

[Cite as *Al-Mubarak v. Chraibi*, 2015-Ohio-1018.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101392

NADIM AL-MUBARAK

PLAINTIFF-APPELLANT/
CROSS-APPELLEE

vs.

WAFAE CHRAIBI

DEFENDANT-APPELLEE/
CROSS-APPELLANT

JUDGMENT:
AFFIRMED IN PART; REMANDED IN PART
FOR CLARIFICATION

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Division of Domestic Relations
Case No. DR-11-338704

BEFORE: Jones, P.J., E.A. Gallagher, J., and Kilbane, J.

RELEASED AND JOURNALIZED: March 19, 2015

ATTORNEY FOR APPELLANT/CROSS-APPELLEE

Randall M. Perla
19443 Lorain Road
Fairview Park, Ohio 44126

ATTORNEYS FOR APPELLEE/CROSS-APPELLANT

Jorge Luis Pla
Lila D. Raslan
Nadia Zaiem
Raslanpla & Company, L.L.C.
1701 East 12th Street, Suite 3GW
Reserve Square Building
Cleveland, Ohio 44114

GUARDIAN AT LITEM

Adam J. Thurman
Schoonover Rosenthal Thurman & Daray L.L.C.
1001 Lakeside Avenue
Suite 1720
Cleveland, Ohio 44114

LARRY A. JONES, SR., P.J.:

{¶1} Plaintiff-appellant/cross-appellee Nadim Al-Mubarak (“Husband”) appeals from the trial court’s April 22, 2014 judgment entry of divorce. Husband contends that the trial court erred in determining that the duration of the parties’ marriage should be extended to include a period of nine years of cohabitation preceding their legal marriage on December 4, 2010. Husband also challenges the date that the trial court determined the marriage ended, September 9, 2011. Additionally, Husband challenges how the trial court calculated the amount of spousal support he had to pay.

{¶2} Defendant-appellee/cross-appellant Wafae Chraibi (“Wife”) has filed a cross-appeal, contending that the trial court erred in calculating the value of the parties’ marital home as well as its contents.

{¶3} We affirm the trial court’s judgment in part and remand in part for clarification.¹

I. Factual and Procedural History

{¶4} The record shows that Husband, a Saudi Arabian physician, came to the United States in 1991 on a seven-year Visa that entitled him to come for the purpose of professional advancement. Wife, a Moroccan, came to the United States in 1996 when she was in her early thirties. She initially came under a tourist Visa, but remained illegally past the validity of the Visa and worked as a babysitter. She had a high school education, which she had obtained in Morocco. English was not her first language.

{¶5} In 1999, Husband and Wife met in New York, where Husband was working as a physician. At that time, Husband was in the process of attempting to obtain permanent residency in the United States. Husband and Wife were both practicing Muslims.

¹The parties’ assignments of error are set forth in the appendix.

{¶6} In 2001, the parties decided to marry. Wife purchased traditional Moroccan wedding dresses and her family traveled to New York for the wedding: her mother, sister, and nephew traveled from Morocco, and a brother traveled from San Diego.

{¶7} On August 25, 2001, Husband and Wife, along with Wife's family, went to a New York City mosque to get married. The Imam took personal information from the parties as part of the marriage ceremony, but stopped the ceremony upon learning that the parties did not have a New York state marriage license. A Sharia marriage contract used for documenting Muslim marriages was introduced into evidence, but it lacked the parties' signatures. Additionally, photographs admitted into evidence purportedly depicted Husband registering the parties' names in a book at the mosque, as would be custom for a Muslim marriage. Wife's eldest brother who lived in New York was also present, and under Sharia law he was to authorize the marriage of his sister in the absence of their father.

{¶8} Notwithstanding the incomplete marriage ceremony, Husband, Wife, and Wife's family returned to her brother's apartment and, according to Wife, had a marriage celebration. Photographs were entered into evidence showing the celebration, which the trial court described as a "raucous party." The photographs showed Wife in multiple dresses, which is consistent with Moroccan wedding traditions, and also showed a wedding cake. Wife's brother testified that the photographs were of the parties' wedding celebration. Husband denied that the photographs showed a wedding celebration, however. He claimed that Wife's attire was "any occasion" attire and that she would occasionally wear tiaras, such as the one she was pictured wearing. Moreover, despite identifying himself in several of the photographs, Husband claimed they were "fake," a position that the trial court found damaging to his credibility.

