

[Cite as *Baechel v. Baechel*, 2009-Ohio-6837.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BARBI BAECHEL

Appellant

-vs-

THOMAS BAECHEL

Appellee

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 2008 CA 00210

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Domestic Relations
Division, Case No. 2007DR00158

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 21, 2009

APPEARANCES:

For Appellant

For Appellee

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Hoffman, J.

{¶1} Plaintiff-appellant Barbi Baechel appeals the September 10, 2008 Judgment Entry of the Stark County Court of Common Pleas, Domestic Relations Division, awarding spousal support and attorney fees to Defendant-appellee Thomas Baechel.

STATEMENT OF THE FACTS AND CASE

{¶2} The parties were married on October 22, 1983, and three children were born of the marriage.

{¶3} On September 21, 2007, Barbi Baechel (hereinafter “Wife”) filed a complaint for divorce.

{¶4} On August 19, 2008, the trial court granted the divorce based upon incompatibility and upon the terms contained in the proposed findings of fact and conclusions of law filed by Thomas Baechel (hereinafter “Husband”) which the court approved and adopted as its own.

{¶5} On August 20, 2008, via Judgment Entry, the trial court entered judgment on the complaint, ordering Wife pay spousal support in the sum of \$500.00 per month for a period of twelve years and attorney fees to Husband in the sum of \$1,500. Via separate Judgment Entry of August 20, 2008, the trial court granted the decree of divorce.

{¶6} Appellant now appeals, assigning as error:

{¶7} “I. IT WAS ERROR AND AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO AWARD PLAINTIFF SPOUSAL SUPPORT IN THE AMOUNT OF \$500.00 PER MONTH FOR A PERIOD OF TWELVE (12) MONTHS [SIC] BASED UPON THE

UNEQUAL DIVISION OF MARITAL DEBT AND OTHER FACTS AS CONTAINED IN O.R.C. SECTION 3105.18.

{¶8} “II. THE TRIAL COURT COMMITTED ERROR WHEN IT FOUND THAT APPELLANT WOULD BE ORDERED TO PAY APPELLEE’S ATTORNEY FEES IN THE SUM OF \$1,500.00.

{¶9} “III. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT AWARDED SPOUSAL SUPPORT AND PAYMENT OF ATTORNEY FEES [HUSBAND] TO WHEN THE ONLY TWO ISSUES PER THE COURT’S OWN ORDER TO BE SET FOR EVIDENCE WERE THE DIVISION OF MARTIAL DEBT AND BARBIE [SIC] BAECHEL’S 401(K).”

I.

{¶10} In the first assignment of error, Wife asserts the trial court erred in awarding Husband spousal support in the amount of \$500.00 per month for a period of twelve years.

{¶11} A review of a trial court's decision relative to spousal support is governed by an abuse of discretion standard. *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 421 N.E.2d 1293. We cannot substitute our judgment for that of the trial court unless, when considering the totality of the circumstances, the trial court abused its discretion. *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 541 N.E.2d 597. In order to find an abuse of that discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶12} R.C. 3105.18(C)(1)(a) through (n) sets forth the factors a trial court must consider in determining whether spousal support is appropriate and reasonable and in determining the nature, amount, terms of payment and duration of spousal support.

These factors are:

{¶13} “(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;

{¶14} “(b) The relative earning abilities of the parties;

{¶15} “(c) The ages and the physical, mental, and emotional conditions of the parties;

{¶16} “(d) The retirement benefits of the parties;

{¶17} “(e) The duration of the marriage;

{¶18} “(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;

{¶19} “(g) The standard of living of the parties established during the marriage;

{¶20} “(h) The relative extent of education of the parties;

{¶21} “(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

{¶22} “(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;

{¶23} “(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;

{¶24} “(l) The tax consequences, for each party, of an award of spousal support;

{¶25} “(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

{¶26} “(n) Any other factor that the court expressly finds to be relevant and equitable.” *Id.*

{¶27} A trial court need not acknowledge all evidence relative to each and every factor listed in R.C. 3105.18(C), and we may not assume the evidence was not considered. *Barron v. Barron*, Stark App. No.2002CA00239, 2003-Ohio-649 at paragraph 25. The statute directs the court to consider all fourteen factors, and a reviewing court will presume the trial court did so absent evidence to the contrary. *Cherry*, *supra*. The court must only set forth sufficient detail to enable a reviewing court to determine the appropriateness of the award. See, e.g., *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 518 N.E.2d 1197.

{¶28} In the case sub judice, the trial court adopted the proposed findings of fact and conclusions of law filed by Husband. The trial court's findings set forth Husband maintains no pension plan or retirement plan, while Wife has a 401(K). Further Wife is employed by Ramsburg Insurance Agency earning \$45,765.00 in 2006, while Husband is a self-employed handyman with an income in 2007, of \$2,293.00.

{¶29} Upon review of the findings of fact and conclusions of law, we presume the trial court considered all of the factors required by the statute, and do not find the trial court abused its discretion in ordering Wife pay spousal support in favor of Husband.

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

II.

{¶31} Wife's second assignment of error argues the trial court erred in ordering she pay Husband's attorney fees.

