

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
PICKAWAY COUNTY

MICHAEL TITTEL,	:	
	:	Case No. 19CA38
Plaintiff-Appellant/ Cross-Appellee,	:	
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
BETHANY TITTEL,	:	
	:	
Defendant-Appellee/ Cross-Appellant.	:	<b>RELEASED: 03/09/2021</b>
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APPEARANCES:

Jon Klein, Powell, Ohio, for Appellant/Cross-Appellee.

Lori Pritchard Hardin, Circleville, Ohio, for Appellee/Cross-Appellant.

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Wilkin, J.

{¶1} This is an appeal and cross-appeal from a Pickaway County Court of Common Pleas Final Divorce Decree that in pertinent part ordered Appellant/Cross-Appellee, Michael Tittel (“Michael”), to pay \$300 a month in spousal support and \$719 a month in child support to Appellee/Cross-Appellant, Bethany Tittel (“Bethany”). On appeal, Michael alleges that the trial court abused its discretion in awarding Bethany spousal support and child support. On cross-appeal, Bethany alleges that the trial court abused its discretion in not finding that Michael engaged in financial misconduct during their marriage and consequently failed to take that into consideration in making its distribution. Having reviewed the record and the applicable law, we overrule Michael’s assignments of error on

appeal and Bethany's assignment of error on cross-appeal, and affirm the trial court's judgment.

### BACKGROUND

{¶2} Michael and Bethany were married in 1994 and have two children, with only one minor child remaining in the home. On October 11, 2017, Michael filed a complaint seeking a divorce from Bethany. Bethany filed an answer and counterclaim. The parties executed a memorandum entry wherein they resolved Bethany would have custody of the minor child, but the parties did not agree on child support. After the final hearing on the complaint for divorce and counterclaim, the magistrate issued a decision with findings of fact and conclusions of law that determined Michael's annual income was \$88,156, and recommended in pertinent part that Michael pay \$719.64 per month in child support and \$300 per month in spousal support to Bethany. The magistrate also found that Michael mismanaged finances, and adjusted the distribution of marital assets and debt in favor of Bethany.

{¶3} Michael filed objections to the magistrate's decision regarding the division of the martial property and debt based on his financial mismanagement, spousal support, and child support. Michael first alleged that the evidence did not show the tax debt for 2015, 2016, and 2017, was financial mismanagement on his behalf with regard to determining the equitable division of property. He also argued that because the evidence did not support his income was \$88,156, the magistrate erred in recommending that he pay \$300 per month in spousal support and \$719.64 in child support.

{¶4} The trial court sustained Michael’s first objection and adjusted the division of marital property, but overruled his second and third objections and otherwise adopted the magistrate’s decision regarding spousal support and child support, as reflected in the final divorce decree. It is this judgment that Michael appeals, asserting two assignments of error. Bethany has filed a cross-appeal asserting a single assignment of error.

#### MICHAEL’S APPEAL

#### ASSIGNMENTS OF ERROR

- I. “WHETHER THE COURT COMMITTED REVERSIBLE ERROR IN THE AWARD OF SPOUSAL SUPPORT AS BEING REASONABLE AND APPROPRIATE”
- II. “WHETHER THE COURT COMMITTED REVERSIBLE ERROR IN DETERMINING THE CHILD SUPPORT AMOUNT”

#### ASSIGNMENT OF ERROR I

{¶5} In his first assignment of error, Michael alleges that the trial court committed reversible error in concluding that, for purposes of calculating spousal support, his income was \$88,156. He alleges that he submitted to the trial court a 2018, 1099-misc. tax form, which reflected that he received income in the amount of \$63,349.86, and he alleges that the trial court committed reversible error in not relying upon that form to calculate his income for purposes of awarding spousal support. Michael alleges that there is no evidence that his income in 2018 was more than \$63,349.46, so the trial court’s determination that his income was \$88,156, was mere speculation and using it to determine spousal support was reversible error.

{¶6} Michael also alleges that there is no indication that the magistrate considered his expenses in determining his income, and he alleges that Bethany's alleged expenses were not supported by any documentation.

{¶7} Finally, Michael alleges that the magistrate erred because she "failed to specify in her decision her consideration of the statutory factors under R.C. 3105.18."