{¶9} But by Husband's own admission, he and Wife had planned for a religious, as

opposed to civil, marriage. He testified that he was unaware that one needed a marriage license for a religious ceremony, and learned that at the mosque in 2001 when he and Wife attempted to have a religious marriage.

{¶10} Immediately after the marriage attempt, Husband and Wife began living together and Wife stopped working. Husband consulted with an attorney, who advised him that attempting to pursue a marriage license while Wife was an illegal immigrant could jeopardize his pending application for permanent residency. The record demonstrates that both Husband and Wife understood this position, and decided to live together. But the record also demonstrates that cohabitation before marriage is not accepted in the Muslim culture. Thus, Wife presented evidence that she and Husband presented themselves as a married couple, and for all purposes, lived as such. Husband admitted that people presumed they were married. The record shows that Husband did not do anything to dispel that presumption.

{¶11} Not only did Husband fail to dispel the perception that he and Wife were married, there is evidence in the record that Husband himself represented them as married after the 2001 attempted religious ceremony. In particular, Dr. Steven Neuhaus, the trial court's custody and psychological evaluator, testified that husband told him that the parties were married in 2001 at a New York mosque.

{¶12} In March 2002, Husband and Wife moved from New York to Ohio, where Husband starting working at a Cleveland hospital. They continued to represent themselves as husband and wife. Husband and Wife mutually decided that they wanted to have a baby which, out of wedlock, the record showed is also shunned in the Muslim culture. They went through in vitro fertilization treatments, Wife became pregnant, and they had a baby girl in March 2005.²

²The parties went through the in vitro fertilization process at least one other time, in 2007, and Wife became

{¶13} By this time, Husband had a very successful cardiologist practice. The presumption that they were married not only saved the parties from being ostracized in the Muslim community generally, but it also more specifically was advantageous for Husband's medical practice, which included a significant Muslim patient base. In 2006, they built a home in Westlake, Ohio that was initially appraised at \$1,759,000.

{¶14} In 2009, Husband became an American citizen, but did not sponsor Wife for a green card until she signed a prenuptial agreement, which the trial court found invalid because of "misrepresentations and gross distortions" by Husband in disclosing his assets and income, a finding Husband does not now challenge. Wife testified that, despite already viewing herself as married, she signed the agreement so that Husband would sponsor her for a green card.

{¶15} Around this time, Wife began suffering from depression. The parties legally married in December 2010 in Ohio. Wife's mental health issues persisted, and in April 2010, she attempted suicide. She was diagnosed with acute psychosis and depression and received treatment for these mental health issues.

{¶16} Wife testified that after the parties' 2010 legal marriage, her condition improved, but later in September 2011 she started having issues again so she left the marital home on September 8, 2011. Wife testified that when she left the home, she had no intention of returning and no longer wanted to be married. In October 2011, Husband filed for divorce. Wife answered and counterclaimed for divorce.

{¶17} A hearing before a magistrate was held in April 2013, and was continued until September 2013 due to a serious illness suffered by the parties' daughter. After the conclusion of hearing testimony, the magistrate issued detailed findings of fact and conclusions of law. The

pregnant with twins, but miscarried.

magistrate found that for equitable purposes, the duration of the parties' marriage should be treated as commencing on August 25, 2001, the date they attempted to marry in New York, and ending on September 20, 2013, the last date of trial. Husband was awarded custody of the parties' daughter and Wife was ordered to pay him child support. Husband was ordered to pay spousal support to Wife.

{¶18} Both parties filed objections to the magistrate's decision. In its April 22, 2014 judgment, the trial court overruled the parties' objections, with the exception of two of Husband's objections, which related to calculations of his income for the purpose of ordering child and spousal support. The effect of the trial court sustaining Husband's two objections was to increase Wife's child support obligation, but it did not modify Husband's spousal support obligation.

