

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Anna Schmidt Marsh

Court of Appeals No. OT-09-036

Appellee

Trial Court No. 08DR058B

v.

Raymond P. Marsh

DECISION AND JUDGMENT

Appellant

Decided: October 15, 2010

* * * * *

Howard C. Whitcomb, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Raymond P. Marsh, appellant, appeals a November 13, 2009 final judgment of the Ottawa County Court of Common Pleas in an action for divorce brought by appellee, Anna Schmidt Marsh. Anna and Raymond were married on April 5, 2003. The judgment granted them a divorce, ordered distribution of their separate property and division of marital property, and also ordered Raymond to pay Anna spousal support in the amount of \$1,700 each month for a period of two years.

{¶ 2} Raymond appeals the judgment with respect to the award of spousal support alone. He asserts two assignments of error on appeal:

{¶ 3} "I. The trial court erred in awarding the plaintiff-appellee an amount and duration of spousal support that was not necessary, reasonable and appropriate.

{¶ 4} "II. The trial court abused its discretion in this case by awarding spousal support to the plaintiff-appellee because the plaintiff-appellee failed to present sufficient evidence to support an award of spousal support and/or it was against the weight of the evidence to make such an award."

{¶ 5} An appellate court reviews a trial court judgment awarding spousal support under an abuse of discretion standard. *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67; *Bowen v. Bowen* (1999), 132 Ohio App.3d 616, 626. The term abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 6} "Even though a trial court has broad discretion in awarding spousal support, its determination of whether spousal support is 'appropriate and reasonable' the nature, amount, duration and terms of payment of spousal support is controlled by the factors in R.C. 3105.18(C)(1). *Schultz v. Schultz* (1996), 110 Ohio App.3d 715, 724; *Carmony v. Carmony*, 6th Dist. No. L-02-1354, 2004-Ohio-1035, at ¶ 10." *Crites v. Crites*, 6th Dist. Nos. WD-04-034 and WD-04-042, 2004-Ohio-6162, ¶ 26-27. (Footnote omitted). Although a trial court need not enumerate each R.C. 3105.18(C)(1) factor, it must demonstrate that it considered all the "relevant factors." *Stockman v. Stockman* (Dec. 15, 2000), 6th Dist. No. L-00-1053.

{¶ 7} Additionally, when awarding spousal support, "the trial court's judgment must contain sufficient detail to enable a reviewing court to determine that the spousal support award is "fair, equitable and in accordance with the law." *Crites v. Crites* 6th Dist. Nos. WD-04-034, WD-04-042, 2004-Ohio-6162 ¶ 27, quoting *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 97, 518 N.E.2d 1197." *Schoren v. Schoren*, 6th Dist. No. H-04-019, 2005-Ohio-2102, ¶ 11.

{¶ 8} R.C. 3105.18(C)(1) provides:

{¶ 9} "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:

{¶ 10} "(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;

{¶ 11} "(b) The relative earning abilities of the parties;

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

{¶ 13} "(d) The retirement benefits of the parties;

{¶ 14} "(e) The duration of the marriage;

{¶ 15} "(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;

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

{¶ 17} "(h) The relative extent of education of the parties;

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

{¶ 19} "(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;

{¶ 20} "(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;

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

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

{¶ 23} "(n) Any other factor that the court expressly finds to be relevant and equitable."

{¶ 24} The trial court identified the factors it considered in its analysis in making the spousal support award. The court considered the disparity of incomes between the parties. R.C. 3105.18(C)(1)(a). It found that Anna earned up to \$19,191 in 2006. Raymond's income in 2006 was \$57,566.90 and in 2007, \$53,310. His projected income in 2008 was \$54,249.32. The trial court found that Anna had varied work experience and

was not anticipated to reach an income level equal to Raymond's. R.C. 3105.18(C)(1)(b). The court considered the ages of the parties (both age 44) and that neither have any physical, mental or emotional disabilities that would prevent reaching their full earning potential. R.C. 3105.18(C)(1)(c). The court referred to its consideration of the duration of the marriage (five years) and to the standard of living established during the marriage. R.C. 3105.18(C)(1)(e) and (g).

{¶ 25} As the final divorce decree, the November 13, 2009 judgment provided for a division of marital property and included listings of assets and liabilities of the parties that were considered in making that determination. However, the court neither listed R.C. 3105.18(C)(1)(i) as a factor it considered nor discussed in the judgment the relative assets and liabilities of the parties in awarding spousal support.

{¶ 26} Appellant argues that he is unable to pay the \$1,700 per month award and that the judgment is not based upon a consideration of his ability to pay. Appellant testified that he has two minor children (not of the marriage) and is obligated to pay \$111.28 a week for the child support and to provide the children with medical insurance. The judgment in this case also requires appellant to pay a total of \$12,402.95 as his share of marital debt.

{¶ 27} Although appellant acquired ownership of real property on Chase Street before the marriage and was awarded the property as his separate property under the November 13, 2009 judgment, appellant testified that he holds no equity interest in the property. The property is in foreclosure proceedings concerning payments due under a

December 2000 mortgage loan of \$31,606.66. Appellant testified that the property was rental property and under rent at the time of the final hearing.

{¶ 28} Appellant pays a monthly rent for his residence. He testified at the final hearing as to living expenses and argues that the difference between his monthly disposable income and monthly expenses before making payments towards the marital debt is \$313. He argues that under the circumstances the obligation to pay \$1,700 a month in spousal support is neither reasonable nor appropriate.

{¶ 29} R.C. 3105.18(C)(1) mandates that "[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" that the court consider factors listed in R.C. 3105.18(C)(1)(a) through (n). These factors relate "either directly or indirectly, to the obligee's spouse's need or the obligor's spouse's ability to pay." *Billingham v. Bingham* (Feb. 16, 2001), 2d Dist No. 18403; accord, *Abbott v. Abbott*, 6th Dist. No. F-06-020, 2007-Ohio-5308, ¶ 78; *Kelly v. Forbis*, 6th Dist. No. WD-09-050, 2010-Ohio-3071, ¶ 37.

{¶ 30} Consideration of the R.C. 3105.18(C)(1)(i) factor of "[t]he relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties" directly relates to both an obligor spouse's ability to pay spousal support and the obligee spouse's need for support. We conclude that the trial court abused its discretion by failing to consider the factor in its analysis on whether to award spousal support and in its determination of the nature and amount of any such award. The failure

prevented a full assessment of appellee's need for support and appellant's ability to pay spousal support. Appellant's Assignment of Error No. I is well-taken.

{¶ 31} Our ruling on Assignment of Error No. I renders Assignment of Error No. II moot.

{¶ 32} We conclude that justice was not afforded the party complaining and reverse the judgment of the trial court to the extent the judgment awarded spousal support. We remand this case to the Ottawa County Court of Common Pleas for further proceedings consistent with this decision for determination of whether to award spousal support and, should spousal support be awarded, for determination of the nature, amount, terms of payment and duration of spousal support. Appellee is ordered to pay costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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