

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

JOSEPH CAMPBELL,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-04-039
- vs -	:	<u>OPINION</u>
	:	11/30/2009
PATRICIA C. CAMPBELL,	:	
Defendant-Appellant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 08DR31760

Richard L. Kaplan, Suite 202, 683 Miamisburg-Centerville Road, Dayton, Ohio 45459, for plaintiff-appellee

Cohen & Gregg, Douglas Gregg, 7929 Washington Woods Drive, Dayton, Ohio 45459, for defendant-appellant

BRESSLER, P.J.

{¶1} Defendant-appellant, Patricia C. Campbell, appeals a decision of the Warren County Court of Common Pleas, Domestic Relations Division, regarding the denial of a continuance and spousal support. We affirm the trial court's decision.

{¶2} Patricia and plaintiff-appellee, Joseph D. Campbell, were married on June 25, 1988. Both parties had successful careers during the marriage, which allowed them to live comfortably. In May of 2005, Patricia suffered what Joseph characterized was a

"breakdown." After this breakdown, Patricia began exhibiting erratic behaviors, such as physically threatening Joseph and their now emancipated daughter, and believing she was being poisoned and operated on without consent. Joseph also testified that on at least two occasions, authorities placed Patricia on psychiatric hold.

{¶3} Joseph stated that he told Patricia that if she did not receive medical treatment then he and their daughter would move out of the marital home. Because Patricia did not seek treatment, Joseph and their daughter left in February of 2008, and Joseph subsequently filed for divorce. Patricia stopped going to work and was terminated from her \$150,000 a year job as an account executive.

{¶4} During the pendency of the divorce, Patricia lived in the marital home while Joseph paid all of the bills associated with the house. Joseph tried to have the home listed for sale, but Patricia refused to sign with a realtor. Even after the magistrate ordered the home listed and sold, Patricia refused to comply. Contempt motions were filed against Patricia and she was ordered to appear before the trial court; however, service could not be made.

{¶5} On December 18, 2008, Patricia's attorney filed a motion for continuance with the trial court for both the December 23, 2008 hearing and the January 12, 2009 final hearing, explaining that he had been unable to communicate with his client.¹ Patricia's attorney also stated that "there was a reasonable basis to believe that [Patricia] may be suffering from mental illness or disability which prevents her from communicating adequately with counsel or otherwise participating in the case." He respectfully requested the trial court to grant the continuance until such time that Patricia was able to participate in the process. Finally, the motion stated that Patricia's counsel would attempt to get Patricia a mental

1. Patricia's counsel explained to the trial court, at the January 12, 2009 hearing, that he had not been able to personally speak with her since November 10, 2008, despite having made phone calls and sending her letters.

examination upon the trial court's request. The trial court granted the continuance of the December 23, 2008 hearing, but denied the request to reschedule the January 12, 2009 hearing.

{¶6} Patricia failed to appear at the January 12, 2009 final hearing, so the trial court was only able to hear testimony from Joseph and two of Patricia's relatives. During the hearing, the trial court stated that it had spoken to counsel previously about the possibility of having the probate court appoint a guardian for Patricia. Patricia's counsel replied that he looked into the matter, but was unable to locate an Ohio resident who would assume that responsibility. The trial court also noted that because nothing had been filed with the probate court, it was not certain whether Patricia was actually incompetent. Because the trial court felt "compelled to proceed" with the parties' divorce, the court decided to order that any property award and any support award be held in escrow for Patricia, until she applied for release of the funds.

{¶7} In its January 15, 2009 decision, the trial court gave sole exclusive use of the marital home to Joseph in order to list and sell the property with the proceeds to be divided equally between the parties. The trial court also ordered Joseph to contact Warren County's mental health department to determine what services were available to Patricia after her eviction from the home. Joseph received a few items of household goods, while the bulk of the furnishings -- which Joseph testified cost \$100,000 -- were given to Patricia. Upon her refusal or inability to retrieve the items, Joseph was ordered to place them into storage for Patricia for three months. Joseph and Patricia each received their respective cars and motorcycles, their respective accounts and debts, and half of each others' retirement accounts. The trial court also ordered Joseph to give Patricia a \$48,384 cash settlement which was to be paid to the clerk of courts, and held for Patricia until she applied for the release of the funds upon demonstrating she was mentally capable of handling them, or upon

application for release by a lawfully constituted guardian.