II. Law and Analysis

A. Husband's Appeal

Commencement of Marriage Date

{¶19} Husband's first three assignments of error challenge the decision of the trial court to extend the duration of the marriage to include the nine years the parties cohabitated before their legal marriage. We decline to disturb the trial court's finding on this issue.

{¶20} Under R.C. 3105.171, which governs the equitable division of marital and separate property, "during the marriage" means:

- (a) Except as provided in division (A)(2)(b) of this section, the period of time from the date of the marriage through the date of the final hearing in an action for divorce or in an action for legal separation;
- (b) If the court determines that the use of either or both of the dates specified in division (A)(2)(a) of this section would be inequitable, the court may select dates

that it considers equitable in determining marital property. If the court selects dates that it considers equitable in determining marital property, “during the marriage” means the period of time between those dates selected and specified by the court.

R.C. 3105.171(A)(2).

{¶21} This court upheld the application of R.C. 3105.171(A)(2) to extend the parties’ marriage to include their period of cohabitation prior to marriage in *Bradley v. Bradley*, 8th Dist. Cuyahoga No. 78400, 2001 Ohio App. LEXIS 3028 (July 5, 2001). In *Bradley*, the parties became romantically involved in 1979, started living together, and in 1980 had a child. In 1991, they had a religious marriage ceremony in a Catholic church, but without a marriage license. The couple held themselves out as husband and wife, and the wife stayed at home to take care of their child.

{¶22} In 1995, the wife filed for divorce. The court determined that the parties were married at common law as of the date of their religious ceremony (June 22, 1991),³ but that for the purpose of equitable division of their property, the marriage commenced in 1979 when they started living together.

{¶23} We recognize that *Bradley* addressed the now non-existent common law marriage doctrine. But the issue of whether the parties were married at common law was but one issue in *Bradley*, and was completely distinct and separate from the issue of the trial court’s extension of the date of marriage. *See id.* at *8-*10. The first issue in *Bradley* dealt with the common law marriage question, that is, whether the parties were married as of the date of their religious ceremony. The second issue was *whether the time before the common law marriage* should have

³Common law marriage was abolished in Ohio on October 10, 1991.

been included to form a different, more equitable commencement of marriage date for the purpose of property division. Upon consideration of that issue, this court held as follows:

R.C. 3105.171(A)(2)(b) permits the court to choose *an alternative date* for “during the marriage” to effectuate an equitable division of the marital property. Taking into consideration the length of time the two parties have been living together and the fact that [wife] was rendered financially dependent upon [husband], we cannot conclude the trial court abused its discretion by determining that “during the marriage” spanned sixteen years or by requiring [husband] to pay spousal support and to continue to provide for [wife’s] financial well being.

(Emphasis added.) *Id.* at *9-*10.

{¶24} Thus, *Bradley* is instructive to present day analysis under R.C. 3105.171(A)(2)(b), and factually indistinguishable from this case. Husband and Wife here, like husband and wife in *Bradley*, prior to their legal marriage, cohabitated and had a baby, which Wife stayed home to take care of. Further, in both cases the parties held themselves out as husband and wife during their premarital periods of cohabitation.

{¶25} We note Husband’s citation to *Ward v. Ward*, 9th Dist. Summit No. 26372, 2012-Ohio-5658. In *Ward*, the parties were married in July 2005 and thereafter had a baby. In the parties’ divorce action, the trial court held that, under R.C. 3105.171(A)(2)(b), the marriage commenced in May 2003.