{¶8} In response, Bethany argues that a review of the transcript of the proceedings reveals that the trial court considered the factors set out in R.C. 3105.18 in awarding her spousal support. Bethany alleged that evidence of Michael's income for 2014-2016 was introduced, which supports the magistrate's award of spousal support, but none was introduced regarding Michael's income for 2017 and 2018. Therefore, she argues, the trial court did not abuse its discretion in awarding her \$300, a month in spousal support.

## LAW

### 1. Standard of Review for Spousal Support

{¶9} "Trial courts generally have broad discretion and 'wide latitude' when evaluating the appropriateness, reasonableness, and amount of a spousal support award." *Martindale*, 4th Dist. Athens No. 18CA17, 2019-Ohio-3028, ¶ 88, citing *Kunkle v. Kunkle*, 51 Ohio St.3d 64, 67, 554 N.E.2d 83 (1990); *Bolinger v. Bolinger*, 49 Ohio St.3d 120, 122, 551 N.E.2d 157 (1990); *Cherry v. Cherry*, 66 Ohio St.2d 348, 421 N.E.2d 1293 (1981); *Clifford v. Skaggs*, 4th Dist. Gallia No. 17CA6, 2017-Ohio-8597, 2017 WL 5513569, ¶ 9. Therefore, an award of spousal support will not be reversed absent an abuse of discretion. *Id.*, citing

*Clifford* at ¶ 9. An “[a]buse of discretion’ has been defined as an attitude that is unreasonable, arbitrary or unconscionable.” *Hodges v. Hodges*, 4th Dist.

Pickaway No. 18CA8, 2019-Ohio-552, 130 N.E.3d 891, ¶ 10, citing *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985). “However, the relevant factors set forth in R.C. 3105.18(C)(1)(a)-(n) must guide the trial court’s discretion.” *Mays v. Mays*, 4th Dist. Ross No. 01CA2585, 2001-Ohio-2474, citing *Cherry*, 66 Ohio St.2d at 355, 421 N.E.2d 1292 (1981). R.C.

3105.18 (C)(1) provides:

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:

- (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 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.

{¶10} A trial court “must consider all of the statutory factors and not base its determination upon any one factor taken in isolation[,] \* \* \* and must indicate the basis for a spousal support award in sufficient detail to enable a reviewing court to determine that the award complies with the law.” *Eichenlaub v. Eichenlaub*, 4th Dist. Scioto No. 18CA3825, 2018-Ohio-4060, 120 N.E.3d 380, ¶ 13, citing *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 518 N.E.2d 1197 (1988), paragraphs one and two of the syllabus. However, absent a request for findings of fact and conclusions of law, “*Kaechele* does not require the trial court to list and comment on each factor.” *Id.*, citing *Brown v. Brown*, 4th Dist. Pike No. 02AP689, 2003-Ohio-304, ¶ 10. Instead, the trial court can sufficiently “reveal the basis for its award in either its judgment or the record.” *Id.* And “[i]f the record reflects that the trial court considered the statutory factors, and if 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.” *Id.*, citing *Chattree v. Chattree*, 8th Dist. Cuyahoga No. 99337, 2014-Ohio-489, 8 N.E.3d 390, ¶ 71.

{¶11} With regard to the specific factor of “income,”

Neither the Revised Code nor case law fully defines “income” for purposes of awarding spousal support. Thus, a trial court appears to possess discretion in determining what constitutes “income.” However, in determining what constitutes “income,” we believe that a trial court should typically use the figures shown on

a party's annual income tax return. If a trial court chooses not to use a party's annual income tax return in assessing "income," the court should explain its reasons.

(Citation omitted.) *Freeland v. Freeland*, 4th Dist. Jackson No. 02CA18, 2003-Ohio-5272, ¶ 16; see also *Foster v. Foster*, 150 Ohio App.3d 298, 301, 780 N.E.2d 1041 (12th Dist. 2002) ("Federal and state tax documents provide a proper starting point to calculate a parent's income, but they are not the sole factor for the trial court to consider.")

{¶12} And finally, "[w]hile the decision to award spousal support is discretionary, an appellate court reviews the factual findings to support that award under a manifest weight of the evidence standard." *Freeland*, , at ¶ 14, citing *Brown v. Brown*, 4th Dist. Pike No. 02CA689, 2003-Ohio-304; *Patterson v. Patterson*, 4th Dist. Adams No. 97CA654; see, also, *Fletcher v. Fletcher*, 68 Ohio St.3d 464, 468, 628 N.E.2d 1343 (1994); *C.E. Morris v. Foley Construction Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

In conducting a manifest weight of the evidence review, the reviewing court is to weigh the evidence and all reasonable inferences to be drawn therefrom, consider the credibility of witnesses, and determine whether in resolving evidentiary conflicts, the fact-finder clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed.

