

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

BRENDA J. MCKIDDY,	:	APPEAL NO. C-170346
Plaintiff-Appellee,	:	TRIAL NO. DR-1501247
vs.	:	<i>JUDGMENT ENTRY.</i>
WENDELL MCKIDDY,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Wendell McKiddy appeals from the judgment of the domestic relations court. Wendell's former wife, plaintiff-appellee Brenda McKiddy, filed for divorce in 2015. The parties had a long-term marriage, but had not lived together for ten years before the divorce petition was filed. Wife, who is 62, worked outside the home until her company down-sized, which was shortly after she filed for divorce. Husband, who is 60, owns an auto mechanic business, which is heavily in debt due to state sales-tax liens and money owed to an auto parts company.

The parties owned three properties, the marital home, a rental property next door, and a house in Kentucky. Approximately \$31,000 in tax liens from husband's business have been recorded on the two Ohio properties. Wife knew of the sales-tax debts, but did not know about the liens until the houses were going to be listed for

sale pursuant to the property division. There were also home equity loans against the Ohio properties.

The parties agreed to sell the two Ohio properties and divide the proceeds, but they disagreed over whether to sell the Kentucky property. Husband maintained it was a gift from a friend, and therefore, his separate property. Husband paid wife \$1000 a month during the marriage for expenses such as mortgages and insurance on the couple's properties. During the marriage, wife also had her salary and income of \$600 in rent from the house next door. Husband was ordered to pay temporary spousal support of \$1000, which was lowered to \$750, then to \$500, throughout the divorce proceedings. He made one payment of \$500. The parties have two adult children and husband has a minor son from another relationship. He pays his son's mother's rent of \$500 and some of the expenses for his son.

The magistrate found the Kentucky property to be marital, as the deed recited the price of \$25,000 and the property was acquired during the marriage. The assets and debts of the business were awarded to husband. The magistrate awarded spousal support to wife of \$500 per month for ten months and awarded wife attorney's fees of \$5000. Both parties filed objections to the magistrate's decision. The trial court granted in part wife's objection and lengthened the duration of the spousal support from ten months to three years, when she will be 66 years old. Husband appeals the overruling of several of his objections, and alleges four assignments of error.

Husband alleges that the trial court failed to make an equitable division of marital property as required by R.C. 3105.171. Wife borrowed a total of \$12,600 from home equity lines of credit. She borrowed \$5000 prior to filing for divorce and another \$7,600 during the pendency of the divorce. The trial court overruled

husband's objection to the initial \$5000 not being charged to wife because the withdrawal was made prior to the divorce. The parties agreed wife could borrow \$5600 in additional funds so that wife could pay the real estate taxes on the couple's properties and pay for real estate appraisals in order to facilitate the sale of the properties. Wife spent \$2265.26 to pay for the taxes and appraisals. The additional \$3,334.74 wife withdrew was charged to her when the magistrate divided the parties' debts and assets. Wife borrowed an additional \$2000 during the pendency of the divorce proceedings when her unemployment benefits were about to end. Although husband had been ordered by the court to pay wife spousal support of \$500 a month during the pendency of the litigation, he only made one payment. Husband also argues that he was not credited for paying approximately \$2200 for some of the marital debts, but the record demonstrates that wife paid some of the marital debts as well. Husband argues that he should not have to make an equalizing payment of \$4601.22 to wife because he did not receive half of the money in her checking account when she filed for divorce, but husband removed \$1,013 from a joint checking account that wife used to pay the parties' bills. In addition, husband sold a car and gave away another car which were worth approximately \$3000.

Husband's first assignment of error asserts that the division of some of the couple's assets was inequitable, but a "reviewing court cannot examine the valuation and division of a particular marital asset or liability in isolation; rather, the reviewing court must view the property division in its entirety, consider the totality of the circumstances, and determine whether the property division reflects an unreasonable, arbitrary or unconscionable attitude on the part of the domestic relations court. *Briganti v. Briganti*, 9 Ohio St.3d 220, 459 N.E.2d 896 (1984); *Jelen v. Jelen*, 86 Ohio App.3d 199, 203, 620 N.E.2d 224 (1st Dist.1993). The trial

court's judgment cannot be disturbed on appeal absent a showing that the trial court abused its discretion. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983). Based on the record before us, we cannot say the trial court abused its discretion in its division of the couple's marital property. Husband's first assignment of error is overruled.

