

[Cite as *Edwards v. Edwards*, 2014-Ohio-5856.]

STATE OF OHIO, HARRISON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

AMY EDWARDS,

)

)

PLAINTIFF-APPELLEE,

)

)

CASE NO. 14 HA 1

V.

)

)

OPINION

ROGER EDWARDS,

)

)

DEFENDANT-APPELLANT.

)

CHARACTER OF PROCEEDINGS:

Civil Appeal from Court of Common
Pleas, Domestic Relations Division of
Harrison County, Ohio
Case No. DRA20120060

JUDGMENT:

Affirmed

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

Attorney Adrian V. Hershey
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JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: December 30, 2014

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DONOFRIO, J.

{¶1} Defendant-appellant, Roger Edwards, appeals from a Harrison County Common Pleas Court divorce judgment ordering him to pay spousal support to plaintiff-appellee, Amy Edwards.

{¶2} The parties were married in 1995. Two children were born to the marriage, Jarret (d.o.b. 11/7/97) and Addie (d.o.b. 9/20/00).

{¶3} Appellee filed for divorce on September 25, 2012. While the case was pending, appellee filed for bankruptcy and a stay was placed on the divorce proceedings.

{¶4} When the stay was lifted, the parties were able to come to an agreement on all issues involving the division of property and marital debt. The parties also agreed that appellee would be the residential parent of the children and they reached an agreement as to child support.

{¶5} The matter proceeded to a hearing regarding spousal support where the court heard testimony from both parties. The trial court considered the evidence and the statutory factors. It then determined that spousal support was appropriate for four years. The court ordered appellant to pay spousal support to appellee as follows: for the year 2014, \$1,000 per month; for the year 2015, \$925 per month; for the year 2016, \$875 per month; and for the year 2017, \$800 per month. The court retained jurisdiction over the issue of spousal support.

{¶6} Appellant filed a timely notice of appeal on January 14, 2014.

{¶7} Appellant now raises a single assignment of error that states:

IT WAS ERROR FOR THE TRIAL COURT TO AWARD APPELLEE SPOUSAL SUPPORT IN THE AMOUNT OF \$1,000.00 PER MONTH FOR 2014, \$925.00 PER MONTH FOR 2015, \$875.00 PER MONTH FOR 2016 AND \$800.00 PER MONTH FOR 2017 SINCE THE DECISION IS NOT SUPPORTED BY THE EVIDENCE AND IS ARBITRARY AND UNREASONABLE.

{¶8} Appellant argues the evidence did not support the trial court's award of

spousal support. While he does not contest the fact that appellee is entitled to spousal support, he contends the amount of spousal support is excessive, not supported by the evidence, and more than was requested by appellee. Appellant notes the court found his annual income to be \$90,000, which he contends was not supported by the evidence. Additionally, he points out the court found appellee to be underemployed. Furthermore, appellant argues that given his reasonable monthly expenses, which he provided to the court, he does not earn enough money to pay the court's ordered spousal support. Moreover, appellant asserts the court failed to consider that he has taken on all of the marital debt and will be responsible for 78 percent of the children's medical expenses not covered by insurance.

{¶9} We review matters surrounding spousal support decisions for an abuse of discretion. *Corradi v. Corradi*, 7th Dist. No. 01-CA-22, 2002-Ohio-3011, ¶51. Abuse of discretion connotes more than an error in judgment; it implies that the trial court's judgment is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶10} In determining whether a spousal support award is appropriate and reasonable and in fashioning that award, the trial court shall consider:

- (a) The income of the parties, from all sources, * * *;
- (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.

R.C. 3105.18(C)(1).

{¶11} In this case, the trial court analyzed the applicable factors. It made the following findings as to the statutory factors.

{¶12} Appellant earns approximately \$90,000 annually. Appellee earns \$15,000 annually. R.C. 3105.18(C)(1)(a).

{¶13} There are significant differences in the parties' earning abilities. Appellant is an experienced coal miner with regular earnings of \$65,000 and overtime averaging \$25,000. Appellee has an associate's degree in mental health, but has not found work in that field. She is currently a school secretary earning \$15,000 per year. R.C. 3105.18(C)(1)(b).

