

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Nazik Elhag,	:	
Plaintiff-Appellee,	:	No. 19AP-117
v.	:	(C.P.C. No. 17DR-3468)
Khalil Babiker,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 26, 2019

On brief: *The Legal Aid Society of Columbus, Tabitha M. Woodruff, and Stuart Y. Itani*, for appellee. **Argued:** *Tabitha M. Woodruff*.

On brief: *Khalil Babiker*, pro se. **Argued:** *Khalil Babiker*.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations and Juvenile Branch

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Khalil Babiker, appeals from a divorce decree of the Franklin County Court of Common Pleas, Division of Domestic Relations and Juvenile Branch, ending his marriage to plaintiff-appellee, Nazik Elhag. For the following reasons, we affirm.

I. Factual and Procedural Background

{¶ 2} Babiker and Elhag were married on July 15, 2005, in Omdurman, Sudan. In September 2017, Elhag filed a complaint for divorce. On September 17, 18, and 20, 2018, the matter was heard before the trial court. On January 31, 2019, the trial court filed a divorce decree that granted the divorce and determined the division of property, spousal support, and allocation of parental rights and responsibilities. As pertinent to this appeal,

the trial court ordered Babiker to pay to Elhag the sum of \$7,333 for one-half of the marital equity (\$14,666) in real property located in Sudan that is otherwise Babiker's separate property.

{¶ 3} Babiker timely appeals.

II. Assignments of Error

{¶ 4} Babiker assigns the following errors for our review:

[1.] The trial court erred by ruling that the amount of 44,000 Sudanese pounds mention in the Trial court plaintiff Exhibit 14-pages (1,2,3), which related to the condominium in Sudan-Khartoum is martial interest and subject for division.

[2.] The trial court erred by ruling that the SUDAN condominium property ownership was already transfer under the defendant name and the amount of 44,000 Sudanese pounds was already been paid by the defendant to his brother without any empirical evidence.

[3.] The trial court erred by ruling and performs the wrong calculation for the amount \$7,333.00 that been granted to plaintiff.

(Sic passim.)

III. Discussion

{¶ 5} Babiker's three assignments of error are interrelated, and we address them together. Generally, these assignments of error challenge the trial court's decision to order Babiker to pay to Elhag the sum of \$7,333 for one-half of the marital equity in the real property Babiker refers to as the Khartoum, Sudan condominium.

{¶ 6} Pursuant to R.C. 3105.171(B), in divorce proceedings, the court must determine what constitutes marital property and separate property and then "divide the marital and separate property equitably between the spouses." The division "shall be equal" unless equal division would be inequitable. R.C. 3105.171(C)(1). Thus, "[t]he trial court is not required to make an equal division of the marital estate, so long as the division is equitable." *Hadinger v. Hadinger*, 10th Dist. No. 15AP-09, 2016-Ohio-821, ¶ 15, citing *Cherry v. Cherry*, 66 Ohio St.2d 348 (1981), paragraphs one and two of the syllabus. Because the characterization of property as marital or separate is a factual inquiry for the trial court, we review that factual determination under a manifest weight of the evidence

standard. *Taub v. Taub*, 10th Dist. No. 08AP-750, 2009-Ohio-2762, ¶ 15. And a trial court's decision on the equitable division of marital property is subject to an abuse of discretion standard of review. *Richardson v. Richardson*, 10th Dist. No. 01AP-1236, 2002-Ohio-4390, ¶ 47, citing *Martin v. Martin*, 18 Ohio St.3d 292, 294-95 (1985).

{¶ 7} The record before us in this case, however, is inadequate for our review of Babiker's assigned errors. "[A] bedrock principle of appellate practice in Ohio is that an appeals court is limited to the record of the proceedings at trial." *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110, ¶ 13. Pursuant to App.R. 9, an appellant must submit to the court of appeals a transcript of the trial court proceedings deemed necessary for appellate review. If a transcript is unavailable, an appellant may "prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection," pursuant to App.R. 9(C), or submit a joint statement of the case pursuant to App.R. 9(D). See App.R. 9(B)(4). An exhibit merely appended to an appellate brief is not part of the record, and we may not consider it in determining the appeal. *Cashlink, LLC v. Mosin, Inc.*, 10th Dist. No. 12AP-395, 2012-Ohio-5906, ¶ 8. "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980).

{¶ 8} Here, a transcript of the proceedings, or an acceptable alternative, is necessary for our review of Babiker's assignments of error. Relying on Elhag's trial exhibit No. 14, Babiker challenges the trial court's determination that a portion of the equity in the Sudan condominium was marital property as well as the value it placed on that equity. While Babiker argues a review of exhibit No. 14 is sufficient to reverse the trial court, without a transcript of the proceedings, including testimony related to exhibit No. 14, we are unable to evaluate Babiker's contentions because the meaning and effect of this exhibit is not self-evident. Because the appellate record does not include a transcript of the proceedings before the trial court, or an acceptable alternative, this court must presume the regularity of the trial court's ruling on this issue and affirm its judgment. Consequently, we overrule Babiker's first, second, and third assignments of error.

IV. Disposition

{¶ 9} Having overruled all three of Babiker's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations and Juvenile Branch.

Judgment affirmed.

KLATT, P.J., and NELSON, J., concur.
