[Cite as *Plymire v. Plymire*, 2018-Ohio-2786.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
NOBLE COUNTY

CHRISTOPHER S. PLYMIRE,

Plaintiff-Appellee,

v.

SHARON M. PLYMIRE,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 17 NO 0443.

Civil Appeal from the
Court of Common Pleas of Noble County, Ohio
Case No. 216-0014.

BEFORE:
Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:
Affirmed in Part. Reversed in Part.

Atty. Miles Fries, Gottlieb, Johnston, Beam & Dal Ponte, 320 Main Street, P.O. Box 190, Zanesville, Ohio 43701, for Plaintiff-Appellee.

Atty. Jeanette Moll, Jeanette M. Moll LLC, 301 Main Street, Suite H, Zanesville, Ohio 43701, for Defendant-Appellant.

Dated:
June 28, 2018

Donofrio, J.

{¶1} Defendant-appellant, Sharon Plymire, appeals from a Noble County Common Pleas Court judgment granting a divorce to her and plaintiff-appellee, Christopher Plymire.

{¶2} The parties were married on January 19, 1999. No children were born as issue of the marriage.

{¶3} Appellant is a licensed banker. Appellee is the sole proprietor of a business installing cable wire. The parties own two houses. One house is known as the Cambridge House, which appellant owned prior to the marriage. The other house is known as the Lake House, which the parties had constructed during the marriage.

{¶4} Appellee filed a complaint for divorce on February 10, 2016. A hearing was held before the trial court, which heard testimony from both parties and several other witnesses.

{¶5} The court adopted the findings of fact and conclusions of law proposed by appellee and entered a decree of divorce. The court divided the property. It also determined not to award spousal support. We will address the relevant findings of fact and conclusions of law as they relate to each assignment of error.

{¶6} Appellant filed a timely notice of appeal on January 20, 2017. The trial court stayed its judgment pending this appeal. Appellant now raises six assignments of error.

{¶7} Appellant's first assignment of error states:

> THE TRIAL COURT ABDICATED ITS RESPONSIBILITY TO SCRUTINIZE THE HUSBAND'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

{¶8} Appellant asserts the trial court failed to properly distribute certain items of property.

{¶9} Trial courts are vested with broad discretion in dividing marital property. *Bisker v. Bisker*, 69 Ohio St.3d 608, 609, 635 N.E.2d 308 (1994). 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). The division of marital property shall be equal unless an equal division would be inequitable. R.C. 3105.171(C)(1).

{¶10} In rendering a divorce decree, the trial court shall determine what constitutes marital property and what constitutes separate property. R.C. 3105.171(B). The court shall divide marital property equally, unless an equal division would be inequitable. R.C. 3105.171(C)(1). Except in certain limited circumstances, the trial court shall disburse a spouse's separate property to that spouse. R.C. 3105.171(D).

{¶11} "Marital property" includes real property, or any interest in real property, that is currently owned by either or both spouses and that was acquired during the marriage. R.C. 3105.171(A)(3)(a)(i) and (ii). "'Marital property' does not include any separate property." R.C. 3105.171(A)(3)(b).

{¶12} "Separate property" includes real property and any interest in real property that was acquired by one spouse prior to the date of the marriage. R.C. 3105.171(A)(6)(a)(ii).

{¶13} Appellant breaks her first assignment of error down into three sub-assignments of error. We will address each one in turn.

{¶14} First, appellant argues:

> THE TRIAL COURT ERRORED IN FAILING TO AWARD THE WIFE HALF OF THE E-TRADE ACCOUNT AS AGREED TO BY THE HUSBAND.

{¶15} The divorce decree states:

> 5. The Husband has an E-Trade account, which as of December 31, 2015, had a value of $26,239.50. As of the date of trial, however, the E-Trade account had a value of less than $1,000.00. The parties disagree as to the value of the E-Trade account to be included in the marital estate. The account value was reduced as a result of Husband having to pay income taxes. Husband is self-employed so there are no taxes withheld. If Husband had not paid the taxes they would have remained a liability as of the date of trial. Therefore, the court finds that the value of the Husband's E-Trade

> account includable in the marital estate of one thousand dollars ($1,000.00).

(JE Finding No. 5).

{¶16} Appellant argues this finding directly contradicts the stipulation that the E-Trade account value of $26,239.50 was a marital asset. (Joint Ex. A, J.E. Finding No. 4). It also contradicts appellee's testimony that the E-Trade value was $26,239.50 and he agreed to pay half of that value to appellant. (Tr. 158, 186). Appellant asserts the trial court should have valued the E-Trade account at the stipulated value and divided it equally between the parties ($13,119.75 each).

{¶17} Appellee agreed that the E-Trade account had a balance of $26,239.50 as of December 2015. (Tr. 183). He also agreed that as of the date of the trial (November 22, 2016) the balance was below $1,000. (Tr. 183). He stated he put the money from the E-Trade account into his USA Bank account during the pendency of the divorce. (Tr. 183-184). When asked what he spent the money on, appellee stated that he spent "some" on gambling and used the rest to pay outstanding bills and income taxes. (Tr. 183-184). Appellee did not know how much of the money he used for gambling. (Tr. 184).

