

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
MADISON COUNTY

MELISSA K. RUBLE, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2010-09-019  
 :  
 - vs - : OPINION  
 : 7/5/2011  
 :  
 JAMES V. RUBLE, :  
 :  
 Defendant-Appellant. :

CIVIL APPEAL FROM MADISON COUNTY COURT OF COMMON PLEAS,  
DOMESTIC RELATIONS DIVISION  
Case No. DRA 20090017

Timothy R. Stonecipher, 18 East First Street, London, Ohio 43140, for plaintiff-appellee

James V. Ruble, 8020 Morgan Road, West Jefferson, Ohio 43162, defendant-appellant,  
pro se

**POWELL, P.J.**

{¶1} Defendant-appellant, James V. Ruble ("Husband"), appeals the judgment of the Madison County Court of Common Pleas relating to his divorce from plaintiff-appellee, Melissa K. Ruble ("Wife"), and custody of the parties' minor children.

{¶2} The parties were married on September 26, 1998 and had two children together, A.R., born April 11, 2003, and K.R., born February 17, 2005. On February 3,

2009, Wife filed a complaint for divorce. The matter proceeded to a final hearing before a magistrate on March 4, 2010.

{¶13} On June 16, 2010, the magistrate issued a decision that: (1) determined Husband's annual income was \$65,000 and Wife's annual income was \$50,000; (2) ordered Husband to pay \$753.34 per month in child support; (3) designated Wife as the residential parent and granted Husband standard visitation rights; (4) awarded Wife title to the parties' marital home located at 679 Brookdale Drive, West Jefferson, Ohio; (5) determined the Brookdale residence was worth \$110,000; (6) determined Husband's equity in the Brookdale residence was \$10,280; (7) awarded Husband a \$3,000 credit to "offset" the disparity in the parties' household goods; (8) awarded Husband \$13,280 for purposes of property settlement; and (9) awarded Wife one-half of Husband's State Teachers Retirement ("STRS") fund from the date of Husband's employment until the date of the magistrate's decision.

{¶14} Both parties filed objections to the magistrate's decision. The trial court overruled Husband's objections and modified the magistrate's decision as follows. First, the trial court increased Husband's child support payments to \$963.34 per month. The trial court also sustained Wife's objection to Husband's \$3,000 household goods credit upon finding the record lacked evidence of values to support the credit. Lastly, the trial court reaffirmed Wife's status as residential parent pursuant to a finding that Husband engaged in domestic violence against Wife and "excessive discipline" against the minor children.

{¶15} On September 9, 2010, the trial court issued its final judgment of divorce.

{¶16} Husband now appeals, raising seven assignments of error.

{¶17} Assignment of Error No. 1:

{¶18} "THE TRIAL COURT ERRED BY [DENYING] APPELLANT'S MOTION FOR

FULL CUSTODY OF THE CHILDREN."

{¶9} In his first assignment of error, Husband challenges the trial court's decision designating Wife as the residential parent. Specifically, Husband argues: (1) he can provide stable accommodations for the children at his parents' residence; (2) Wife, not Husband, has a documented history of domestic violence and disruptive behavior; and (3) Husband obtained employment that coincides with the children's school schedule, which would facilitate visitation.

{¶10} An appellate court reviews a court's custody determination for an abuse of discretion. *In re L.E.N.*, Clinton App. No. CA2010-11-019, 2011-Ohio-1722, ¶10. An abuse of discretion constitutes more than an error of law or judgment; it requires a finding that the trial court acted unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. "The discretion which a trial court enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned." *L.E.N.* at ¶10; *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74.

{¶11} R.C. 3109.04 governs the award of parental rights and responsibilities. In making this determination, the primary concern is the best interest of the child. *Stan v. Stan*, Preble App. No. CA2003-01-001, 2003-Ohio-5540, ¶9. The trial court considers all relevant factors, including but not limited to those enumerated in R.C. 3109.04(F)(1).

{¶12} Although the trial court did not mention the statute in its decision, the parties presented evidence implicating a number of factors the trial court needed to consider under R.C. 3109.04(F)(1).