{¶14} Appellant is 44 years old and has some health concerns that do not interfere with his employment. Appellee is 43 years old and has a number of health issues that must be monitored and addressed, but do not affect her employability.

R.C. 3105.18(C)(1)(c).

{¶15} The parties divided the retirement benefits accumulated during the marriage. Given the disparity in earning potential, appellant will likely have an advantage in accumulating future benefits. R.C. 3105.18(C)(1)(d).

{¶16} The duration of the marriage was at least 17 years. R.C. 3105.18(C)(1)(e).

{¶17} Childcare is not needed at this time. R.C. 3105.18(C)(1)(f).

{¶18} The parties lived on appellant's income and used appellee's income for "extras." Addie requires regular healthcare from the Cleveland Clinic. The family has incurred substantial expenses in 4-H activities. R.C. 3105.18(C)(1)(g).

{¶19} Appellant has sufficient education to continue his employment. Appellee is qualified for her current position and other entry level positions but additional education would improve her employment opportunities. R.C. 3105.18(C)(1)(h).

{¶20} The parties reached an agreement concerning the division of debts and assets. Appellee completed a bankruptcy and has essentially no debt and no assets. Appellant will have the debt of a newly-purchased truck and the chance to maintain the marital home. Because the parties reached an agreement on this issue, the court will not consider it in determining spousal support. R.C. 3105.18(C)(1)(i).

{¶21} Any contribution to the other spouse's education or earning ability is not applicable. R.C. 3105.18(C)(1)(j).

{¶22} There has been no indication that appellee wishes to pursue further education. Appellant does not require any further education. R.C. 3105.18(C)(1)(k).

{¶23} Any award of spousal support will shift income and tax liability away from appellant and to appellee. R.C. 3105.18(C)(1)(l).

{¶24} The parties never intended to rely on appellee's income to support essential family needs. While appellee has been working, she has not accumulated marketable experience. R.C. 3105.18(C)(1)(m).

{¶25} Appellant will continue to have health insurance for himself and the

children through his employment. Appellee believed she would have insurance through her employment, though she was not sure to what extent. R.C. 3105.18(C)(1)(n).

{¶26} Appellant drives 140 miles per day to maintain his employment. He attempts to reduce fuel costs by carpooling. Appellee incurs travel expenses, to a lesser extent, in maintaining her own employment and securing medical treatment for Addie. R.C. 3105.18(C)(1)(n).

{¶27} The trial court found that numerous factors weighed in favor of a spousal support award. Appellee's income and potential for income are much lower than appellant's income. Appellant's access to overtime gives him more flexibility in meeting financial demands. Appellant has considerable experience in his occupation and he will likely have greater job security than appellee. Appellant has an established health insurance plan while appellee is unsure of the extent of the benefits that will be available to her. Appellant will have an advantage over appellee in accumulating future retirement benefits as he is currently contributing eight percent of his wages into a retirement account and his employer is matching the first six percent. The marriage, which is more than 17 years, is of considerable duration. During the marriage, the parties met the needs of the entire family through their combined efforts. But they failed to prepare appellee to assume total responsibility for her economic security.

{¶28} The trial court found, considering the above factors, that an award of spousal support was appropriate. It stated that further consideration of additional factors was needed to determine the amount of the monthly payments and their duration. Therefore, the court considered these additional factors.

{¶29} The court determined it would not consider appellant's overtime earnings in determining spousal support. It noted that courts must consider overtime when calculating child support, but there is no requirement that it make the same consideration when calculating spousal support. The court found in this case it was equitable to only use appellant's regular income in fashioning a spousal support

award.

{¶30} The court also pointed out that appellant will claim the children as dependents on his taxes and, therefore, he will receive a substantial reduction in his tax liability. Additionally, the court noted that appellee could qualify for the Earned Income Credit as the head of household with children, which would result in a financial benefit to her. Therefore, the court found these factors to be “neutral” in considering spousal support.

{¶31} Next, the court took into consideration the fact that appellant must commute a substantial distance to maintain his employment. Therefore, the court found it appropriate to reduce appellant’s income by \$2,500 per year. The court also imputed the full time minimum wage to appellee in the amount of \$16,324. It noted that even with these adjustments in income, there was still a substantial disparity between the parties.

{¶32} Finally, the court considered that during the pendency of the divorce, appellant paid appellee \$400 per month in spousal support.