{¶18} On cross-examination, counsel cited to appellee's bank account records. Appellee admitted to making cash withdraws of the following amounts during the months leading up to the divorce hearing: $2,000 in January; $7,000 in February; $6,000 in March; $6,000 in April; $7,700 in May; $5,300 in June; and $6,600 in July. (Tr. 185-186). When questioned about what he did with the money, appellee stated that he "went gambling," "it was stupid," and he "blew some money this year." (Tr. 186). The following exchange then took place between counsel and appellee:

> Q But that includes that 24,000 - -
>
> A Yes, I'm agreeing to paying half of that back to her even though it was in my E-trade [sic.] account. I have no argument about that.
>
> Q Okay.

A Not one. Yeah, we agreed on that. That's what we talked about earlier.

Q Okay. So you don't dispute you put it into your account and basically it's gone.

A Yeah. Divide by two. As I said I'm - - I divided it. That's what I said, I want to be fair.

(Tr. 186).

{¶19} Appellee's testimony contradicts the trial court's finding of fact regarding the E-Trade account. While appellee's testimony indicates that he may have used some of the E-Trade money to pay income taxes, his testimony reveals that he spent the vast majority of that money on gambling. Moreover, appellee testified that he agreed to equally split the $26,239.50 value of the E-Trade account with appellant.

{¶20} Based on the above, the trial court abused its discretion in valuing the marital portion of the E-Trade account at $1,000. Considering appellee's testimony on the subject, the court should have awarded appellant half of the value of the E-Trade account or $13,119.75

{¶21} Thus, appellant's first argument has merit.

{¶22} Second, appellant argues:

THE TRIAL COURT ERRORED IN FAILING TO DIVIDE ALL THE PERSONAL PROPERTY OF THE PARTIES DUE TO THE HUSBAND'S CONCEALMENT OF THE SAME. THE TRIAL COURT ALSO ERRORED IN FAILING TO EXCLUDE THE SEPARATE, PREMARITAL PERSONAL PROPERTY OF THE WIFE AT THE CAMBRIDGE PROPERTY.

{¶23} The divorce decree states:

6. The parties own miscellaneous household goods and furnishings, which were appraised by Ben Schafer. That appraisal was submitted into evidence as Plaintiff's Exhibit 3. There has been no agreement with respect to the division of those household goods.

* * *

8. * * * In addition to the foregoing, the parties own miscellaneous household goods and furnishings, which were appraised by Ben Schafer. Since there has been no agreement with respect to the division of these assets, the court finds that the household goods and furnishings should be sold at public auction (unless the parties otherwise agree) with the net proceeds to be divided equally between the parties.

(JE Finding No. 6; JE Order No. 8).

{¶24} Appellant contends the trial court failed to consider personal property she alleged appellee withheld from Schafer's appraisal and failed to consider her separate personal property. Appellant asserts appellee acknowledged that the parties owned valuable personal property that he placed in a trailer, which was not accessible to Schafer, including a Pittsburgh Steelers jersey, a Thomas Kincaid painting, guns, and tools. (Tr. 77-78, 86-87, 102, 106, 160-161). Appellant contends the trial court should have ordered the auction of all marital property or granted her a distributive award to compensate her for appellee's concealment of marital property.

{¶25} Appellant also states she testified that much of the furniture at the Cambridge House was her premarital property and appellee agreed. (Tr. 161, 185). Thus, she contends the trial court erred in failing to award her this separate property.

{¶26} Appellee acknowledged that he stored some of the parties' marital property in a trailer that was located at the Cambridge House at the time the appraiser went to the Cambridge House to appraise the personal property. (Tr. 78, 86). This property included rifles, paintings, and football paraphernalia. (Tr. 86). As appellant asserts, these items were not appraised.

{¶27} The evidence indicates there was some marital personal property that was not appraised. This is insignificant, however, in light of the fact that the court ordered the parties' marital personal property to be sold at auction, unless they otherwise agreed, with the proceeds to be divided equally between them. Thus, there is no error in this regard.

{¶28} As to appellant's separate property argument, appellant testified that most of the furniture in the Cambridge House was her separate property. (Tr. 161). Appellee agreed that appellant owned some of the furniture at the Cambridge House before they were married. (Tr. 185).

{¶29} Given that the testimony was undisputed on this matter, the trial court erred in failing to award appellant her separate property, consisting of pre-marital furniture, located at the Cambridge House.

{¶30} Thus, appellant's second argument has merit as it relates to her separate property (furniture) located at the Cambridge House.

{¶31} Third, appellant argues:

> THE TRIAL COURT ERRORED IN ORDERING THE PARTIES TO SWITCH HOUSES.

