

[Cite as *Minocchi v. Minocchi*, 2004-Ohio-4635.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JEANNE MINOCCHI	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellant	:	Hon. John W. Wise, J.
	:	Hon. John F. Boggins, J.
-vs-	:	
	:	Case No. 2003CA00431
DONALD MINOCCHI	:	
	:	
Defendant-Appellee	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Civil appeal from Stark County Court of Common Pleas, Division of Domestic Relations, Case No. 2003DR00216

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: AUGUST 30, 2004

APPEARANCES:

For Plaintiff-Appellant

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Boggins, J.

{¶1} This is an appeal from certain decisions of the Stark County Court of Common Pleas, Division of Domestic Relations relating to property appraisal and spousal support.

STATEMENT OF THE FACTS

{¶2} The parties were married on December 4, 1993.

{¶3} Prior to the marriage, in August, 1993, Appellant had purchased the residence. At the divorce hearing, it had a first mortgage of \$57,000.00 and a second of \$27,000.00 to \$28,000.00 (Tr. 17).

{¶4} Appellant was employed with the United States Postal Service. Her base salary was \$43,000.00 per year, but due to physical problems, she earned \$29,548.00 in 2001 and \$28,626.00 in 2002.

{¶5} Appellee had been engaged in home improvement work but also had physical disability problems and his primary income was \$104.00 per month from the Veteran's Administration.

{¶6} Appellant had obtained an appraisal of the residence but Appellee had failed to obtain one prior to trial due to a claim of inability to arrange such with Appellant.

{¶7} The Court took the case under advisement and permitted Appellee to obtain an appraisal within one week subsequent to the hearing.

{¶8} While Appellant initially objected to this procedure, the trial court found no objection in ordering such along with proposed findings of fact and written arguments. (T. at 58). No further objection was made at such time.

{¶9} Appellant did, however, file a motion to exclude Appellee's submitted appraisal, which motion was not ruled upon by the court and, as to which, we must determine therefore that such was denied. When a trial court fails to rule on a motion, the motion is considered denied. *State v. Olah*, 146 Ohio App.3d 586, 592, 2001-Ohio-1641, citing *Georgeoff v. O'Brien* (1995), 105 Ohio App.3d 373, 378, 663 N.E.2d 1348; *Solon v. Solon Baptist Temple, Inc.* (1982), 8 Ohio App.3d 347, 345-352- 457 N.E.2d 858.

{¶10} The court ordered spousal support to Appellee of \$500.00 per month for 24 months.

{¶11} The residence was granted to Appellant subject to indebtedness thereon, which she was to assume.

{¶12} Appellant raises two Assignments of Error:

ASSIGNMENTS OF ERROR

{¶13} "1. THE TRIAL COURT ERRED IN ALLOWING AN APPRAISAL SUBMITTED BY APPELLEE OVER THE OBJECTION WHICH RESULTED IN A VALUATION OF THE REAL ESTATE WHICH CAUSED APPELLANT TO ASSUME NEGATIVE EQUITY IN THE PROPERTY.

{¶14} “II. THE TRIAL COURT ERRED IN MAKING AN AWARD OF SPOUSAL SUPPORT WITHOUT REGARD TO THE EVIDENCE OR CONSIDERATION OF ANY OF THE STATUTORY FACTORS AS FOUND IN O.R.C. SECTION 3105.18.”

I.

{¶15} As to the First Assignment of Error, the admission or exclusion of relevant evidence rests within the sound discretion of the trial court and that court’s ruling as to such matters will not be reversed absent an abuse of discretion. See *Krischbaum v. Dillon* (1991), 58 Ohio St.3d 58, 66; *Rigby v. Lake Cty.* (1991), 58 Ohio St.3d 269, 271.

{¶16} In addition, the magistrate determined that the residence at 2628 Lakeside Avenue was pre-marital to Appellant. No objections were filed as to such determination. Therefore, as to the residence, the obtaining of the appraisal was irrelevant even if the acceptance of the late filing of the appraisal was incorrect. The only issue as to the home was the indebtedness thereon, not as to the value. The record is devoid of testimony as to the basis or use of the secondary indebtedness and we therefore reject this First Assignment.

II.

{¶17} The Second Assignment objects to the spousal support.

{¶18} R.C. 3105.18 provides in part:

{¶19} “(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:

{¶20} (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;

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

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

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

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

{¶25} (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;

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

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

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

{¶29} (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;

{¶30} (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;

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

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

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

{¶34} (2) In determining whether spousal support is reasonable and in determining the amount and terms of payment of spousal support, each party shall be considered to have contributed equally to the production of marital income.”

{¶35} A review of a trial court=s decision relative to spousal support is governed by an abuse of discretion standard. *Cherry v. Cherry* (1981), 66 Ohio St.2d 348. We cannot substitute our judgment for that of the trial court unless, when considering the totality of the circumstances, the trial court abused its discretion. *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128. In order to find an abuse of discretion, we must determine the trial court=s decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217. We must look at the totality of the circumstances in the case *sub judice* and determine whether the trial court acted unreasonably, arbitrary or unconscionably.

{¶36} We fail to find an abuse of discretion nor any indication that the court did not consider the statutory factors even though those which may be applicable are not enunciated.

{¶37} A reviewing court must presume the trial court applied the law correctly. *State v. Coombs* (1985), 18 Ohio St.3d 123, 125, citing *State v. Eubank* (1979), 60 Ohio St.2d 183. Where findings are general, an appellate court will assume regularity rather than irregularity in the trial court's findings.

{¶38} We therefore reject the Second Assignment of Error.

By: Boggins, J.

Hoffman, P.J. and

Wise, J. concur.

JUDGES

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

JEANNE MINOCCHI
Plaintiff-Appellant

-vs-

DONALD MINOCCHI
Defendants-Appellee

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JUDGMENT ENTRY

CASE NO. 03-CA-431

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Stark County, Ohio is affirmed. Costs to Appellant.

JUDGES