

[Cite as *Hamilton v. Hamilton*, 2009-Ohio-4321.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LINDA M. HAMILTON

Plaintiff-Appellee

-vs-

BRADLEY K. HAMILTON

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2008 CA 00256

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Domestic Relations Division, Case
No. 2007 DR 00916

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 24, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, J.

{¶1} Appellant Bradley K. Hamilton appeals a post-decree decision setting a spousal support order in the Stark County Court of Common Pleas, Domestic Relations Division. Appellee Linda M. Hamilton is appellant's former spouse. The relevant facts leading to this appeal are as follows.

{¶2} Appellee and appellant were married in 1978. Three children were born of the marriage, the youngest in 1990. On July 30, 2007, appellee filed a complaint for divorce. Appellant answered and filed a counterclaim on September 25, 2007.

{¶3} The matter proceeded to a final divorce hearing on July 3, 2008. The trial court subsequently issued a decree of divorce. However, because appellant had recently lost his job, the decree of divorce specifically reserved jurisdiction over the amount and duration of spousal support, which the parties agreed would be \$1.00 (one dollar) per month until appellant became employed.

{¶4} Appellant, in the meantime, found employment as a sanitation manager at a business located in Iowa. Accordingly, the issue of spousal support proceeded to an evidentiary hearing before a magistrate on July 30, 2008. At that time, appellee requested to receive spousal support that equaled 50% of the parties' net combined income, or \$1,786.51 per month.

{¶5} Via a decision filed on September 18, 2008, the magistrate ordered appellant to pay appellee spousal support of \$2,175.00 per month for ten years, subject to the death of either party or appellee's remarriage. The magistrate in part relied on appellant's initial financial statement, which was prepared before he had fully settled in

Iowa and which used lesser expense amounts than his subsequent updated "Iowa" financial statement.

{¶6} Appellant thereupon filed an objection to the decision of the magistrate. At the hearing on appellant's objections, the trial court agreed to consider appellant's aforesaid updated financial statement filed October 15, 2008. That statement was based on appellant's asserted actual expenses following the completion of his move to Iowa, which were not the \$1,275.00 that the magistrate considered, but were claimed to be more than three times that amount, \$4,584.65. Appellant argued, inter alia, that the spousal support award was excessive, and that in light of the updated financial statement, appellee would now be receiving 68% of the parties' combined disposable incomes.

{¶7} The trial court nonetheless overruled appellant's objection to the magistrate's decision in a judgment entry filed on November 5, 2008.

{¶8} On November 12, 2008, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶9} "1. THE TRIAL COURT'S SPOUSAL SUPPORT AWARD, WHICH LEFT APPELLEE WITH 68% OF THE PARTIES' DISPOSABLE INCOME, WAS EXCESSIVE AND AMOUNTED TO AN ABUSE OF DISCRETION.

I.

{¶10} In his sole Assignment of Error, appellant contends the trial court abused its discretion in deciding the amount of spousal support awarded to appellee.¹ We disagree.

{¶11} A trial court's decision concerning spousal support may only be altered if it constitutes an abuse of discretion. See *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67, 554 N.E.2d 83. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is 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) provides the factors that a trial court is to review in determining spousal support:

{¶13} “(C)(1) In 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 following factors:

{¶14} “(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; (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

¹ Based on the nature of the reservation of jurisdiction to modify in the decree, appellant concedes that his new job constitutes a change in circumstances under R.C. 3105.18(E).

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.”

{¶15} We note R.C. 3105.18 does not require the lower court to make specific findings of fact regarding spousal support awards. While R.C. 3105.18(C)(1) does set forth fourteen factors the trial court must consider, if the court does not specifically address each factor in its order, a reviewing court will presume each factor was considered, absent evidence to the contrary. *Carroll v. Carroll*, Delaware App.No.2004-CAF-05035, 2004-Ohio-6710, ¶ 28, citing *Watkins v. Watkins*, Muskingum App. No. CT 2001-0066, 2002-Ohio-4237, (additional citations omitted).

{¶16} In the case sub judice, appellant, age 49, takes medication for high blood pressure but is in otherwise good health.² Appellant's salary was set at \$68,000, but his counsel cautioned the court that his new job was far from secure based on pending legal actions involving the company. Tr., Objection Hearing, at 5. Moreover, as previously noted, because appellant had not yet settled in Iowa, his earlier financial statement was incomplete, reflecting monthly expenses of only \$1,275.00.

{¶17} Appellee, age 53 and in good health, attended some college and works at a local university as an administrative assistant. She lives in the marital home with two of the parties' emancipated children. Appellee and appellant filed a joint bankruptcy while still married; appellee presently has no significant debts other than the mortgage and her car. Appellee estimated that her monthly living expenses exceeded \$3,100.00, including the cost of health insurance.

{¶18} Appellant first contends the spousal support award is unreasonable because it leaves him with just 32% of the parties' combined disposable incomes. Appellant notes this award exceeds appellee's own requested amount, and he maintains that it leaves him unable to meet his updated monthly expenses in Iowa. Appellant further urges that he should not be required to pay spousal support to effectively help support the two emancipated children, ages 18 and 24 at the time of the hearing, who are still residing with appellee. Appellant essentially charges that the trial court's award was driven not only by an inaccurate financial statement that does not

² Because his new job in Iowa was to begin the next day, appellant did not attend the trial on July 30, 2008. However, the parties agreed that appellant's exhibits would be allowed into evidence.

reflect his situation in Iowa, but by the court's concern that appellee be able to meet her monthly expenses.

{¶19} Nonetheless, we note the record demonstrates that this was a marriage of nearly thirty years. Appellee has a limited job history and is currently earning just \$17,000.00 annually. Also, appellee was awarded the marital residence in the decree, and is responsible for paying approximately \$700.00 per month on an "interest only" mortgage. In this scenario, it was not unreasonable, arbitrary, or unconscionable to ensure that appellee could meet her claimed expenses following the divorce, and we are not herein inclined to substitute our judgment for that of the trial court.

{¶20} Accordingly, upon review of the record, we are unpersuaded that the court abused its discretion in awarding spousal support of \$2,175.00 per month to appellee under the facts and circumstances of this case. Appellant's sole Assignment of Error is overruled.

{¶21} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, Stark County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Delaney, J., concur.

JUDGES

