

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

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| CRYSTAL L. ST. GERMAINE | : | |
| Plaintiff-Appellee | : | C.A. CASE NO. 2009 CA 28 |
| v. | : | T.C. NO. 08 DR 0258 |
| ROBERT A. ST. GERMAINE | : | (Civil appeal from Common |
| Defendant-Appellant | : | Pleas Court, Domestic Relations) |

OPINION

Rendered on the 6th day of August, 2010.

RANDALL ROACH, Atty. Reg. No. 0002071, 26 N. Wright Avenue, Fairborn, Ohio 45324
Attorney for Plaintiff-Appellee

ROBERT A. ST. GERMAINE, London Correctional Institute, P. O. Box 69, State Route 56,
London, Ohio 43140
Defendant-Appellant

WILLAMOWSKI, J. (by assignment)

{¶ 1} Defendant-Appellant, Robert A. St. Germaine, Jr. (“Robert” or “Husband”),
appeals the judgment of the Greene County Court of Common Pleas, Domestic Relations
Division, granting a divorce from Plaintiff-Appellee, Crystal L. St. Germaine, aka Crystal L.
Cook (“Crystal” or “Wife”). Robert, appearing pro se, contends that the trial court erred in

ordering him to pay \$5,000 to Crystal as part of the property division settlement. For the reasons set forth below, the judgment is affirmed.

{¶ 2} Robert and Crystal were married in 2006, and one child was born as issue of the marriage. In August of 2008, Crystal filed a complaint for divorce and a hearing was held on January 6, 2009. Crystal was present in court, with her attorney, and Robert attended the hearing via video teleconference.

{¶ 3} The trial court heard evidence, found that the parties were incompatible, and filed a Final Judgment and Decree of Divorce on March 24, 2009. The judgment entry stated, in pertinent part:

{¶ 4} “The Court further finds that the parties hereto have entered into certain stipulations and agreements by which they have settled between themselves all questions arising as to real property ownership, spousal support, division and distribution of property rights and other attendant matters. The agreement was orally stated in open Court in the presence of both parties, who each signified their approval by signing the stenographer’s notes. It further appearing to the Court that said stipulations and agreements are equitable, reasonable and proper, the same are hereby ratified, confirmed and approved, and adopted as the Order of this Court.”

{¶ 5} The trial court then specified its orders concerning custody, spousal support, real property, vehicles, and other matters. As to personal property, each party was to retain the property currently in his or her possession, although several specific items were ordered to be returned to the Wife. The judgment entry also stated:

{¶ 6} “Further, Husband agrees to reimburse Wife the sum of Five Thousand Dollars (\$5,000.00) representing the value of certain furnishings, electronics and other property removed

from the marital residence by Husband. Such payment shall constitute a full and complete compromise of all claims Wife possesses against Husband as to the removal [of] such property.

{¶ 7} “Further, Husband acknowledges that the payment required hereunder constitutes a Court order in the nature of a property division. Further, Husband is specifically ordered to pay such sums within Fourteen Days of receipt of an expected inheritance in the matter of the Estate of Margaret Barone.”

{¶ 8} It is from this judgment that Robert timely appeals, raising the following assignment of error for our review:

{¶ 9} “The court erred in approving the stated decree of divorce without making proper findings of the amount to be paid by [Robert] to [Crystal] and without proof of such loss.”

{¶ 10} Robert argues that there was never any agreement made to pay this amount to Crystal, either verbally or in written form, and that there was no evidence of any actual loss that Robert caused which would warrant the paying of such “restitution.” Furthermore, Robert contends that Crystal has no legal claim to any of the funds he was to inherit.