{¶32} Both parties sought to be awarded the Lake House. The trial court awarded the Lake House to appellee and the Cambridge House to appellant.

{¶33} Appellant argues both parties gave similar testimony as to why they wanted the Lake House. She claims the trial court gave no reason as to why it chose to award the Lake House to appellee. Appellant alleges the only reason the court awarded the Lake House to appellee was because it simply adopted appellee's findings of fact and conclusions of law as a whole. She points out that for over a year preceding the divorce, she resided at the Lake House and appellee resided at the Cambridge House. Appellant contends the court gave no reason as to why the parties should switch houses.

{¶34} The parties stipulated to the value of both houses. They stipulated that the Cambridge House has a value of $216,800 and the Lake House has a value of $238,900. (Joint Ex. A).

{¶35} Appellant testified that when she married appellee, she already owned the Cambridge House. (Tr. 22). At the time of the divorce hearing, appellant testified that she was living at the Lake House and appellee was living at the Cambridge House. (Tr. 33). She stated that she had been living at the Lake House since March or April of

2015. (Tr. 34). Thus, as of the date of the hearing, appellant had been living at the Lake House for approximately a year and a half.

{¶36} Appellee testified that when they began constructing the Lake House, their intention was to eventually sell the Cambridge House and use the Lake House as their permanent residence. (Tr. 54). Appellee testified that he wanted the court to award the Lake House to him because he had remodeled the Cambridge House to appellant's specifications. (Tr. 57). Moreover, his plan had been to stop working "on the road" and enjoy the Lake House. (Tr. 57-58). Appellee testified that three days after he told appellant he was going to "come off the road," she asked for a separation. (Tr. 58). When he arrived home, appellee found appellant had moved all of his belongings to the Cambridge House and locked him out of the Lake House. (Tr. 58-60). Appellant denied locking him out. (Tr. 153).

{¶37} Appellant also testified that she wished to be awarded the Lake House because she had already been living there for a year and a half and she felt it was her home. (Tr. 163). She stated that appellee had spent little time there because he was always out of town for work. (Tr. 163).

{¶38} Based on the limited evidence, we cannot conclude that the trial court abused its discretion in awarding appellee the Lake House and awarding appellant the Cambridge House. Both parties wanted the Lake House. The houses are similarly valued. The court simply had to make a decision to give one house to one party and the other house to the other party. Nothing in the record suggests that the court's decision on this issue was an abuse of discretion.

{¶39} Thus, appellant's third argument is meritless.

{¶40} Accordingly, appellant's first assignment of error has merit and is sustained in part as to the value of the E-Trade account and as to the trial court's failure to award appellant her separate personal property located in the Cambridge House. It is without merit and is overruled as to the failure to value personal property located in the trailer and as to the award of the two houses.

{¶41} Appellant's second assignment of error states:

> THE TRIAL COURT ERRED IN FAILING TO AWARD THE WIFE HER PREMARITAL INTEREST IN THE CAMBRIDGE PROPERTY.

{¶42} As to the Cambridge house, the trial court found:

8. The Wife brought the Cambridge real estate into the marriage. On the date of the marriage, it was encumbered by a mortgage in favor of Universal One Credit Union, That mortgage was obtained in November 1995 in the principal amount of eighty thousand dollars ($80,000.00) * * *. The parties disagree whether this real estate is marital or separate property. The value of the real estate as of the marriage date is unknown.

9. The Wife presented no evidence establishing the principal balance of the mortgage on the date of the marriage. The mortgage was obtained in November 1995 and the parties were married on January 19, 1999, four (4) years later; it was amortized over thirty (30) years. On a thirty year mortgage, there would have been little or no principal reduction during the first four (4) years.

10. Three (3) years after they were married, in November 2002, the mortgage on the Cambridge real estate was refinanced. Wife testified that at that time the principal balance on the original mortgage was sixty-eight thousand dollars ($68,000.00). In November 2002, the parties jointly signed a mortgage note in favor of People's Bank in the principal amount of eighty thousand dollars ($80,000.00). * * * That mortgage was entirely paid off during the course of the marriage and the mortgage was then released. * * *

11. During the marriage, there were substantial improvements to the Cambridge real estate, including, but not limited to, the construction of a three-car garage. J. Randall Bridwell, a certified appraiser, testified that these improvements enhanced the value of the real estate by forty-three thousand two hundred fifty-seven dollars ($43,257.00).

12. The improvements to the Cambridge real estate were almost entirely funded by Husband's use of his substantial premarital funds.

13. Subsequently, the Cambridge real estate was mortgaged to finance the construction of the Jewel Road property.

14. The Cambridge real estate was encumbered at the time of the marriage. During the marriage, the parties, 1) liquidated that encumbrance; 2) executed another mortgage and paid if [sic.] off; 3) mortgaged the real estate to finance the construction of another residence; and, made substantial improvements to the Cambridge real estate. While a portion of the value of the Cambridge real estate would have been separate property at the time of the marriage, the actions of the parties over time are such, that the Court is unable to reasonably determine what, if any, of the value has retained its characterization as separate property.