{¶26} The Ninth Appellate District reversed, holding that a “determination that a marriage commenced prior to the ceremonial date of the marriage is improper and would effectively resurrect common law marriages after the legislature abolished them in 1991.” *Id.* at ¶ 27. But this court has not adopted the bright line rule of the Ninth District and has instead held that “R.C. 3105.171(A)(2)(b) provides the court with the authority to select a date other than the ceremonial wedding date for purposes of equitably determining what comprises the marital estate for a division of property assessment.” *Bryan v. Bryan*, 8th Dist. Cuyahoga No. 97817,

2012-Ohio-3691, ¶ 11. We follow our precedent in *Bryan* and find that R.C. 3105.12, which prohibits common law marriages, recognizes the authority that R.C. 3105.171(A)(2)(b) grants to use a date other than the actual marriage date:

(A) Except as provided in division (B) of this section [which prohibits common law marriage], proof of cohabitation and reputation of the marriage of a man and woman is competent evidence to prove their marriage, and, *in the discretion of the court, that proof may be sufficient to establish their marriage for a particular purpose.*

(Emphasis added.)

{¶27} That is exactly what happened here: the trial court used proof of Husband and Wife’s cohabitation and reputation as being married as evidence of marriage for the purpose of equitably determining marital property.

{¶28} Moreover, in addition to *Bradley* being instructive, we also find *D’Hue v. D’Hue*, 8th Dist. Cuyahoga No. 81017, 2002-Ohio-5857, on point. In *D’Hue*, the parties met in 1991 and started living together in 1992. At that time, the wife started working in the husband’s medical office. She had no funds of her own, but worked for free because the husband paid all her expenses and she believed they were going to be wed. They married in 1994 and maintained a comfortable lifestyle, which was supported by the husband. The wife’s work in the husband’s office “demonstrably aided the growth of the medical practice, [the husband’s] income, and, in turn, the parties’ lifestyle.” *Id.* at ¶ 90.

{¶29} The trial court determined that the parties’ marriage commenced in 1992, when they started living together. This court upheld that finding, noting that the record demonstrated that 1992 was when they started

functioning as husband and wife, both socially and economically. At that time, their finances were, substantially, as one. [The husband] paid for everything from that point forward and [the wife] was financially dependent upon [him].

Id.

{¶30} Here, as in *D'Hue*, Wife and Husband began functioning as a married couple, socially and economically, when they started living together in 2001. Wife stopped babysitting and was completely financially dependent on Husband. It was important that they held themselves out as Husband and Wife so as not to be ostracized in the Muslim community. Further, although Wife did not work for Husband, she certainly contributed to growing his practice by hosting receptions at their home which, at least indirectly, helped to establish Husband as a reputable physician, especially in the Muslim community.

{¶31} In sum, the record demonstrates that from the time of the parties' attempted marriage in 2001 through the time of their legal marriage in 2010, they lived together continuously, and Husband was solely responsible for financially maintaining them, because Wife did not work. Wife testified that she was a "housewife," who decorated and maintained the home, and took care of their daughter. They held themselves out as husband and wife, and were perceived as such.

{¶32} The trial court has broad discretion to determine what is equitable upon the facts and circumstances of each case. *Kunkle v. Kunkle*, 51 Ohio St.3d 64, 544 N.E.2d 83 (1990). On this record, we find no abuse of that discretion. Husband's first, second, and third assignments of error are therefore overruled.

Termination of Marriage Date

{¶33} In his fourth assignment of error, Husband contends that the trial court abused its discretion by determining that the marriage terminated on September 20, 2013, the date of the final hearing, instead of on September 9, 2011, when Wife left the marital home with no intention to return or continue the marriage.

{¶34} Under R.C. 3105.171(A)(2)(a), the date of the final hearing is presumed to be the appropriate termination date of the marriage unless the trial court, in its discretion, uses a de facto termination date. *O'Brien v. O'Brien*, 8th Dist. Cuyahoga No. 89615, 2008-Ohio-1098, ¶ 40; *Berish v. Berish*, 69 Ohio St.2d 318, 321, 432 N.E.2d 183 (1982).

{¶35} As stated by this court:

In general, trial courts use a de facto termination of marriage date when the parties separate, make no attempt at reconciliation, and continually maintain separate residences, separate business activities, and separate bank accounts. However, courts should be reluctant to use a de facto termination of marriage solely because one spouse vacates the marital home. Rather, a trial court may use a de facto termination of marriage date when the evidence clearly and bilaterally shows that it is appropriate based upon the totality of the circumstances. A court's decision to use the date of the final hearing or a de facto date is discretionary and will not be reversed on appeal absent an abuse of discretion.