{¶13} First, the court heard evidence regarding the children's interaction and interrelationship with their parents and other persons who may significantly affect their best interest. R.C. 3109.04(F)(1)(c). Specifically, Wife testified Husband engaged in

domestic violence against her and "excessive discipline" against the children. Wife testified to two specific incidents of domestic violence, but indicated the violence occurred throughout the marriage. During the first incident, Wife testified Husband slammed her against a sofa, at which time their son, A.R., appeared and referred to the incident as the time Husband put "Mommy \* \* \* in a time-out." During the second incident, Wife was pregnant and riding in the parties' vehicle when Husband repeatedly accelerated and "slam[med] on the brakes" in the middle of the road to scream at her. Pursuant to these incidents, Wife expressed concern that Husband would direct this anger towards the children in the future. Regarding Husband's behavior with the children, Wife testified A.R. once indicated Husband hit him and "knocked [his] tooth loose" during a church ceremony. Moreover, Wife testified Husband threatened to "smack" the children.

{¶14} Conversely, Husband argued Wife lacked proof of domestic violence where he "had never been handcuffed" or charged for these incidents. Instead, Husband claimed Wife had a history of violent and disruptive behavior that required him to obtain a restraining order. Husband also testified to "a couple of instances where the children [were] \* \* \* left alone with [Wife] where the children had gotten hurt." Specifically, Husband testified A.R. cut his thumb with scissors and fell out of his crib under Wife's care.

{¶15} However, it was within the province of the trial court to believe Wife's testimony over Husband's in this matter. See *In re A.B.*, Butler App. No. CA2009-10-257, 2010-Ohio-2823, ¶21 ("[a] reviewing court must keep in mind that the trial court is better equipped to examine and weigh the evidence, determine the credibility, attitude and demeanor of witnesses, and make decisions concerning custody"); *Myers v. Garson*, 66 Ohio St.3d 610, 614, 1993-Ohio-9 ("[w]here the decision in a case turns upon credibility of testimony, and where there exists competent and credible evidence supporting the

findings and conclusions of the trial court, deference to such findings and conclusions must be given by the reviewing court").

{¶16} Next, the trial court heard evidence regarding the children's adjustment to their home, school, and community. R.C. 3109.04(F)(1)(d). Specifically, Wife testified she was the children's primary caregiver and legal custodian during the parties' separation and the divorce proceedings. Wife also testified that at all times during the parties' separation, she raised the children in the Brookdale residence. The court also heard evidence that Husband lacked a permanent residence and instead lived between three friends' homes. Moreover, Husband admitted he was unable to purchase a permanent residence until the court awarded him an equity share in the Brookdale residence. In the absence of an equity award, Husband testified he would move into his parents' residence.

{¶17} Lastly, the trial court heard evidence regarding the parent more likely to honor and facilitate visitation. R.C. 3109.04(F)(1)(f). Specifically, Wife testified Husband exercised less than half of his visitation time during the parties' separation. Wife also testified Husband recently prohibited his own parents from seeing the children, despite Wife's willingness to permit the interaction. Additionally, Husband testified his financial situation was "bad to say the least," and he was unable to afford reliable transportation for the children at that time.

{¶18} Having thoroughly reviewed the record before us, we conclude there is evidence that satisfies the relevant R.C. 3109.04(F)(1) factors. Further, it was the role of the trial court to determine the relative weight to assign each factor, in relation to the others, when determining the children's best interest. See, e.g., *Sheppard v. Brown*, Clark App. No. 2007 CA 43, 2008-Ohio-203, ¶47. Although Husband maintains placing the children in Wife's care creates a danger for their health and safety, there is evidence to support the trial court's findings to the contrary. Because the trial court's decision was

supported by competent, credible evidence, we conclude the trial court did not abuse its discretion in designating Wife as the residential parent and legal custodian of the parties' minor children.

{¶19} Accordingly, Husband's first assignment of error is overruled.

{¶20} Assignment of Error No. 2:

{¶21} "THE TRIAL COURT ERRED BY RULLING [sic] IN FAVOR OF THE APPELLEE INDICATING DOMESTIC VIOLANCE [sic]."

{¶22} In his second assignment of error, Husband argues the trial court erred in finding he engaged in "domestic violence against [Wife] and used excessive discipline in a church event directed at [A.R.]"

{¶23} As previously discussed, "[w]here the decision in a case turns upon credibility of testimony, and where there exists competent and credible evidence supporting the findings and conclusions of the trial court, deference to such findings and conclusions must be given by the reviewing court." *Garson*, 66 Ohio St.3d at 614. Thus, we find it was within the province of the trial court to believe Wife's testimony over Husband's regarding his alleged domestic violence and excessive discipline. See *id.* Because the trial court's findings were supported by competent, credible evidence, we find no error in the court's finding on this matter.