(JE Finding Nos. 8, 9, 10, 11, 12, 13, 14).

{¶43} After making these findings, the court noted that in June 2001, appellant executed a joint and survivorship deed conveying an interest in the Cambridge House to appellee. (JE Order No. 10). The court also pointed to appellant's testimony that it was her intention for the Cambridge House to be the parties' joint home and to be owned by both of them. (JE Order No. 13). Thus, the court found that appellant's clearly expressed intention was for the Cambridge House to become joint property. (JE Order No. 13).

{¶44} Appellant asserts the trial court erred in following *Hippely v. Hippely*, 7th Dist. No. 01 CO 14, 2002-Ohio-3015, in determining that her interest in the Cambridge House was not her separate property. She further argues that appellee did not offer evidence that she intended her interest in the Cambridge House to be a gift to him.

{¶45} Appellant points to the trial court's findings that in 1995 the Cambridge House was valued at $130,000 and there was an $80,000 mortgage on it. Thus, she

argues, there was at least $50,000 in equity in the house at that time, which was her separate property. Moreover, she notes that she testified she paid down the mortgage by another $13,000 by the time the parties married, which would make the premarital equity $63,000.

{¶46} A classification of the equity in the home as separate or marital is required in this case, as such a classification is required in all divorce cases. *Sicilia v. Sicilia*, 7th Dist. No. 99-CO-66, 2001-Ohio-3364. The commingling of separate property with other property does not destroy the identity of the property as separate, unless it is not traceable. R.C. 3105.171(A)(6)(b).

{¶47} This court set out the applicable law for determining whether a spouse has gifted real property to another spouse in *Hippely*, 2002-Ohio-3015, ¶ 14:

> The elements of a gift are: 1) intent of the donor to make an immediate gift; 2) delivery of the property to the donee; and 3) acceptance of the gift by the donee. When a court is asked to determine whether real property acquired prior to marriage was converted to marital property by one spouse granting another interest in the real property, the key issue is donative intent. Donative intent is established if a donor intends to transfer a present possessory interest in an asset. Regarding gifts between spouses, the donee has the burden of showing by clear and convincing evidence that the donor made the intervivos gift with the intention of waiving all rights and interest he/she may have had in the gift items as martial property.

(Internal citations omitted.)

{¶48} The evidence as to whether appellant gifted an interest in the Cambridge House to appellee is as follows.

{¶49} Appellant testified that she owned the Cambridge House when she married appellee. (Tr. 22). At that time, it was encumbered by a mortgage. (Tr. 23). In 1995, the amount of the mortgage was $80,000. (Tr. 23). The parties were married in 1999. In 2002, the parties paid off the mortgage and then signed a new mortgage for $80,000 with a different bank. (Tr. 24). Both appellant and appellee signed the new

mortgage. (Tr. 25). The parties paid off the new mortgage in 2012. (Tr. 25). Additionally, the parties then took out another mortgage on the Cambridge House in order to finance their construction of the Lake House. (Tr. 173-174).

{¶50} After the parties married, they made substantial improvements to the Cambridge House. Appellee testified that they added a three-car garage, added an office den, replaced most of the windows, put in new landscaping, installed new carpet throughout the house, installed new soffit, and added brick to the outside. (Tr. 47). To finance these improvements, appellee cashed in approximately $80,000 of stock that he owned prior to the marriage. (Tr. 47-48).

{¶51} Appellee testified that before the parties started on the improvements, they had a discussion about the ownership of the Cambridge House. (Tr. 93). The discussion was that they would jointly own the house. (Tr. 51). So they both signed the new mortgage. (Tr. 51). In 2001, appellant executed a deed transferring interest in the Cambridge House from her alone to her and appellee jointly. (Tr. 52; Pl. Ex. 21). Appellant signed this deed prior to the parties making any improvements to the house. (Tr. 52).

{¶52} When asked if she intended to gift a half interest in the Cambridge House to appellee, appellant responded, "Gift? I assumed - - We were married. To me we shared the home, we were sharing the expense of building the addition. To me, sure, I shared - - I put his name on it. I mean I wasn't planning on a divorce." (Tr. 151). Appellant also testified that it was reasonable for appellee to believe that he was a half owner of the house after she signed the deed to him. (Tr. 166).

{¶53} This evidence is clear and convincing that appellant intended to gift an interest in the Cambridge House to appellee. Appellant testified that she intended for her and appellee to share the Cambridge house and that it was reasonable for appellee to believe that he was a half-owner of the house. The parties had a discussion about the ownership of the property and the improvements they wanted to make. After this discussion, appellant signed a deed transferring ownership to her and appellee jointly. After appellant deeded an interest to appellee, the parties took out a new mortgage on the property together. They also then made substantial improvements to the house using a large amount of appellee's premarital funds. Finally, after paying off the

mortgage on the Cambridge House, the parties then took out another mortgage on it so that they could finance their construction of the Lake House.