*Fox v. Positron Energy Res., Inc.*, 4th Dist. Washington No. 17CA2, 2017-Ohio-8700, 101 N.E.3d 1, ¶ 10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

#### ANALYSIS

{¶13} Michael argues that the trial court committed reversible error in determining that his income was \$88,156, in 2018 for purposes of calculating spousal support. He alleges that contrary to the magistrate's assertion he submitted evidence of his income in 2018 in the amount of \$63,349.86, by way of

his 2018, 1099-misc. tax form, and he testified in court that was the only income he made that year. He also complains there is no indication how the trial court calculated his expenses for 2018. Finally, he asserts there is no evidence that he was voluntarily underemployed, so no income could be imputed to him.

{¶14} The magistrate found that Michael “did not present any evidence of 2017 or 2018 income.” The magistrate relied on Michael’s 2016 Schedule C tax form to calculate his income. The magistrate reasoned that because Appellant was employed “exclusively for Ralph Fallon Builders, he no longer incurs certain deductible expenses listed in [his] Schedule C,” including trash (\$463), an alarm (\$635), heat (\$3180), utilities (\$512), cost of goods sold (\$3,401), office expenses (\$1891), and supplies (\$12,530). To calculate Michael’s “gross income,” the Magistrate took his “net profit” of \$65,544.00, from his 2016 Schedule C tax form and added to it the aforementioned expenses, which total \$22,612.00, and found Michael’s gross income to be \$88,156.00, for purposes of calculating spousal support.

{¶15} Initially, we note that there are no complete tax returns for Michael in the record, which courts have recognized as the best starting point to determine income. See *Wolf-Sabatino v. Sabatino*, 10th Dist. Franklin No. 12AP–1042, 2014-Ohio-1252, ¶ 44, *Marvin v. Marvin*, 11th Dist. Portage No. 96-P-0185, 1997 WL 123914, \*2 (Feb. 7, 1997). Instead, the parties submitted numerous 1099-misc. tax forms from 2014, 2015, 2016, and 2018, and one 2016 Schedule C tax form.



**{¶16}** The trial court relied on Michael's 2016 Schedule C tax form to calculate his income to be \$88,156, for two reasons. First it found "[i]f anything, \$300 a month is probably too low considering all of the factors in R.C. 3105.18." Second, in addressing Michael's objection to child support regarding the trial court's determination that Michael's income was \$88,156, which rationale is pertinent here as well, the trial court further stated:

**{¶17}** As noted by the Magistrate, [Michael] is a self-employed cabinet maker. [Michael's] 1099 gross wages were \$103,396.15 in 2014, \$111,071.75 in 2015, and \$103,118.66 in 2016. [Michael's] net income in 2016 as shown on his schedule C, was \$65,544.00. [Michael] also had reported lottery winnings of \$11,062.37 in 2016.

**{¶18}** Plaintiff claims he only earned \$63,849.00 in 2018. However, there is no federal income tax return for [Michael]. Exhibit B is simply one 1099 issued in 2018 to [Michael] from Ralph W. Fallon Builder, Inc. Clearly, this is only part of [Michael's] tax return. Absent introduction of complete tax returns for 2017 and 2018, the Court finds the Magistrate did the best she could to determine [Michael's] income.

**{¶19}** We agree with Michael that the magistrate was wrong in stating that he did not submit any evidence of income for 2017 or 2018; he did submit a single 1099-misc. tax form from 2018. However, the other tax documents before the trial court showed that Michael made approximately \$100,000, from Ralph Fallon Builders ("RFB") annually from 2014 through 2016, as well as additional income from other sources in some of those years. Consequently, it is clear that the trial court was suspicious of the unusual drop in Michael's 2018 income as displayed in a sole 1099-misc. tax form and discounted Michael's testimony that his 2018, 1099-misc. tax form represented his entire income for that year. Instead, the trial court utilized Michael's 2016 Schedule C tax form to calculate

his income, and in doing so the trial court, as reflected in the magistrate's decision, used the "net profit" of \$65,554.00, listed in his 2016 Schedule C tax form, and added to it the various expenses listed in the Schedule C (\$22,602.00), that he no longer incurs because he is working for RFB, to determine that his income was \$88,156, for purpose of calculating spousal support.