{¶33} The court then set out its support award of \$1,000 per month in 2014, \$925 per month in 2015, \$875 per month in 2016, and \$800 per month in 2017. The court also slightly reduced the amount of child support appellant owed based on a newly completed worksheet.

{¶34} The evidence supports the trial court’s award of spousal support.

{¶35} Appellee testified that although she has an associate’s degree in mental health, she is currently employed full-time as a school secretary earning \$15,000 annually. (Tr. 12-13). She stated health insurance will be available to her through her employment for approximately \$260 per month. (Tr. 14).

{¶36} As to appellant, appellee stated that appellant spends extra money on 4-H animals for the children. (Tr. 26). And he purchased a new truck with a \$500 to \$600 monthly payment. (Tr. 27). Appellee testified that she filed for bankruptcy because appellant failed to make the monthly payments on their house. (Tr. 27-28).

{¶37} Appellee also testified as to the parties’ daughter. She stated that

Addie has a rare cancer-like disorder that requires her to make numerous trips to Cleveland for doctors' appointments and treatments. (Tr. 29-30).

{¶38} Additionally, appellee stated that she has medical expenses for high blood pressure, anxiety, depression, asthma, and sleep apnea. (Tr. 35-36).

{¶39} Appellee testified that in order to pay her basic expenses, she needs \$800 per month in spousal support for five years. (Tr. 34, 43).

{¶40} Appellant testified that he works in a mine in Claysville, Pennsylvania. (Tr. 63). In order to get to work, appellant has a 150-mile round-trip commute. (Tr. 63).

{¶41} Appellant stated that he is currently paying on two loans against his 401K, health insurance for him and the children, the mortgage and equity line of credit on the marital home, and a loan for his new truck. (Tr. 64-66). He testified that after paying his monthly expenses, he has approximately \$600 left over. (Tr. 69). Appellant stated that he has assumed all of the marital debt. (Tr. 71-72).

{¶42} Appellant objected to any award of spousal support but opined that if the court did grant a support award, it should be for a term of no more than three years. (Tr. 73).

{¶43} In addition to the parties' testimony, the trial court also considered the parties' agreements on all terms other than spousal support and their child support worksheet.

{¶44} Appellant argues the court should not have awarded more than appellee's request of \$800 per month. However, what appellant fails to take into consideration is that appellee requested \$800 per month for five years. This equals a total of \$48,000 over five years. Instead, the court awarded support for four years at a gradually decreasing monthly obligation. The court's award equals a total of \$33,600 over four years. Thus, the court's total award was actually less than what appellee requested.

{¶45} Appellant also argues the court erred in finding his annual income to be \$90,000. While the trial court did make this finding, it was based on appellant's

salary plus overtime. What appellant fails to note is that the court also found it would only consider appellant's regular salary of \$65,000 for purposes of spousal support and did not consider any overtime.

{¶46} Finally, appellant contends the court failed to consider his debt. But the court did consider this in its analysis of R.C. 3105.18(C)(1)(i). The court noted that appellee completed bankruptcy proceedings and has essentially no debt and no assets. It also noted appellant will have the debt of a newly-purchased truck and the chance to maintain the marital home. The court stated that because the parties reached an agreement on this issue, the court would not consider it in determining spousal support.

{¶47} The trial court took care to make very detailed findings and to analyze all of the applicable statutory factors along with other factors it found to be relevant. The court did what it found appropriate and reasonable in this case. For example, because of appellant's long, and necessarily costly, commute to work, the court deducted \$2,500 from appellant's annual salary. Additionally, although appellee is employed in a full-time position, because she does not earn what she would at a minimum-wage full-time job, the court imputed a minimum wage salary to her. And the court considered the tax consequences to both parties. Moreover, the trial court retained jurisdiction over the issue of spousal support. So should the parties' financial circumstances change, the court can modify the spousal support award accordingly.

{¶48} Given the court's careful consideration of the relevant factors, which was supported by the evidence, we cannot conclude that the court abused its discretion in fashioning its spousal support order. Accordingly, appellant's sole assignment of error is without merit.

{¶49} For the reasons stated above, the trial court's judgment is hereby affirmed.

Vukovich, J., concurs.

DeGenaro, P.J., concurs.