Husband's second assignment of error alleges that the trial court erred in failing to make an equitable division of his business as required by R.C. 3105.171. Husband was self-employed as a mechanic. Husband did not present any evidence as to the value of his business. Husband's property statement did not identify his business or its value. The court raised the issue of the parties' need to establish the value of some of their assets early in the proceedings, but husband's testimony regarding his business was equivocal about what assets he owned. Husband testified that he did not own the real estate that housed the garage. His testimony indicated that some of the tools and equipment were his and some may have been left by the prior tenant of the building. Husband presented little evidence of the assets of the business, but did present evidence regarding the debts. The business had accumulated debts from unpaid Ohio sales tax and from an auto parts supplier. The bill for automobile parts was \$0 in February 2015, but was \$15,000 by July 2015, when the divorce petition was filed. Husband testified that he wanted to close his business in Norwood and move the tools and equipment to the Kentucky property to repair cars in order to sell them. Wife testified that she was not involved in the business.

“When a party fails to provide the court with evidence as to the value of an item, the party may be found to have waived the right to appeal with regard to that asset.” *Smith v. Smith*, 2017-Ohio-44, 80 N.E.3d 1091, ¶ 26 (6th Dist.), citing

Roberts v. Roberts, 10th Dist. Franklin No. 08AP-27, 2008-Ohio-6121, ¶ 21. The magistrate explained to the parties that they needed to establish the value of their assets. Husband was provided with opportunities to call an expert or to testify as to the business's value, but he did not. The trial court decided the case based on the evidence before it, and if husband elected not to present evidence of the value of his business, the trial court was not required to order the submission of additional evidence. See *Hruby v. Hruby*, 7th Dist. Columbiana No. 93-C-9, 1997 WL 321608 (June 11, 1997); *Walls v. Walls*, 4th Dist. Highland No. 94 CA 849, 1995 WL 293831 (May 4, 1995). Husband's second assignment of error is overruled.

The third assignment of error presented for our review alleges that the trial court erred in awarding spousal support to wife pursuant to R.C. 3105.18. The parties were married for over 40 years. The trial court ordered husband to pay wife spousal support of \$500 for three years until she will be able to collect substantially more social security. Wife presented evidence that her current monthly social security payment would be approximately \$572, but if she waited until she was 66 years old to claim social security benefits, it would be \$825. The record shows that husband paid wife \$1000 a month to pay their expenses during the marriage. Wife worked at that time. Now, wife is unemployed. She is 62, has a high school education, and suffers from depression and arthritis. She testified that she has applied for jobs, but had only worked sporadically at the time of the final hearing.

If the trial court considered the statutory factors, and the judgment contains details sufficient for a reviewing court to determine that the support award is fair, equitable, and in accordance with the law, the reviewing court will uphold the award. *Chattree v. Chattree*, 2014-Ohio-489, 8 N.E.3d 390, ¶ 71 (8th Dist.). A reviewing court solely determines whether the trial court properly exercised its discretion.

Schroeder v. Schroeder, 1st Dist. Hamilton No. C-990532, 2000 WL 1161999, *1 (Aug. 18, 2000). We hold that there were sufficient details for this court to find that the support award is fair, equitable, and in accordance with the law. The husband's third assignment of error is overruled.

Husband's fourth assignment of error alleges that it was error for the trial court to award \$5000 in attorney fees to wife. Pursuant to R.C. 3105.73(A):

a court may award all or part of the reasonable attorney's fees * * * 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 the parties, and any other relevant factors the court deems appropriate.

Counsel for wife presented the statement of her fees and testified as to the amounts. Husband insisted on maintaining that the Kentucky property was gifted to him by a friend, despite the deed indicating a \$25,000 purchase price. He also did not make the Kentucky property available for sale by providing the keys to wife despite an agreed entry indicating that he would cooperate with the sale of the properties.

An award of attorney fees in a domestic-relations action is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *Chattree* at ¶ 79; *Schroeder* at *3. We hold the trial court did not abuse its discretion in awarding attorney fees. Husband's fourth assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

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Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on June 29, 2018

per order of the court _____.
Presiding Judge