{¶20} Michael argues that his testimony that he only made \$63,349.86 as set out in his 2018, 1099-misc. tax form was not contested, and therefore corroborates that \$63,349.86, was, in fact, his sole income for 2018. However, although she did not testify as to any specific additional income that Michael earned in 2018, Bethany did testify that in addition to working for RFB, Michel did "side jobs." And her testimony is corroborated by Michael's 2014 and 2016 tax documents before the trial court. Based on this evidence, we find it was reasonable and within the trial court's discretion to eschew reliance on Michael's sole 2018, 1099-misc. form, and instead rely on his 2016 Schedule C tax form to calculate his income for purposes of determining spousal support.

{¶21} Michael also alleges that that there is no evidence to support Bethany's alleged expenses, and the trial court failed to consider all the factors in R.C. 3105.18 (C)(1). Bethany testified that her monthly expenses were \$2,629.62, and her monthly income was \$2,300.00, and therefore sought \$500.00, a month in spousal support. Although Michael is correct there is no documentation to support her assertion, we again note that the trial court has authority to determine the credibility of her testimony. Further, expenses are only one of many factors the trial court must consider in deciding whether to award

spousal support. The trial court expressly stated that after “considering all the factors in R.C. 3105.18, it opined that \$300 in spousal support was probably low.” These factors include incomes, relative earning capacity, etc. *Eichenlaub*, 4th Dist. Scioto No. 18CA3825, 2018-Ohio-4060, 120 N.E.3d 380, ¶ 13. In examining the record, we find that the trial court considered these factors and its findings are supported by the evidence submitted in this case. Accordingly, we find that the trial court order of \$300 per month of spousal support was not against the manifest weight of the evidence or an abuse of the trial court’s discretion. Therefore, we overrule Michael’s first assignment of error.

#### ASSIGNMENT OF ERROR II

{¶22} In his second assignment of error, Michael alleges that the trial court committed reversible error in calculating his income to be \$88,156, for purposes of awarding child support to Bethany for the care of their son. As he asserts in his first assignment of error, Michael argues that the trial court committed reversible error by refusing to rely on his 2018, 1099-misc tax form to determine his income for purposes of calculating child support. Michael further argues that there is no basis to find that he was underemployed.

#### LAW

{¶23} Unlike determining income for the purpose of spousal support, which begins by considering the parties’ income, the parties’ gross income is the starting point for calculating child support. See *Corwin v. Hammer*, 4th Dist. Highland No. 07CA17, 2008-Ohio-2691, ¶ 11. Gross income includes the sum of all wages, salaries, profits, interest payments, rents, and other forms of

earnings, before any deductions or taxes. R.C. 3119.01(12). “[I]ncome and personal earnings shall be verified by electronic means or with suitable documents, including, but not limited to, paystubs, employer statements, receipts and expense vouchers related to self-generated income, tax returns, and all supporting documentation and schedules for the tax returns.” R.C. 3119.05(A).

“Ohio courts have held that a trial court abuses its discretion by calculating income for child support purposes without requiring some form of documentary evidence listed in R.C. 3119.05(A).” *Martindale*, 4th Dist. Athens No. 2019-Ohio-3028, ¶ 45, citing *In re M.C.M.*, 2018-Ohio-1307, 110 N.E.3d 694 (8th Dist.), ¶ 32 (concluding that trial court abused its discretion by failing to rely upon sufficient documentary evidence when calculating parent's income); *In re K.R.B.*, 2017-Ohio-7071, 95 N.E.3d 799 (8th Dist.), ¶ 26 (finding an abuse of discretion when record failed to contain documentary evidence to support income-calculation); *Montgomery v. Montgomery*, 3rd Dist. Union No. 14-14-22, 2015-Ohio-2976, 2015 WL 4510904, ¶ 50 (determining that trial court abused its discretion when fixing income based solely upon parent's testimony); *Rymers v. Rymers*, 11th Dist. Lake No. 2011-L-064, 2012-Ohio-1675, 2012 WL 1288726, ¶ 29 (concluding that trial court abused its discretion when court failed to verify the parents' incomes with proper documentation); *Basham v. Basham*, 3d Dist. Allen No. 1-02-37, 2002-Ohio-4694, 2002 WL 31007154, at ¶ 8 (finding that trial court abused its discretion when record did not contain sufficient documentation to verify parent's income). Consequently, determining income “ ‘by testimony alone, without proper verification as required under R.C. 3119.05(A), is an abuse

of the trial court's discretion." ' ' *Martindale*, 4th Dist. Athens No. 2019-Ohio-3028, at ¶ 73, quoting *Montgomery v. Montgomery*, 3rd Dist. Union No. 14-14-22, 2015-Ohio-2976, 2015 WL 4510904, ¶ 51, quoting *Ornelas v. Ornelas*, 12th Dist. Warren No CA2011–08–094, 2012–Ohio–4106, ¶ 25.