{¶8} After dividing the marital property, the trial court considered the statutory spousal support factors, and found that spousal support was appropriate and reasonable. The trial court ordered Joseph to pay Patricia \$100 per year for seven years, payable on December 31st of each year, for a total of \$700. The trial court also expressly reserved jurisdiction to modify the spousal support award.

{¶9} In its decision, the trial court acknowledged that it agreed with Patricia's counsel that Patricia was "likely unable to work," however, the court further declared that it was also "likely because she is unable, or unwilling, to accept medical treatment." The trial court observed that Patricia lived on her own, took care of her dog, travelled, incurred debt and "is otherwise able to care for herself." In ordering the support award, the trial court stated:

{¶10} "If this Court were to grant significant spousal support, it would be a waste of funds until [Patricia] received appropriate medical care. If [Patricia] complied with medical care, there is a strong likelihood that she may still be able to earn a substantial income. Through the procedure adopted by the Court, spousal support may be reassessed after such care is received."

{¶11} After the final judgment and decree of divorce was filed on March 6, 2009, Patricia filed a timely appeal asserting three assignments of error.

{¶12} Assignment of Error No. 1:

{¶13} "THE TRIAL COURT ABUSED ITS DISCRETION BY REFUSING TO GRANT A CONTINUANCE SO THAT DEFENDANT'S COUNSEL COULD HAVE DEFENDANT'S COMPETENCY EVALUATED AND ATTEMPT TO HAVE A GUARDIAN APPOINTED."

{¶14} In her first assignment of error, Patricia argues that the trial court erred in failing to grant the requested continuance so that her competency, or lack thereof, could be assessed and/or a guardian appointed before the final hearing on the parties' divorce.

{¶15} "The grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge." *State v. Unger* (1981), 67 Ohio St.2d 65, 67. See, also, *Black v. Black*, Clinton App. No. CA2008-06-022, 2009-Ohio-92, ¶11-14. "An appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion." *Unger* at 67. An abuse of discretion involves more than an error of law or judgment; it implies the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶16} After careful review of the record, we observe that the requested continuance at issue was actually the third continuance requested by Patricia. She filed motions for continuances on June 18, 2008 and September 30, 2008, both of which were granted by the trial court. Her third request, which is the subject of this assignment of error, was actually a request for two continuances. Although the trial court denied her request for continuance of the January 12, 2009 final hearing, the court granted a continuance of the December 23, 2008 hearing and reset it until January 12, 2009. Thus, Patricia had approximately a month in which to begin appropriate proceedings in the probate court, which in turn could have delayed proceedings pending the outcome of any competency hearing. Furthermore, the trial court stated on the record that it had previously suggested to the attorneys for both parties that a guardian be sought through the probate court.²

{¶17} We find the trial court's denial of Patricia's requested continuance of the January 12, 2009 hearing, under the particular circumstances of this case, was not unreasonable, arbitrary or unconscionable. Therefore, Patricia's first assignment of error is

2. {¶a} At the January 12, 2009 hearing, the following conversation took place on the record:

{¶b} "THE COURT: All right. Again to further clarify for the record here, we talked about her mental problems, we talked about attempting to get a guardian through the Probate Court and my notes indicate that no one was willing to be her guardian?"

{¶c} "MR. GREGG [Patricia's attorney]: I believe Your Honor that you suggested maybe that the Plaintiff would look into that as well. As uh from our side we did not . . . we could not find an Ohio resident."

overruled.

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT ABUSED ITS DISCRETION BY REFUSING TO GRANT REASONABLE SPOUSAL SUPPORT."

{¶20} In her second assignment of error, Patricia argues the trial court erred in the amount of spousal support it ordered. In particular, Patricia contends that the court's decision was based on its perceived belief that she was incapable of handling larger sums of money. In addition, based on the fact that the parties had a 21-year marriage; Joseph earns more than \$180,000; and Patricia is unable to work; the amount of support ordered by the trial court was inadequate. We do not agree.

{¶21} After the division of marital property, a trial court may order an award of reasonable spousal support to either party in a divorce proceeding. R.C. 3105.18(B). Pursuant to R.C. 3105.18(C)(1), "[i]n 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 * * * factors" set forth in R.C. 3105.18(C)(1).³ See, also, *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, paragraph one of the syllabus.