{¶24} Moreover, we note the trial court did not find Husband *guilty* of domestic violence or excessive discipline, but rather found the evidence supported relevant factors under R.C. 3109.04(F)(1), namely the children's interaction and interrelationship with their parents, and possibly the mental and physical health of all persons involved in the situation. R.C. 3109.04(F)(1)(c), (e).

{¶25} Accordingly, Husband's second assignment of error is overruled.

{¶26} Assignment of Error No. 3:

{¶27} "THE TRIAL COURT ERRED BY AWARDING HALF OF THE DEFENDANTS [sic] STRS TO THE PLAINTIFF HAS NO BASIS IN THE RECORD."

{¶28} Assignment of Error No. 4:

{¶29} "THE TRIAL COURT ERRED BY AWARDING THE WHOLE AMMOUNT [sic] RECEIVED BY THE SALE OF THE 4695 GOODSON HOUSE TO THE APPELLEE."

{¶30} As Husband's third and fourth assignments of error relate to the distribution of the parties' marital property, we will address them together.

{¶31} As an initial matter, property division in a divorce proceeding is a two-step process that is subject to two different standards of review. *Renz v. Renz*, Clermont App. No. CA2010-05-034, 2011-Ohio-1634, ¶13. Initially, pursuant to R.C. 3105.171(B), "the court shall \* \* \* determine what constitutes marital property and what constitutes separate property." A trial court's classification of property as marital or separate must be supported by the manifest weight of the evidence, and an appellate court will not reverse the trial court's classification if it is supported by competent and credible evidence. *Id.*

{¶32} After classifying the assets as marital or separate property, "the court shall disburse a spouse's separate property to that spouse" and divide the marital property equally, unless the court finds an equal division would be inequitable. *Id.* at ¶14; R.C. 3105.171(C)(1); R.C. 3105.171(D). The trial court is given broad discretion in determining what constitutes an equitable division of property and will not be reversed absent an abuse of that discretion. *Renz*, 2011-Ohio-1634 at ¶14. As previously discussed, an abuse of discretion requires a finding that the trial court acted unreasonably, arbitrarily or unconscionably. *Blakemore*, 5 Ohio St.3d at 219.

{¶33} First, Husband argues the trial court erroneously awarded Wife a one-half interest in his STRS pension fund. Specifically, Husband contends his "continual investments made to the fund \* \* \* should not be considered a marital asset." However,

Husband misunderstands the effect of the trial court's decision in this matter.

{¶34} In the case at bar, the parties presented limited evidence regarding Husband's STRS fund. While neither party testified to the value of the STRS fund, Husband indicated he began his employment associated with the STRS fund during the marriage in 2007. Accordingly, the STRS fund accrued between the date of Husband's initial employment and the date of the divorce decree was clearly "marital" property subject to division pursuant to R.C. 3105.171(A)(3)(a)(i). See, also, *Erb v. Erb* (1996), 75 Ohio St.3d 18, 20 ("[p]ension or retirement benefits accumulated during the course of a marriage are marital assets subject to property division in a divorce action"). In the case at bar, it appears the trial court divided only the *marital* portion of the STRS fund pursuant to the standard coverture fraction. See, e.g., *Waldon v. Waldon*, Butler App. No. CA2003-05-117, 2004-Ohio-1714. Where Husband failed to present evidence to the contrary, we cannot say the court's decision to divide the STRS fund in this manner resulted in an inequitable distribution of marital property.

{¶35} Secondly, Husband argues the trial court erroneously applied proceeds from the sale of the parties' second home located at 4695 Goodson Road toward mortgages on the Brookdale residence. Husband argues because both parties contributed funds to build the Goodson residence, the amount should be divided equally between the parties.

{¶36} Before addressing Husband's argument, it is necessary to provide additional background on this matter. In 1998, the parties moved into their first marital residence located at 679 Brookdale Drive. However, in 2007, the parties built a new home on Goodson Road. To finance the Goodson residence, the parties placed a second mortgage on the Brookdale residence. While living in the Goodson residence, the parties procured renters who agreed to lease the Brookdale residence with an option to purchase. However, when the Goodson residence was sold pursuant to an action in

foreclosure, the parties terminated the lease agreement. As a result, the renters filed suit, seeking return of the rent portion Husband promised to retain and apply toward the purchase price of the home.

{¶37} When Husband failed to answer the complaint, the renters obtained a default judgment, at which time they received a portion of the proceeds from the Goodson residence sale as payment for their lost rent. As Wife points out, Husband's default clearly reduced the monies applicable to the parties' debts, including the mortgages on the Brookdale residence.

