10. Those findings are not at issue in this case. Rather, Mr. Lowman’s arguments here concern the factors set forth in *R.C. 3105.18(C)(1)*. We have determined in our resolution of Mr. Lowman’s first and third assignments of error that the record supports that the trial court considered the required factors pursuant to *R.C. 3105.18(C)* when it modified Mr. Lowman’s spousal support obligation. Therefore, the calculation of the \$88,000.00 arrearage amount is not in error.

{¶17} Accordingly, Mr. Lowman’s second assignment of error is overruled.

ASSIGNMENT OF ERROR IV

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION AND ERRED BY UNILATERALLY ALTERING THE JURISDICTIONAL RESERVATION OF THE PARTIES’ DECREE, EFFECTIVELY ELIMINATING THE COURT’S AUTHORITY TO TERMINATE SPOUSAL SUPPORT CONTRARY TO THE EXPRESS TERMS OF THE SEPARATION AGREEMENT AND R.C. 3105.18(E).

{¶18} In his fourth assignment of error, Mr. Lowman argues the trial court erred by altering the parties' express jurisdictional reservation in the separation agreement. The parties had agreed pursuant to Section 5.3 of their separation agreement that the trial court retained jurisdiction over the duration, termination, and amount of spousal support, but the trial court changed that reservation of jurisdiction to the amount of spousal support, but not the duration. At oral argument, counsel for Ms. Nelligan conceded that the trial court erred in altering the jurisdictional reservation to which the parties had agreed.

{¶19} Accordingly, Mr. Lowman's fourth assignment of error is sustained.

III.

{¶20} For the forgoing reasons, Mr. Lowman's first, second, and third assignments of error are overruled. Mr. Lowman's fourth assignment of error is sustained. The judgment of the Summit County Court of Common Pleas, Domestic Relations Division, is affirmed in part, reversed in part, and remanded for proceedings consistent with this decision.

Judgment affirmed in part,
reversed in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period

for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

BETTY SUTTON
FOR THE COURT

FLAGG LANZINGER, P. J.
HENSAL, J.
CONCUR.

APPEARANCES:

NICHOLAS KLYMENKO, Attorney at Law, for Appellant.

CAROLYN MARKS, Attorney at Law, for Appellee.