{¶24} In addition, a trial court may impute income to a parent, but only if the court first finds that the parent is voluntarily unemployed or underemployed. *Martindale*, 4th Dist. Athens No. 2019-Ohio-3028, ¶ 45, citing *Inscoe v. Inscoe*, 121 Ohio App.3d 396, 424, 700 N.E.2d 70 (4th Dist. 1997), citing *Rock v. Cabral*, 67 Ohio St.3d 108, 616 N.E.2d 218 (1993), syllabus; R.C. 3119.01(C)(17)(a).

#### ANALYSIS

{¶25} Appellant is correct, the trial court did not impute income to him, i.e. it did not determine he was unemployed or underemployed. Rather, based on Bethany's testimony that Appellant, in addition to his work for RFB, did other side jobs, as supported by Appellant's various other tax forms from 2014 through 2016, the court declined to rely on Michael's 2018, 1099-misc. tax form in calculating his income in that as compared to the other tax documents submitted to the trial court it appeared to be an outlier. Instead, the trial court relied upon Appellant's 2016 Schedule C tax form, profit adding in expenses that he can no longer deduct as a 1099 employee of RFB, and concluded that Appellant's income for 2018 was \$88,156 for purposes of calculating child support. We do not find that the trial court's calculation of Michael's income for purposes of child support was unreasonable, arbitrary or unconscionable.

{¶26} For the aforementioned reasons, we overrule Michael's two assignments of error.

#### BETHANY'S CROSS APPEAL

#### THE LOWER COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLEE/CROSS APPELLANT WHEN IT RULED THAT APPELLANT/CROSS-APPELLEE WAS NOT GUILTY OF FINANCIAL MISCONDUCT

{¶27} On cross-appeal, Bethany asserts that the uncontroverted testimony reveals that Michael was guilty of financial misconduct because he repeatedly failed to pay debts, taxes and utilities. More specifically, Bethany alleges Michael failed to comply with the temporary orders during this case by failing to pay the mortgage, child support, and propane payments. She also alleges that approximately forty-five thousand dollars in proceeds from the sale of their marital home went to pay off a tax liability and vehicle loan. And finally, she alleges that Michael stopped depositing his income in their joint account during the pendency of this case requiring Bethany to solely pay child care and utility expenses. Therefore, Bethany argues the trial court abused its discretion in not giving her a greater portion of the marital property pursuant to R.C. 3105.17(E)(4).

{¶28} In response, Michael argues that there is no clear and convincing evidence that he committed financial misconduct and therefore no additional award of property to Bethany was warranted. Michael alleges that the evidence shows that "both parties had a long history of not having enough money to pay bills and taxes."

## LAW

**{¶29}** “Trial courts must divide marital property equitably between the spouses. R.C. 3105.171(B). Usually, this requires the court to divide the marital property equally. R.C. 3105.171(C)(1).” *Sinkovitz v. Sinkovitz*, 4th Dist. Hocking No. 15CA18, 2016-Ohio-2861, 64 N.E.3d 382, ¶ 35. However, if an equal division “would produce an inequitable result, [the court] must divide the property in a way it deems equitable.” *O’Rourke v. O’Rourke*, 4th Dist. Scioto No. 08CA3253, 2010-Ohio-1243, 2010 WL 1138832, ¶ 15; R.C. 3105.171(C)(1).