O'Brien at ¶ 41.

{¶36} Upon review, we do not find that the trial court abused its discretion in determining that the date of the final hearing was the termination date of the marriage. The record demonstrates that significant portions of the parties' marital property and financial holdings remained entangled until the conclusion of trial. During this time, Wife was completely financially dependent on Husband. Wife's dependence on Husband and his control over her was illustrated, for example, by him taking away her Mercedes Benz vehicle and replacing it with a Nissan Versa. For these reasons, we find that the trial court did not abuse its discretion by refusing to use the date when Wife moved out of the marital home as the de facto termination date of the marriage.

{¶37} Husband's fourth assignment of error is, therefore, overruled.

Spousal Support Calculations

{¶38} Husband's fifth, sixth, seventh, and eighth assignments of error allege that the trial

court made various errors in calculating spousal support. Specifically, Husband contends that the trial court failed to (1) properly apply the spousal support factors in R.C. 3105.18(C) to the facts of this case (fifth assignment of error); (2) abused its discretion in ordering him to pay \$9,000 per month in spousal support without a termination date (sixth assignment of error); and (3) made various errors in calculating his income.

{¶39} A trial court has wide latitude in awarding spousal support. *Kapadia v. Kapadia*, 8th Dist. Cuyahoga No. 94456, 2011-Ohio-2255, ¶ 81. Therefore, absent an abuse of discretion, an appellate court will not reverse a trial court's decision regarding spousal support. *Id.*

{¶40} In awarding spousal support, the trial court must consider the factors set forth under R.C. 3105.18. As R.C. 3105.18(C)(1) outlines:

(C) (1) In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors:

- (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.

{¶41} A trial court is not required to enumerate each factor under the statute, but must merely provide a sufficient basis to support its award. *Kapadia* at ¶ 83.

{¶42} In his fifth assignment of error, Husband contends that the trial court failed to give due consideration to Husband's status as the primary caregiver of the parties' child, who suffers from a life-threatening illness. Specifically, Husband contends that the trial court did not properly consider the reduction in his income due to the child's care and treatment. It is true that Husband's income had decreased, but by his own admission, the decrease was due to negative publicity regarding the performance of unnecessary procedures at one of the hospitals where he

had privileges. Husband did not offer any evidence to explain, or even suggest, that his role as primary caregiver, or the illness of, the parties' daughter had affected his income. We therefore overrule Husband's fifth assignment of error.

{¶43} For his sixth assigned error, Husband contends that the trial court abused its discretion by ordering him to pay Wife \$9,000 a month in spousal support without a termination date. The court found that an indefinite period of spousal support was necessitated largely because it questioned Wife's ability to obtain employment in the near future due to her ongoing mental health challenges.

{¶44} In regard to the duration of a spousal support award, the Ohio Supreme Court has held as follows:

* * * except in cases involving a marriage of long duration, parties of advanced age or a homemaker-spouse with little opportunity to develop meaningful employment outside the home, where a payee spouse has the resources, ability and potential to be self-supporting, an award of sustenance alimony should provide for the termination of the award, within a reasonable time and upon a date certain, in order to place a definitive limit upon the parties' rights and responsibilities.

Kunkle, 51 Ohio St.3d at 69, 554 N.E.2d 83.

{¶45} This court has upheld awards of spousal support for indefinite periods, where, as here, the record demonstrates that the payee spouse has little opportunity to obtain meaningful employment. For example, in *Wojanowski v. Wojanowski*, 8th Dist. Cuyahoga No. 99751, 2014-Ohio-697, this court upheld an indefinite award where the parties were married for 23 years, the wife lacked potential to become self-supporting in light of her age, her physical and mental health ailments, the years she spent as a homemaker, her very limited employment history during the marriage, and the husband approximate income of \$120,000 per year. *See also Gupta v. Gupta*, 8th Dist. Cuyahoga No. 99005, 2013-Ohio-2203 (upholding an indefinite award of spousal support, where, in 2008, the husband earned \$1,218,854, and the wife's earning ability and work

history stood in stark contrast to the husband's.)

