

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Judith A. DiBari, :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. : No. 08AP-1050  
 : (C.P.C. No. 06DR-10-4091)  
 John A. DiBari, :  
 : (REGULAR CALENDAR)  
 Defendant-Appellant. :

---

D E C I S I O N

Rendered on July 14, 2009

---

*Judith A. DiBari*, pro se.

*Farlow & Associates LLC, Vicki K. Johnston and  
Christopher L. Trolinger*, for appellant.

---

APPEAL from the Franklin County Court of Common Pleas,  
Division of Domestic Relations.

TYACK, J.

{¶1} John A. DiBari ("appellant") is appealing from the terms of his decree of divorce. He assigns four errors for our consideration:

I. THE TRIAL COURT ABUSED ITS DISCRETION BY ORDERING AN UNREASONABLE AND ARBITRARY AWARD OF SPOUSAL SUPPORT BOTH IN AMOUNT AND DURATION.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN ITS ORDER OF PROPERTY DISTRIBUTION.

III. THE TRIAL COURT ERRED IN AWARDING PLAINTIFF-APPELLEE HER ATTORNEY FEES AND SUCH AWARD CONSTITUTES AN ABUSE OF DISCRETION.

IV. THE TRIAL COURT'S DECISION SHOULD BE REVERSED AND REMANDED AS APPELLANT WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL.

{¶2} Appellant and Judith DiBari ("appellee") were married on November 14, 1986. Their divorce decree was journalized October 30, 2008. Thus, they had a long-term marriage. See *infra*, ¶15.

{¶3} The couple parented four children, only one of whom was un-emancipated on the date of divorce. That child was 16 years of age. By agreement of the parties, that child has appellant as the residential parent. The issue of child support was submitted to the trial court for determination, as was the issue of spousal support.

{¶4} Appellee was a full-time parent when the children were young. She followed this with a period of part-time employment outside the home. By the time of the divorce, she was working full-time outside the home. That employment was with Columbia Gas. Her income was expected to be \$42,000 per year.

{¶5} Appellant had worked for many years for AT&T and successor corporations. His income in 2008 was expected to be \$66,432.04.

{¶6} The trial court awarded \$900 in spousal support per month to appellee and determined that guideline child support would be unjust and unreasonable. Therefore, the trial court reduced child support down to nothing, but made a conditional order for health insurance for the child which required her to pay medical support of \$93.67 per month if private health insurance is no longer being provided. The trial court also ordered

the parties to split any co-payments equally. Uncovered medical, dental, orthodontic, and/or psychiatric/psychological expense were also to be divided equally.

{¶7} The court ordered that spousal support increase to \$1,400 per month three months after the youngest child of the parties was emancipated and ended high school. This order and the initial spousal support orders were made after a careful evaluation of the factors set forth in R.C. 3105.18(C)(1). Spousal support is to terminate if appellee remarries, on the death of either party, or on appellant's 55th birthday (January 8, 2020), whichever first occurs.

{¶8} In the first assignment of error, counsel for appellant argues that the spousal support award is unreasonable both as to the length of the order and as to the amount ordered.

{¶9} Counsel acknowledges that, for the spousal support order to be overturned, we must find an abuse of discretion by the trial court. See, e.g., *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 131. An abuse of discretion implies that the trial court's attitude was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Similarly, we cannot substitute our own judgment for that of the trial court, with regard to factual issues or findings. See *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 356.

{¶10} We find no abuse of discretion here.

{¶11} After a long-term marriage, the husband was earning \$66,432.04 with an expectation of both cost of living increases and other salary increases built into his union contract. His seniority would provide him some job protection, as would his status as a

union member. He had significant fringe benefits, including a group legal service plan, which paid all his attorneys' fees.