**{¶30}** “R.C. 3105.171(E)(4) authorizes a trial court to make a distributive or greater award of marital property to one spouse upon a finding that the other spouse ‘has engaged in financial misconduct, including but not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets.’ ” *Martindale v. Martindale*, 4th Dist. Athens No. 18CA17, 2019-Ohio-3028, ¶ 82, quoting R.C. 3105.171(E)(4). The financial misconduct statute should apply only if the spouse engaged in some type of “wrongdoing.” *Jacobs v. Jacobs*, 4th Dist. Scioto No. 02CA2846, 2003-Ohio-3466, ¶ 23, citing *Rinehart v. Rinehart*, 4th Dist. Gallia No. 96CA10, 1998 WL 282622, \*11 (May 18, 1998); *Hammond v. Brown*, Cuyahoga App. No. 67268, 1995 WL 546903 (Sep. 14, 1995). “Poor investing” is not “wrongdoing or financial misconduct” as contemplated by R.C. 3105.171(E)(4). *Id.*

**{¶31}** The party complaining of the misconduct has the burden of proof. *Vulgamore v. Vulgamore*, 4th Dist. Pike No. 16CA876, 2017-Ohio-4114, ¶ 30, citing *Jacobs* Scioto No. 02CA2846 at ¶ 25. “ ‘There must be a clear showing

that the offending spouse either profited from the alleged misconduct or intentionally defeated the other spouse's distribution of assets.' ” *Martindale*, 4th Dist. Athens No. 2019-Ohio-3028 at ¶ 82, quoting *Jacobs* at ¶ 23. Appellate courts will review a trial court's decision concerning a distributive award under R.C. 3105.171(E)(4) or (5) for an abuse of discretion. *Id.* at ¶ 84, citing *Vulgamore*, at ¶ 30. “An abuse of discretion is more than an error of law or judgment; it implies that the trial court's attitude was unreasonable, arbitrary or unconscionable.” *Jacobs* at ¶ 22, citing *Landis v. Grange Mut. Ins. Co.*, 82 Ohio St.3d 339, 342, 695 N.E.2d 1140 (1998).

#### ANALYSIS

{¶32} In concluding that Michael did *not* commit financial misconduct, the trial court found that

the parties had a habit of failing to make estimated income tax payments. For example [Bethany] testified that they refinanced the house in March of 2015 to pay off back taxes of approximately \$51,000. [Bethany admitted that Michael] deposited money into her separate bank account but yet estimated tax payments were never made. When pressed as to why she failed to send estimated payments to the IRS, [Bethany] stated:

A: I asked him where to send it to. I have no clue where to send it to.

Q: Let me stop you there.

A: Okay.

Q: When you said I asked him who to send it to, wouldn't you know to just – even if you don't send it to anyone, I'm talking about why not open up another account or just say hey look, we've got to make sure we have so much left in our bank account at the end of the year to pay taxes. Why didn't you guys do that?

A: You know Jon, I'm not sure what I was doing. And I guess it was solely on my shoulders to try and figure everything out, as everything always has been. And I



apologize, but you know, our tax person said we needed to send it somewhere. And I asked him where to send it to, and I never got – I mean I have no clue where to – I don't know anything about that stuff.

Q: Well, but it would be fair to say though, I mean when we're talking tax debt, there's really only two places to send it to. You either send it to the Federal Government, if it's federal taxes, or you send it to the State of Ohio; would that be true?

A: He, you know – I don't know. I guess. I don't know.

{¶33} The trial court also found that “the parties had a habit of spending more than their incomes could handle”; they “ ‘put everything on the credit card’ and then just made payments.” Therefore, the trial court found that both parties contributed in the way they paid their bills, including their taxes.

{¶34} We find that there were several financial obligations addressed in the case that do not appear to be subject to this analysis because they were Michael's alone. The temporary orders in this case required Michael alone to pay some of the parties' bills during the pendency of this case, including, in pertinent part, a propane gas bill, child support, and the mortgage on the parties' home. The child support was not completely paid by Michael, but the amount due remains pending in arrearages. Michael's failure to pay the mortgage for months ultimately resulted in the house being sold, but the proceeds, after the tax liens were paid, were distributed equally to the parties. Finally, it appears that the propane gas bill of \$2,094.22 remains outstanding and in Michael's name. Under these circumstances, even assuming arguendo that Michael engaged in financial wrongdoing regarding these financial obligations, we do not find that the trial court's distribution of the parties' assets and debts was unreasonable, arbitrary or unconscionable.

{¶35} Because we conclude that the trial court did not abuse its discretion in finding that Michael did not engage in financial misconduct, we overrule Bethany's cross-appeal.

#### CONCLUSION

{¶36} Having overruled Michael's assignments of error in his appeal, and Bethany's assignment of error on cross-appeal, we affirm the judgement of the trial court.

**JUDGMENT AFFIRMED**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the PICKAWAY COUNTY COURT OF COMMON PLEAS to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: \_\_\_\_\_  
Kristy S. Wilkin, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**