{¶54} Thus, there is clear and convincing evidence to support the trial court's determination that the Cambridge House was converted into marital property.

{¶55} Accordingly, appellant's second assignment of error is without merit and is overruled.

{¶56} Appellant's third assignment of error states:

> THE TRIAL COURT FAILED TO PROPERLY VALUE THE HUSBAND'S BUSINESS.

{¶57} Appellee is a sole proprietor of a business where he performs fiber electronics work for cable companies. (Tr. 39-40). He started his business 11 years before he married appellant. (Tr. 39).

{¶58} In regard to appellee's business and the business evaluation performed at appellant's request, the trial court made the following relevant findings:

> 26. Wife engaged the services of Michael Sikora, a certified public accountant, who opined that Plaintiff's business had a value of three hundred fifty-five thousand sixty-one dollars ($355,061.00). Mr. Sikora acknowledged that there are three (3) different methods of valuing a business and that he utilized only one, that being capitalization of earnings. He was unable to state what the result would have been had he utilized either of the other two methods or provide any rationale for using the method that did as opposed to the other two (2).
>
> 27. Mr. Sikora has no credentials as a business evaluator. He did not visit the site of the business, did not inspect any of the equipment that he included values for in his report and had no appraisal to support his conclusion as to the value of the equipment. He had no reasonable explanation for how he arrived at the equipment values that he used. When asked whether he would recommend to a

> client paying three hundred fifty-five thousand sixty-one dollars ($355,061.00) to acquire Mr. Plymire's business, he refused to answer. Mr. Sikora acknowledged that he had never testified in court regarding a business valuation and, thus, had never been qualified as an expert in business valuation. Further, he acknowledged that he had never been involved in the actual sale of a telecommunication business such as Plaintiff's. The Court finds that Mr. Sikora's opinion as to the value of Husband's sole proprietorship, Plymire Communications, should be afforded no weight. Essentially, Husband has a job working for himself. He has no assignable assets.

(JE Finding Nos. 26, 27).

{¶59} Appellant claims the trial court failed to value appellee's business and its assets. She asserts the court could have valued appellee's business based on its physical assets or based on the value testified to by the accountant who conducted a business valuation. But she claims the court failed to do either. Appellant notes appellee estimated that the current value of his tools was $25,000 to $30,000. (Tr. 97). He also testified that he purchased a bucket truck during the marriage, which the parties stipulated was worth $30,000. (Tr. 166). The parties also stipulated to a four wheeler worth $2,945 and a cable trailer worth $11,100. (Joint Stip. A). Appellant further points to Sikora's testimony that he valued appellee's business at $355,061. (Tr. 122).

{¶60} The trial court is not required to adopt any particular methodology in determining a business's value. *Brown v. Brown*, 8th Dist. No. 100499, 2014-Ohio-2402, ¶ 32. "In determining a business's value, the trial court has discretion to weigh the testimony offered by the parties' valuation experts." *Id*. Thus, we will not disturb the trial court's decision absent an abuse of discretion.

{¶61} Appellant hired Sikora to value appellee's business. Sikora testified that he is a certified public accountant and that he conducts business evaluations. (Tr. 113-114). In order to value appellee's business, Sikora stated that appellant provided him with five years' worth of the business's tax forms and a list of the business's equipment.

(Tr. 115-116). Sikora stated that he used this information to perform a weighted average valuation. (Tr. 115). Based on his review, Sikora opined that appellee's business was worth $355,061. (Tr. 120). Appellee objected to Sikora's testimony as to the value of the business. (Tr. 115-116, 122). The trial court ruled that Sikora would be permitted to testify, but noted that Sikora's qualifications would go to the weight it would give his testimony. (Tr. 117).

{¶62} On cross-examination, Sikora stated that he had never testified as an expert and had never given an expert opinion as to a business valuation. (Tr. 124). He also stated that he had never been involved with the sale of a business similar to appellee's business. (Tr. 124). When asked what appellee's business would be worth if appellee stopped working, Sikora stated that he did not know what the value would be. (Tr. 126). Sikora agreed that appellee is the whole business, which is a sole proprietorship. (Tr. 120, 122-123). And Sikora stated that if appellee wanted to sell his business, all he had to sell were his fixed assets, i.e. his cable trailer, four-wheeler, etc. (Tr. 127-128). Additionally, Sikora stated that he never actually saw any of the fixed assets. (Tr. 134). Moreover, Sikora stated that he did not know of any contracts the business had or of any work appellee was currently performing. (Tr. 128). And Sikora stated that he did not receive any information about the business from appellee. (Tr. 129-130). Sikora also knew nothing of appellee's health or his ability to continue to do the work. (Tr. 135). In total, Sikora stated that he spent only one-and-a-half to two hours valuing the business. (Tr. 133, 134).