{¶38} As previously stated, a trial court is given broad discretion in determining what constitutes an equitable division of property and will not be reversed absent an abuse of that discretion. *Renz*, 2011-Ohio-1634 at ¶14.

{¶39} We find that in applying the proceeds from the Goodson residence sale in this manner, the trial court sought to reduce and disentangle the parties' finances to the maximum extent possible. In fashioning its award, it is evident the court considered the default judgment against Husband and its effect on the parties' finances.

{¶40} Given the totality of the circumstances and the minimal value of the equity in dispute, we cannot say the trial court abused its discretion in applying the Goodson proceeds toward the significant debt on the Brookdale residence.

{¶41} Accordingly, Husband's third and fourth assignments of error are overruled.

{¶42} Assignment of Error No. 5:

{¶43} "THE TRIAL COURT ERRED BY ACCEPTING THE NEW CHILD SUPPORT FIGURES WITHOUT ALLOWING THE APPELLANT THE ABILITY TO CROSS EXAMIN [sic] THE AMMOUNTS [sic]."

{¶44} In his fifth assignment of error, Husband argues the trial court increased his child support obligation based on "extraneous, unverified information [that] \* \* \* was not

testified to during the hearing." In essence, Husband argues the trial court did not properly verify Wife's annual employment income prior to calculating Husband's child support obligation. See R.C. 3119.05(A).

{¶45} Our review of the record indicates Husband has not properly preserved this issue for appeal. As previously noted, the magistrate issued his decision on June 16, 2010 and Husband subsequently filed his objections. Husband specifically objected to the following: (1) Wife's designation as residential parent; (2) the division of Husband's STRS fund; (3) the application of the Goodson proceeds toward the Brookdale mortgages; and (4) the decision awarding Husband \$13,280, payable within six years.

{¶46} Notably absent is the issue Husband now asserts on appeal. As such, we find Husband waived the issue when he failed to file a specific written objection to the magistrate's decision. See Civ.R. 53(D)(3)(b)(ii), (iv). Accordingly, Husband waived the opportunity to present his argument before this court.

{¶47} Husband cannot escape the consequences of failing to properly object to additional errors below. While we recognize Husband acted pro se when he filed his objections to the magistrate's decision, Husband was still required to comply with the civil rules. "Pro se litigants are expected, as attorneys are, to abide by the relevant rules of procedure and substantive laws, regardless of their familiarity with them." *Bamba v. Derkson*, Warren App. No. CA2006-10-125, 2007-Ohio-5192, ¶14 (addressing party's failure to object to a conclusion of law or finding of fact issued by a magistrate pursuant to Civ.R. 53). A pro se litigant must accept the results of his own mistakes and errors. *Id.*

{¶48} Lastly, although Husband failed to assert plain error on appeal, we nonetheless find the trial court did not commit plain error in finding Wife's annual employment income was \$50,000. "In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional

circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 1997-Ohio-401, paragraph one of the syllabus. These extreme circumstances do not exist in the case at bar.

{¶49} Accordingly, Husband's fifth assignment of error is overruled.

{¶50} Assignment of Error No. 6:

{¶51} "THE TRIAL COURT ERRED BY NOT ALLOWING AN EQUALLY [sic] SPLIT OF THE ASSESTS [sic]."

{¶52} In his sixth assignment of error, Husband argues the trial court erroneously sustained Wife's objection to the magistrate's decision awarding Husband a \$3,000 credit to "offset" the disparity in the parties' household goods.

{¶53} As previously stated, "the court shall disburse a spouse's separate property to that spouse" and divide the marital property equally, unless the court finds an equal division would be inequitable. *Renz*, 2011-Ohio-1634 at ¶14; R.C. 3105.171(C)(1); R.C. 3105.171(D). The trial court is given broad discretion in determining what constitutes an equitable division of property and will not be reversed absent an abuse of that discretion. *Id.* at ¶14. It is axiomatic that equitable need not mean equal. *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 355. However, this does not mean that an equal division can never be equitable. Instead, the trial court's decision is dependent on the facts and the circumstances of each case. *Id.*

{¶54} In the case at bar, Husband argues the trial court erroneously struck the magistrate's decision awarding him a \$3,000 household goods credit. We disagree. Instead, we find the trial court acted in accordance with this court's holding that a court commits "reversible error if it makes a division of marital property and was not presented

with any evidence of valuation of marital property and where it failed to assign a value in its decree." *Brown v. Brown*, Madison App. No. CA2008-08-021, 2009-Ohio-2204, ¶11.