{¶22} "The trial court is not required to comment on each factor. Instead, the record need show only [sic.] that the court considered each factor in making its spousal support award." *Kreilick v. Kreilick*, 161 Ohio App.3d 682, 688, 2005-Ohio-3041, ¶24, appeal not allowed, 106 Ohio St.3d 1559, 2005-Ohio-5531. However, "the trial court must indicate the

3. "These factors include each party's income, earning capacities, age, retirement benefits, education, assets and liabilities, and physical, mental and emotional condition; the duration of the marriage; their standard of living; inability to seek employment outside the home; contributions during the marriage; tax consequences; and lost income capacity due to a party's fulfillment of marital responsibilities." *Brickner v. Brickner*, Butler App. No. CA2008-03-081, 2009-Ohio-1164 at ¶21, citing R.C. 3105.18(C)(1)(a)-(m). "In addition, a trial court is free to consider any other factor it deems relevant and equitable." *Id.*, citing R.C. 3105.18(C)(1)(n).

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." *Kaechele*, paragraph two of the syllabus. In addition, this court has found there is a presumption that the trial court considered all of the spousal support factors when the court states that it did so within its entry. See *Mavity v. Mavity*, Butler App. Nos. CA2000-12-244, CA2000-12-247, 2002-Ohio-556, 5, citing *Babka v. Babka* (1992), 83 Ohio App.3d 428, 435.

{¶23} Finally, "[a] spousal support determination must be both 'appropriate and reasonable' in light of the required factors in R.C. 3105.18(C)(1)." *Brown v. Brown*, Madison App. No. CA2008-08-021, 2009-Ohio-2204, ¶93 (Bressler, P.J., concurring in part and dissenting in part). "Courts have been cautioned that no factor should be viewed in isolation; instead, courts must look to the totality of circumstances surrounding the award to ensure there has been no abuse of discretion." *Id.*, citing *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 96; *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 131.

{¶24} The trial court stated in its entry that it considered all of the factors within R.C.3105.18(C)(1) in finding that spousal support was reasonable and appropriate. Thus, we must presume that the trial court took into account all of the factors it was required to consider in making the support award. The record demonstrates the trial court was aware that Patricia was unemployed; she had approximately \$100,000 worth of household goods; the clerk of the court was holding a cash settlement for her worth almost \$50,000; she may or may not be able to find employment in the future; she was 45 at the time of the divorce and had some sort of mental problems; she had a retirement account worth \$500,000; the marriage lasted 21 years; the parties' child was emancipated; and the parties enjoyed a certain standard of living during their marriage.⁴

4. The trial court also had information regarding the factors as they related to Joseph, as the statute requires looking at the factors as they relate to both parties prior to an award of spousal support.

{¶25} The trial court was faced with an extremely difficult situation, especially in light of Patricia's complete lack of participation in the proceedings, as well as her mental issues and/or condition. When fashioning the award, the trial court exercised the discretion it has in determining the amount and duration of support by expressly taking into account the special circumstances of this case. Concerned about Patricia's ability to handle finances and her refusal to seek treatment, the trial court chose to order a small amount of support, while at the same time inviting Patricia to return to the court to seek a modification. In addition, because Patricia failed to make an appearance at the final hearing, the trial court had to make a support determination based on very little information regarding Patricia's actual needs with regard to spousal support.

{¶26} We cannot say that, in this situation, the trial court abused its discretion in ordering Joseph to pay Patricia \$100 annually for a seven-year period. However, we also expressly limit this holding to the unique and particular facts and circumstances in this case. Patricia's second assignment of error is overruled.

{¶27} Assignment of Error No. 3:

{¶28} "THE TRIAL COURT ABUSED ITS DISCRETION BY STATING 'IF THE WIFE RECEIVES MEDICAL CARE, THROUGH THE PROCEDURE ADOPTED BY THE COURT, SPOUSAL SUPPORT MAY BE REASSESSED AFTER SUCH CARE IS RECEIVED[]' BUT NOT DESCRIBING SUCH PROCEDURE."

{¶29} In her brief, Patricia listed the above assignment of error, but failed to offer any argument or support for her contention. In fact, the page in her appellate brief lists the assignment of error and nothing else. Because Patricia failed to comply with App.R. 16(A)(7), which requires briefs to cite case law or statutes in support of their arguments, we have elected to disregard this assignment of error pursuant to App.R. 12(A)(2). See *State v. Baker*, 157 Ohio App.3d 87, 2004-Ohio-2207, ¶7.

Judgment affirmed.

YOUNG and RINGLAND, JJ., concur.

[Cite as *Campbell v. Campbell*, 2009-Ohio-6238.]