{¶63} Based on this testimony, the trial court determined that Sikora's opinion as to the value of appellee's business was not credible. It did not give any weight to Sikora's business valuation. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts. *Kalain v. Smith*, 25 Ohio St.3d 157, 162, 495 N.E.2d 572 (1986). Moreover, Sikora was never qualified as an expert in business valuations in this case. Thus, there was no expert opinion at issue here.

{¶64} The trial court acted within its discretion in deciding not to give any weight to Sikora's testimony. As the court noted in its judgment, Sikora did not inspect any of the equipment that he included values for in his report and had no appraisal to support his conclusion as to the value of the equipment; he had no reasonable explanation for

how he arrived at the equipment values he used; when asked whether he would recommend to a client paying $355,061 to acquire appellee's business, he refused to answer; he acknowledged that he had never testified in court regarding a business valuation and had never been qualified as an expert in business valuation; and he acknowledged that he had never been involved in the actual sale of a telecommunication business. These findings were all based on Sikora's testimony. Thus, the trial court did not abuse its discretion in deciding not to accept Sikora's business valuation.

{¶65} We must next turn to the issue of appellee's business assets, which the court could have used to value the business.

{¶66} The physical assets of appellee's business included a travel trailer, a four-wheeler, miscellaneous tools, and a bucket truck.

{¶67} Appellant argues the trial court failed to include the travel trailer with a stipulated value of $11,100 and the four-wheeler with a stipulated value of $2,945. But the court specifically included these assets in the marital estate. (JE Finding No. 4; JE Order No. 8). Thus, the court considered these two assets when it divided the martial property.

{¶68} As to appellee's tools, he testified that he had numerous tools before he married appellant including coring tools, drills, saws, shovels, rollers, and flashers. (Tr. 40). He testified that he still had those tools. (Tr. 40). Appellee estimated the value of his work tools to be between $25,000 and $30,000. (Tr. 97-98). Appellee testified that he replaced a few tools during the marriage, but he still had most of the tools he owned prior to the marriage. (Tr. 41). Appellee testified that he believed these tools to be his separate property.

{¶69} The trial court found that appellee owned his tools prior to the date of the marriage. (JE Order No. 9). Therefore, the court found the tools were appellee's separate property. (JE Order No. 9). Thus, the trial court also considered the miscellaneous tools in fashioning the divorce decree, contrary to appellant's assertion.

{¶70} As to the bucket truck, appellee testified that he acquired that during the marriage. (Tr. 42). The parties stipulated that the bucket truck had a value of $30,000.

(Tr. 166). Thus, there was no dispute that the bucket truck was marital property with a value of $30,000.

{¶71} The trial court failed, however, to include the bucket truck in the marital estate. Had the court included the bucket truck, it would have added $30,000 to the marital assets. Under the court's order, appellant received $380,143.42 of the marital assets while appellee received $318,298.75 in marital assets. Because appellant's share of the marital assets was greater than appellee's share, the court ordered appellant to transfer $30,922.30 to appellee by way of a qualified domestic relations order (QDRO) in order to make the division of marital assets equal.

{¶72} The trial court erred in failing to include the bucket truck in its equal division of marital property. Had the court included the bucket truck and awarded it to appellee, it would then have to adjust the amount it ordered appellant to transfer to appellee by way of a QDRO. An equal division of marital property then would have resulted in appellant being required to transfer $15,922.30 by way of a QDRO ($30,922.30 [the ordered amount of the QDRO] - $15,000 [half of the value of the bucket truck]) instead of $30,922.30.

{¶73} Accordingly, appellant's third assignment of error has merit and is sustained only as it relates to the bucket truck.

{¶74} Appellant's fourth assignment of error states:

> THE TRIAL COURT DISREGARDED THE HUSBAND'S FINANCIAL MISCONDUCT.

{¶75} As to appellant's allegation of financial misconduct, the trial court found:

> 17. Wife argues financial misconduct because the Husband gambles. No evidence was presented that Husband has any sort of addiction. A quick balance sheet analysis shows a net worth of approximately $700,000.00 indicating a lack of financial hardship being caused. While other forms of recreation or hobbies may be more palatable in the eyes of others, in this case the Court does not find financial misconduct.

(JE Order No. 17).

{¶76} Here appellant contends the trial court failed to consider appellee's gambling habit as evidence of financial misconduct. She points out that appellee admitted to spending approximately $40,000 gambling in the first seven months of 2016. (Tr. 185-186). She points out that the parties' tax returns also showed evidence of appellee's gambling habit with gambling winnings of $1,200, $5,922, and $13,409 in the years 2013, 2104, and 2015. (Pt. Ex. 12, 16). Based on this evidence, appellant contends the trial court should have made a distributive award to her to compensate her for appellant's dissipation of $40,000 during the pendency of the divorce.

{¶77} An appellate court will not disturb a trial court's finding regarding financial misconduct absent an abuse of discretion. *Carpenter v. Carpenter*, 7th Dist. No. 06-NO-331, 2007-Ohio-1238.