{¶12} Appellee started her first job with a significant income less than six months before the trial of her divorce case. She expected no increase in her base salary except cost of living increases. She will pay taxes on her spousal support. The initial spousal support order will raise her taxable income to \$52,800 while reducing her ex-husband's income to \$55,632.04. Three months after the youngest child of the parties becomes emancipated, and completes high school, in the Spring 2010, the comparative incomes will be \$49,632.04 for appellant and \$58,800 for appellee, a difference of \$9,167.96 unless the expected increases in appellant's income offset some or all of that difference. Thus, the spousal support order will terminate at about 11 years, assuming appellant's age determines the termination date.

{¶13} "Spousal support" means payment or payments made by one former spouse to another, intended to provide for the obligee's living expenses or general sustenance. See R.C. 3105.18(A). To be clear, spousal support is wholly separate and distinguishable from any payments one spouse may make to the other as part of the marital property distribution. See *id*; cf. R.C. 3105.171. The legislature has vested trial courts with broad discretion in determining appropriate spousal support awards. See R.C. 3105.18; see also *Bolinger v. Bolinger* (1990), 49 Ohio St.3d 120, 123. Furthermore, the legislature set forth the following criteria for trial courts to consider when determining what, if any, spousal support is appropriate:

- (a) The income of the parties \* \* \*;
- (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;
- (f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;
- (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;
- (k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;
- (l) The tax consequences, for each party, of an award of spousal support;
- (m) The lost income production capacity of either party that resulted from that party's marital responsibilities;
- (n) Any other factor that the court expressly finds to be relevant and equitable.

R.C. 3105.18(C)(1).

{¶14} The general rule regarding the appropriate duration of spousal support orders is that where a payee spouse has the resources, ability, and potential to be self-

supporting, an order for support should terminate within a reasonable time. See *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 68-69. This general rule does not typically apply, however, in cases of long-term marriages, with parties of advanced ages, or to homemaker-spouses, who have forgone the opportunity to develop meaningful employment outside the home. See *id.*, paragraph one of the syllabus; see also *MacMurray v. Mayo* (Dec. 27, 2007), 10th Dist. No. 07AP-38, ¶8. Although there is no bright-line rule to determine how long a marriage must be to be considered long-term, it is not uncommon for Ohio courts to affirm permanent spousal support awards in marriages that have lasted 19 years or longer. See *MacMurray*; see also *Parsons v. Parsons* (Apr. 22, 2008), 10th Dist. No. 07AP-541, ¶16; *Leopold v. Leopold* (Jan. 11, 2005), 4th Dist. No. 04CA-14, ¶3; *Russell v. Russell* (1984), 14 Ohio App.3d 408, 412.

{¶15} Here, the parties were married for over 20 years. A permanent spousal support order is common in Franklin County following 20 years of marriage. See, e.g., *MacMurray*; *Wightman v. Wightman* (Dec. 30, 1999), 10th Dist. No. 98AP-1280; *Ehni v. Ehni* (Apr. 25, 1995), 10th Dist. No. 94APF10-1530; *Turner v. Turner* (1993), 90 Ohio App.3d 161, 167. The fact that the spousal support terminates after approximately 11 years more than offsets the fact that appellee will have a higher income for 9 of the 11 years.

{¶16} After 20 years of marriage, a spousal support order which equalizes the respective incomes of the parties is not uncommon but not required. See, e.g., *Kaechele v. Kaechele* (Nov. 13, 1986), 10th Dist. No. 86AP-263 (holding that the trial court abused its discretion by awarding the wife less than 30 percent of the parties' expected income); see also *Buckles v. Buckles*, 46 Ohio App.3d 102, 110 ("The starting point is to place both

parties on a parity with the marriage standard of living (not necessarily equality) after divorce.”) Certain unique factors of this case makes an order granting a greater amount of income to the wife for a little over nine years within the range of the trial court’s discretion. First, appellee will be only 53 years of age when the spousal support stops completely, if the spousal support terminates based upon appellant’s turning 55. She will have many years of life left, in all likelihood, and will live her years with significantly less income than appellant will enjoy, assuming the current discrepancies in income continue. Appellee is paying an economic price for the many years she had, at most, part-time work outside the home. She apparently will resume paying that price once appellant turns 55.