{¶ 11} A trial court has broad discretion to determine what property division is equitable in a divorce proceeding. *Bisker v. Bisker*, 69 Ohio St.3d 608, 609, 1994-Ohio-307; *Smith v. Smith*, 182 Ohio App.3d 375, ¶16. A reviewing court will not disturb the trial court’s decision unless it finds that the trial court abused its discretion. *Young v. Young*, Clark App. Nos. 08 CA 59, 08 CA 61, 2009-Ohio-3504, ¶2. Such an abuse is more than an error of judgment; it is rather a decision fairly characterized as arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 5 OBR 481, 450 N.E.2d 1140.

{¶ 12} The trial court ordered Robert to pay Crystal \$5,000 as part of the *property*

division, apparently based upon a division of personal property as an off-set for certain furnishings and electronics that Robert allegedly removed from the marital premises. Therefore, we will only reverse the trial court’s decision if it was an abuse of discretion.

{¶ 13} Robert’s complaint that ordering him to pay “restitution” violated his due process rights is without merit because the division of property in a divorce proceeding does not constitute “restitution.” Restitution is a financial sanction that a court may impose upon a criminal offender. See R.C. 2929.18. For example, a court may order payment of restitution “by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss.” R.C. 2929.18(A)(1).

{¶ 14} Although Robert complains that there was no agreement or evidence to support the trial court’s property award to Crystal, we are unable to review the record to determine whether or not the trial court abused its discretion because Robert did not file a transcript of the hearing. An appellant is required to provide a transcript of the proceedings below (or alternate documentation¹ as permitted by the appellate rules) when required for appellate review. See App.R. 9; *Brownmor Co., L.L.C. v. Trimbach*, Montgomery App. No. 23673, 2010-Ohio-2830, ¶4. “The duty to provide a transcript of the evidence for appellate review falls upon the appellant.” *Pickett v. Allied Waste Servs.*, Montgomery App. No. 22166, 2008-Ohio-2245, ¶6, citing *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384. “When portions of the transcript necessary for resolution of assigned errors are omitted from the

¹The Supreme Court of Ohio has held, in the context of a civil case, that “a transcript is unavailable for purposes of App.R. 9(C) to an indigent appellant unable to bear the cost of providing a transcript.” *State ex rel. Motley v. Capers* (1986), 23 Ohio St.3d 56, 58.

record, we have nothing to pass upon and, thus, we have no choice but to presume the validity of the lower court's proceedings and affirm.” Id.

{¶ 15} The record reflects that Robert requested that the trial court waive the costs associated with preparing a transcript of the hearing, and filed an affidavit of indigency. However, On March 31, 2009, the trial court overruled Robert’s motion for waiver of transcript costs, finding that a court has no duty to waive transcript costs in a civil proceeding. See *Jones v. Jones* (Dec. 13, 1996), Champaign App. No 95-CA-22, 1996 WL 715441. “Civil due process requires only notice and an opportunity to be heard, not provision of transcripts in civil proceedings.” Id. Ohio courts have limited an indigent's right to have transcript fees taxed as costs to criminal cases, termination of parenting rights, and defense of paternity cases. Id. Without a transcript or an App.R. 9(C) statement, we cannot review the evidence to determine whether the trial court erred in ordering Robert to pay Crystal. Therefore, we must presume the regularity of the proceedings below.

{¶ 16} Lastly, Richard argues that Crystal was not entitled to receive part of his inheritance. Richard is correct in stating that an inheritance is generally considered a party’s separate property. See R.C. 3105.171. However, the trial court did not actually award Crystal an interest in Richard’s inheritance. The trial court ordered that Richard pay Crystal a \$5,000 *property division* settlement. However, because Richard was indigent and incarcerated at the time of the divorce hearing, the trial court merely specified that the *timing* of his payment of the property settlement should be within two weeks of the time he received his inheritance and was

no longer indigent.

{¶ 17} Based on the above, Richard’s assignment of error is overruled. Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court.

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FAIN, J. and FROELICH, J., concur.

(Hon. John R. Willamowski, Third District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

- Randall Roach
- Robert A. St. Germaine
- Hon. Steven L. Hurley