{¶78} Pursuant to R.C. 3105.171(E)(4), "[i]f a spouse has engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, nondisclosure, or fraudulent disposition of assets, the court may compensate the offended spouse with a distributive award or with a greater award of marital property."

{¶79} The burden of proving financial misconduct for purposes of R.C. 3105.171(E)(3) is on the complaining spouse. *McNee v. McNee*, 7th Dist. No. 15 CO 0031, 2017-Ohio-7700, ¶ 44. Financial misconduct implies that there was some type of wrongdoing by the offending spouse whereby that spouse will either profit from the misconduct or intentionally defeat the other spouse's distribution of marital assets. *Id*.

{¶80} Appellant, as the party bearing the burden of proof, did not offer much evidence of financial misconduct by appellee.

{¶81} Appellee testified regarding ATM withdraws he made from January through July of 2016. (Tr. 185-186). In total, appellee acknowledged seven withdraws totaling $40,000. (Tr. 185-186). He testified that he used the money for gambling. (Tr. 186). But he also testified to using some of the money to pay taxes and bills. (Tr. 183-184). And of that $40,000, approximately $26,000 was from his E-Trade account. (Tr. 183-184, 185-186). As discussed in appellant's first assignment of error, appellee agreed to pay appellant half of that amount (approximately $13,000).

{¶82} Moreover, as appellee points out, he never attempted to conceal his gambling from appellant. As he testified, gambling is recreation for him. (Tr. 67). As their joint tax returns demonstrate, appellee regularly claimed his gambling wins and losses. (Tr. 67-68). Thus, appellant was well aware of appellee's gambling and likely benefited from any winnings during the marriage.

{¶83} Based on the above, we cannot conclude that the trial court abused its discretion in finding appellee did not commit financial misconduct.

{¶84} Accordingly, appellant's fourth assignment of error is without merit and is overruled.

{¶85} Appellant's fifth assignment of error states:

> THE TRIAL COURT ERRORED IN FAILING TO AWARD SPOUSAL SUPPORT.

{¶86} As to spousal support, the trial court ordered:

> 21. In considering all the factors set forth in O.R.C. 3105.18(C) the court finds that it is neither appropriate nor reasonable to award spousal support to either party.
>
> Wife obtains assets essentially debt free while Husband incurs substantial debt. Husband's knee problem may improve, and he may or may not have the knee replacement surgery. The Court will retain jurisdiction on the issue of spousal support for 3 years.

(JE Order No. 21).

{¶87} In this assignment of error, appellant argues the trial court failed to apply the statutory factors in determining not to award spousal support. She urges this case involved a marriage of long duration and a wife of advanced age who has little opportunity to continue long-term employment. She points out that appellee is younger than she is and earns more than she does. Appellant argues that when all of the statutory factors are considered, it becomes clear that the trial court erred in deciding not to award her spousal support.

{¶88} 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. 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).

{¶89} Contrary to appellant's assertion, the trial court did address the relevant statutory factors in its judgment entry. The court made the following findings, all going to the statutory spousal support factors.

{¶90} Appellant is 50 years old and appellee is 49 years old.[1] (JE Finding Nos. 15, 19; R.C. 3105.18(C)(1)(c)). Appellant has a bachelor's degree from Ohio University and appellee has a high school education and attended building trade school. (JE Finding Nos. 15, 19; R.C. 3105.18(C)(1)(h)). Appellant is currently a licensed banker and is employed as a personal banker. (JE Finding No. 15; R.C. 3105.18(C)(1)(b)). Appellee is self-employed as a contractor. (JE Finding No. 19; R.C. 3105.18(C)(1)(b)). Throughout the marriage, appellee has contracted with various cable companies and the work is given to him on an "as needed" basis. His work is not guaranteed. (JE Finding Nos. 22, 23; R.C. 3105.18(C)(1)(b)).

{¶91} In 2015, appellant's gross income was $40,722.00. (JE Finding No. 17; R.C. 3105.18(C)(1)(a)). Through the first half of 2016, appellant earned $22,709.73, projecting her income in 2016 to be $45,419.46. (JE Finding No. 17; R.C. 3105.18(C)(1)(a)). In addition to her hourly wage, appellant works overtime and receives commissions. (JE Finding No. 17; R.C. 3105.18(C)(1)(a)).

[1] Although the trial court found appellant's age to be 50, appellant's testimony revealed that she was actually age 60 at the time of trial. (Tr. 17).

{¶92} In 2015, appellee's gross income was $67,267.00. (JE Finding No. 25; R.C. 3105.18(C)(1)(a)). Through October 2016, appellee's gross income was $77,442.92. (JE Finding No. 25; R.C. 3105.18(C)(1)(a)). Due to weather and the nature of the work, appellee generally does not work during December, January, and February. (JE Finding No. 25; R.C. 3105.18(C)(1)(a)).