{¶17} As noted earlier, the trial court conducted a detailed analysis of the statutory factors in R.C. 3105.18(C)(1). The trial court’s careful exposition of the factors demonstrate that no abuse of discretion occurred with respect to spousal support.

{¶18} The first assignment of error is overruled.

{¶19} In the third assignment of error, counsel for appellant argues that the trial court erred in awarding appellee part of her attorney fees. Again, the trial court’s award of attorneys’ fees will not be reversed absent an abuse of discretion. *Rand v. Rand* (1985), 18 Ohio St.3d 356, 359. Again, no abuse of discretion occurred.

{¶20} Appellant had the benefit of a group legal services plan which paid his attorney fees. Appellee had no such plan. Instead, she had minimal income for much of the time the divorce was pending. As of the time of trial, she still owed counsel \$29,375. The trial court ordered appellant to pay \$12,000 of that amount upon the sale of the marital residence or no later than December 31, 2010. Thus, appellee has to pay approximately 60 percent of her remaining fees while appellant pays the other 40 percent.

This division of the residual fees is reasonable, causing appellee to pay the majority of the cost she incurred for her retained counsel but allotting some of the cost to the other party for whom counsel was free. See, e.g., *Farley v. Farley* (Aug. 31, 2000), 10th Dist. No. 99AP-1103 (affirming the trial court's award of \$30,000 in attorneys' fees to wife).

{¶21} The third assignment of error is overruled.

{¶22} The fourth assignment of error attempts to import the Sixth Amendment right to effective assistance of counsel into the divorce litigation context. This appellate court is aware of no basis for such an importation and chooses not to create a case law basis for it.

{¶23} The fourth assignment of error is overruled.

{¶24} The second assignment of error attacks the trial court's orders distributing the property of the parties. Again, we find no abuse of discretion.

{¶25} Counsel for appellant suggests that the requirement of the parties to pay a loan for \$25,000 taken out as a second mortgage against the marital residence be paid by both parties was unreasonable. Of the \$25,000, \$13,750 was paid to an attorney who represented one of the children of the parties in juvenile court. Two thousand, three hundred dollars was paid to a guardian ad litem in the divorce case and \$4,728.72 was paid for family expenses. All these expenditures were the responsibility of both parties, and requiring each to pay one-half is reasonable. Four thousand dollars of the \$25,000 was paid to appellee's attorney and the trial court made her solely responsible for these funds. The trial court's award with respect to the \$25,000 was extremely reasonable.

{¶26} Appellant borrowed \$5,000, and then another \$9,000 from his Lucent Technology Savings Plan. At least part of the loan was taken out after a restraining order

was placed on appellant. Appellant was significantly less than clear as to what he did with that \$14,000. As a result, the trial court made him responsible for that loan.

{¶27} The trial court awarded appellee a lump sum of \$2,564.07 to equalize the division of the property. Such equalization is appropriate. See generally *Measor v. Measor*, 160 Ohio App.3d 60, 2005-Ohio-1417, ¶3. The fact that appellant presented no valid figures for the 2001 Chevrolet Silverado truck he bought after the parties separated, and which he received in the divorce, makes it difficult to find an abuse of discretion in any sum awarded to equalize the distribution of assets. Further, he was awarded a 1976 Harley-Davidson motorcycle, valued at \$3,000, and a boat and motor, valued at \$2,000. In addition, he received a number of coin sets, including collectables. We cannot determine from the record before us exactly how the trial judge arrived at the exact figure of \$2,564.07. However, given the awarding of a motorcycle valued at \$3,000, and a boat valued at \$2,000 to appellant, a countervailing award of approximately \$2,500 to appellee was within the trial court's discretion.

{¶28} The value of most of the remaining items of personal property were not the subject of extensive testimony. Appellant claimed some of his guns were missing, and the trial court ordered them returned if appellee found them. Given the sparse testimony as to value, we cannot find an abuse of discretion in the cash award to balance the property division.

{¶29} The second assignment of error is overruled.

{¶30} All four assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

*Judgment affirmed.*

BRYANT and BROWN, JJ., concur.

---