{¶55} We find the record lacked evidence as to the value of the household goods, and as such, it was impossible for the magistrate to award Husband a \$3,000 credit for those goods. In this situation, the trial court was left with no choice but to strike the award. In such a case, we cannot say there was an abuse of discretion in sustaining Wife's objection to this matter.

{¶56} Accordingly, Husband's sixth assignment of error is overruled.

{¶57} Assignment of Error No. 7:

{¶58} "THE TRIAL COURT ERRED BY NOT ACCEPTING A THIRD PARTY APPRASAL [sic] AND ALLOWING THE APPELLEE SIX YEARS TO PAY THE EQUITY IN THE 679 BROOKDALE HOUSE[.]"

{¶59} In his seventh assignment of error, Husband's arguments are twofold. First, Husband argues the trial court erred in ordering Wife to pay Husband a sum of \$10,280 "upon [Wife's] remarriage, death, cohabitation with another adult male or within 6 years from the date hereof, whichever occurs first." Husband argues the payment should occur within 180 days, and anything exceeding that time frame would place Husband in an "unfounded financial hardship."

{¶60} Husband's lump-sum payment was predicated upon the magistrate's finding that Husband's equity in the Brookdale residence was \$10,280. In overruling Husband's objection, the trial court found the magistrate's formula for payment was "reasonable under the totality of the circumstances."

{¶61} Upon review of the record, we see no reason to disturb the trial court's decision. The court did not order Husband to pay spousal support, and Husband made at least \$65,000 annually. While Husband testified to financial hardships stemming from his

responsibilities to Wife and the children, it appears the court attempted to balance the parties' additional financial obligations, such as the Brookdale mortgages and other debts.

{¶62} Under such circumstances, we cannot say the trial court abused its discretion in adopting the magistrate's payment schedule.

{¶63} Secondly, Husband argues the trial court erred in accepting the magistrate's finding that the Brookdale residence was worth \$110,000. Instead, Husband argues the trial court should have used the valuation his third-party appraiser assigned to the property.

{¶64} When valuing a marital asset, a trial court is neither required to use a particular valuation method nor precluded from using any method. *Gregory v. Kottman-Gregory*, Madison App. Nos. CA2004-11-039, CA2004-11-041, 2005-Ohio-6558, ¶15. "Our task on appeal is not to require the adoption of any particular method of valuation, but to determine whether, based on all the relevant facts and circumstances, the court abused its discretion in arriving at a value." *Carter v. Carter*, Clark App. No. 2008 CA 54, 2009-Ohio-3637, ¶15.

{¶65} A trial court errs and abuses its discretion if it "summarily arrives at a valuation of an asset or property, even though between the two extremes of the opposing parties' witnesses, without a proper evidential predicate." *Id.* at ¶17. However, we will not disturb a trial court's valuation as long as the record contains sufficient evidence to support it. *Id.*

{¶66} During the hearing before the magistrate, both parties testified to the value of the Brookdale residence. Wife testified that in her opinion, the home could sell for \$112,000, and, minus all related fees, the home had a net worth of "less than \$100,000." Wife further testified she received information from the Madison County Auditor's website that homes of comparable size and style typically sold for less than \$90,000. Conversely,

Husband presented a recent appraisal performed by Sallie Mae, indicating the Brookdale residence was worth approximately \$120,000.

{¶67} "While a court may not simply adopt an intermediate figure without a supporting rationale when the parties present substantially different valuations of an asset, it may believe all, part, or none of any witness's testimony." *Carter*, 2009-Ohio-3637 at ¶19. In the case at bar, there is competent, credible evidence to support the magistrate's determination that the Brookdale residence had a fair market value of \$110,000. While Wife did not submit evidence regarding the value of the home, she indicated Husband's high estimate was based upon homes far less comparable to the Brookdale residence.

{¶68} Under such circumstances, we find the trial court did not abuse its discretion in adopting the magistrate's finding that the Brookdale residence was worth \$110,000. Further, we note that while neither the magistrate nor the trial court set forth a rationale for valuing the property at \$110,000, the court was not required to do so due to Husband's failure to request findings of fact and conclusions of law. Civ.R. 52. See, also, *Bristow v. Bristow*, Butler App. No. CA2009-05-139, 2010-Ohio-3469, ¶15.

{¶69} Accordingly, Husband's seventh assignment of error is overruled

{¶70} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.