{¶32} R.C. 3105.73(A) governs the award of attorney fees and litigation expenses in domestic relations cases and provides,

{¶33} "In an action for divorce* * * or an appeal of that action, a court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' marital assets and income, any award of temporary spousal support, the conduct of parties, and any other relevant factors the court deems appropriate."

{¶34} R.C. 3105.73(A) does not specifically require the trial court consider the parties' abilities to pay attorney fees. The statute allows the trial court to look at any relevant factor.

{¶35} The award of attorney fees lies within the sound discretion of the trial court. *Rand v. Rand* (1985), 18 Ohio St.3d 356; *Swanson v. Swanson* (1976), 48 Ohio App.2d 85, 355 N.E.2d 894. The court may decide on a case by case basis whether an award of attorney's fees is equitable. *Ockunzzi v. Ockunzzi*, Cuyahoga App. No. 86785,

2006-Ohio-5741, at paragraph 70. When the amount of time and work spent on the case by the attorney is evident, an award of attorney fees, even in the absence of specific evidence, is not an abuse of discretion. *Id.*; see, also, *Richardson v. Richardson* (Dec. 28, 1988), Medina App. No. 1726, unreported, at 5. Upon appeal, the question for inquiry is whether the trial court abused its discretion. *Rand v. Rand* (1985), 18 Ohio St.3d 366, 369, 481 N.E.2d 613.

{¶36} Upon review of the record and the law set forth above, we find the award of attorney fees to be reasonable and supported by evidence in the record. Wife did not object to the evidence presented. The trial court did not abuse its discretion in ordering Wife to pay Husband's attorney fees.

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

III.

{¶38} In the third assignment of error, Appellant maintains the trial court erred in awarding spousal support and attorney fees in favor of Husband, when according to the court's own order stating the only issues to be determined were the division of marital debt and the allocation of Wife's 401(K).

{¶39} Specifically, Wife cites the trial court's May 21, 2008 Judgment Entry which reads:

{¶40} "Findings of Fact:

{¶41} "Parties and counsel appeared for an uncontested hearing.

{¶42} "Division of marital debt of \$22,000 and division of plaintiff's 401(K)."

{¶43} On the day of trial, the court allowed Husband to introduce evidence as to the issue of spousal support and attorney fees.

{¶44} The following exchange took place during the testimony of Husband:

{¶45} “Q. Alimony. I’m going to hand you what I’ve marked as Exhibit 8. And ask you is this a Finn Plan calculation that I prepared to present to the court today?”

{¶46} “A. Yes.

{¶47} “Q. And your asking that she be ordered to pay you \$1,500.00 a month spousal support for the next eight years is that right?”

{¶48} “A. That’s correct.

{¶49} “Q. And if she is ordered to pay that she’ll have fifty two percent of the after tax cash flow and you’ll have forty eight percent is that right?”

{¶50} “A. That’s correct.

{¶51} “Q. We’re also asking that the court order her to pay your attorney fees or a portion of your attorney fees?”

{¶52} “A. Yes.

{¶53} “Q. As to the difference in your incomes is that right?”

{¶54} “A. That’s correct.

{¶55} “Q. And the outstanding balance that is still owed to me is \$2,887.00 is that right?”

{¶56} “A. That’s correct.

{¶57} “Q. And I was billing you at a rate of \$225.00 an hour?”

{¶58} “A. Right.

{¶159} “Q. And you agreed that...that was the rate that you felt was fair for my services?

{¶160} “A. Yes I did.

{¶161} “Q. And your asking...are you asking that you be awarded some credit for some portion of her pension the original part of the pension as well as some portion of the equity in the home?

{¶162} “A. Yes.

{¶163} “Q. Do you feel that the home is worth about what she indicated the hundred and ten thousand dollars?

{¶164} “A. Yes it is.

{¶165} “Q. So that would leave a little more then six thousand in equity?

{¶166} “A. Yes.”

{¶167} Tr. at 28-30.

{¶168} At the end of the hearing, Wife’s counsel added:

{¶169} “The Court: All right ah. Anything further?”

{¶170} “Atty Johnson: Your Honor I do have something for the record. Pursuant to the court’s record of May 21st 2008 when we were in here for pretrial the only two issues before this court for today were to be marital debt of twenty two thousand and the division of plaintiff’s 401K. Spousal support was not an issue and it has never been an issue brought up in this case. So I object that...that was brought up today. I received no financial information from Mr. Baechel at all. And the house has never been an issue until today. Um and these are just brand new things that were brought

up today and we were only here on these two issues. So I would like to put that on the record.

{¶71} “The Court: Anything else?”

{¶72} “Atty Johnson: No.”

{¶73} Tr. at 34.

{¶74} Upon review of the record, Wife’s objection to the testimony came at the close of the hearing, well after the issues of spousal support and attorney fees were first raised and the evidence thereon was introduced on the record. Wife had an opportunity to rebut the testimony presented or, at the least, seek a continuance. Accordingly, we conclude the trial court did not abuse its discretion by proceeding on the issues of spousal support and attorney fees.

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

{¶76} The judgment of the Stark County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Hoffman, J.

Farmer, P.J. and

Delaney, J. concur

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer

HON. SHEILA G. FARMER

s/ Patricia A. Delaney

HON. PATRICIA A. DELANEY