{¶93} Appellant is in good health and intends to remain at her current place of employment. (JE Finding No. 18; R.C. 3105.18(C)(1)(c)). Appellee's work is physically demanding, requiring extensive lifting and climbing. (JE Finding No. 28; R.C. 3105.18(C)(1)(c)). Appellee has significant physical problems, including needing a knee replacement, which impacts his ability to perform his work. (JE Finding No. 28; R.C. 3105.18(C)(1)(c)). Appellee intends to have knee replacement surgery and look for another type of work. (JE Finding No. 28; R.C. 3105.18(C)(1)(c)).

{¶94} The parties were married January 19, 1999. (JE Finding No. 1; R.C. 3105.18(C)(1)(e)). Thus, as of the date of the divorce hearing, they had been married over 17 years.

{¶95} The court divided the real estate, retirement benefits, and other marital property to arrive at an equal division of marital property of $349,221.08 for each party. (JE Order No. 18; R.C. 3105.18(C)(1)(d)(i)).

{¶96} Based on the above, the trial court thoroughly considered the applicable factors. Moreover, the court retained jurisdiction over spousal support for three years. So should the parties' circumstances change during the three-year period the court has the ability to revisit the subject of spousal support.

{¶97} Accordingly, appellant's fifth assignment of error is without merit and is overruled.

{¶98} Appellant's sixth and final assignment of error states:

> THE TRIAL COURT ERRORED IN FAILING TO ALLOCATE THE EXPENSES PAID BY THE WIFE DURING THE PENDENDCY OF THE DIVORCE CASE.

{¶99} In this case, there were no temporary orders while the divorce was pending. Appellant testified that during this time, she paid $13,366 more in marital

expenses than appellee paid. (Tr. 154, Def. Ex. 3). She claims appellee did not dispute this. (Tr. 186-188). Nonetheless, the trial court stated that it was not going to consider the payment of marital bills during the pendency of the divorce. (Tr. 188).

{¶100} Appellant now argues the trial court erred in failing to allocate the marital debt she paid while this case was pending. She contends the court should have reimbursed her for overpayment of marital expenses during the pendency of the divorce.

{¶101} During her testimony, appellant stated that she created a document dating from September 2015, when the parties separated, until the November 2016 divorce hearing. (Tr. 154; Def. Ex. 3). Based on her calculations, appellant testified that she paid a total of $26,792.91 while appellee paid a total of $13,426.19, which resulted in her paying $13,366.72 more than appellee. (Tr. 154; Def. Ex. 3). Appellant requested that the court award her half of that amount. (Tr. 156).

{¶102} Appellee disputed the accuracy of the figures on Defendant's Exhibit 3. (Tr. 187, 189). He also testified that he sent appellant extra money, other than what she documented, although he did not specify the amounts. (Tr. 189).

{¶103} During questioning regarding Defendant's Exhibit 3, appellee's counsel objected. (Tr. 188). Counsel argued that appellant was attempting to get the court to issue a temporary order retroactively. (Tr. 188). The trial court responded that it was not going to do that. (Tr. 188).

{¶104} The trial court did not abuse its discretion in denying appellant's request for $13,366.72 that she claimed to have spent on marital bills. Appellant's only evidence on this point was a document she created listing what she alleged to be the amounts she paid and the amounts appellee paid on various household obligations. Appellant did not provide any bills or bank statements to corroborate her self-serving documents. Moreover, contrary to appellant's assertion, appellee did in fact dispute these amounts at the trial. And had appellant felt that appellee was not contributing to the marital expenses during the pendency of the divorce, she could have filed a motion for a temporary support order, which she did not do.

{¶105} Accordingly, appellant's sixth assignment of error is without merit and is overruled.

{¶106} For the reasons set out above, the trial court's judgment is hereby reversed as to the court's valuing of the E-Trade account, its failure to award appellant her separate personal property located in the Cambridge House, and its failure to include the bucket truck in the marital estate. In light of this judgment, it is hereby ordered that the amount appellant is to transfer to appellee by way of a Qualified Domestic Relations Order is reduced to $2,802.55. We reach this amount in the following manner: $30,922.30 (original amount of the QDRO) minus $13,119.75 (one-half of the value of the E-Trade account) minus $15,000.00 (one-half of the value of the bucket truck) equals $2,802.55. It is further ordered that appellant is to retain her personal property located at the Cambridge House. The trial court's judgment is affirmed in all other respects.

Waite, J., concurs

Robb, P. J., concurs

For the reasons stated in the Opinion rendered herein, appellant's second, fourth, fifth, and sixth assignments of error are overruled. Appellant's first assignment of error is sustained in part as to the E-Trade account and appellant's premarital personal property. It is overruled in all other respects. Appellant's third assignment of error is sustained in part as to the inclusion of the bucket truck in the marital estate. It is overruled in all other respects. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Noble County, Ohio is affirmed in part and reversed in part. The amount appellant is to transfer to appellee by way of a Qualified Domestic Relations Order is reduced to $2,802.55. Additionally, it is orderd that appellant is to retain her personal property located at the Cambridge House. Costs to be taxed against appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.