{¶46} Here, Wife, an immigrant with a non-American high school diploma, only briefly worked in America as a babysitter. She stopped working in 2001, and in the following years had suffered with mental health issues. On this record, we do not find that the trial court abused its discretion in awarding her spousal support for an indefinite period of time. Husband's sixth assignment of error is therefore overruled.

{¶47} In his seventh assignment of error, Husband contends that the trial court erred when it granted one of his objections to the magistrate's decision regarding reducing his income from past interest, dividends, and capital gains, in light of the magistrate's marital property determination that transferred half of those sources of income to Wife. Although the trial court granted his objection and increased Wife's child support obligation to him, Husband notes that the trial court did not accordingly adjust his spousal support obligation toward Wife. We agree that this appears to be an oversight. We therefore remand so that the trial court can appropriately revisit this issue.

{¶48} For his eighth assignment of error, Husband contends that the trial court erred in calculating his income by including \$39,359 per year as business income. According to Husband, he did not have any business income in 2012. We disagree.

{¶49} In his opinion, the magistrate closely detailed Husband's business income for the preceding five years, which included 2012, and found that during those five years Husband generated \$196,795 in business income. Although it is true, as the magistrate noted, that Husband had a lack of income during 2012, Husband never testified that he did not expect to receive income from his business in the future. As such, the trial court took the average of that five-year period, \$39,359, and attributed it to Husband's income. Courts have discretion, in

calculating income for support purposes, to average income over a reasonable period of years in appropriate circumstances. *Rossi v. Rossi*, 8th Dist. Cuyahoga Nos. 100133 and 100144, 2014-Ohio-1832, ¶ 79, citing *MacDonald v. MacDonald*, 8th Dist. Cuyahoga No. 96099, 2011-Ohio-5389, ¶ 39. We find no error in this instance and therefore overrule the eighth assignment of error.

B. Wife's Cross-Appeal

Fair Market Value of Marital Home

{¶50} For her first assignment of error, Wife contends that the trial court erred in failing to properly calculate the fair market value of the parties' home.

{¶51} In a divorce proceeding, the trial court must place a value on each contested item of property in order to divide the property equitably. *Pawlowski v. Pawlowski*, 83 Ohio App.3d 794, 799, 615 N.E.2d 1071 (10th Dist.1992). Valuing property involves factual inquiries requiring an appellate court to apply a manifest weight of the evidence standard of review. *Gentile v. Gentile*, 8th Dist. Cuyahoga No. 97971, 2013-Ohio-1338, ¶ 73, citing *Kapadia*, 8th Dist. Cuyahoga No. 94456, 2011-Ohio-2255. An appellate court therefore will not reverse a trial court's valuation if it is supported by some competent, credible evidence. *Gentile at id.*, citing *Haynes v. Haynes*, 8th Dist. Cuyahoga No. 92224, 2009-Ohio-5360. Moreover, a trial court has broad discretion to develop a measure of value when dividing marital property. *Haynes at ¶ 16*; *Chattree v. Chattree*, 8th Dist. Cuyahoga No. 99337, 2014-Ohio-489, ¶ 109.

{¶52} The record here reflects that, in November 2004, for the purpose of obtaining a mortgage, the lender bank appraised the marital home at \$1.75 million. The construction of the home was completed in 2006. Neither party had the home appraised at the time of trial in 2013.

{¶53} Husband introduced correspondence from the Cuyahoga County Board of Revision

that found the market value of the home for the 2011 tax year to be \$1,011,600. The magistrate accepted this valuation and concluded that the property was “under water” in light of the \$1,038,069 owed to the lender bank as of October 2012.

{¶54} Wife contends that the Board’s market value is inaccurate and asserts that the magistrate should have extrapolated a market value of the home by comparing the bank’s 2004 valuation with the Board’s valuations dating back to 2006, and projecting an independent appraiser’s valuation “*might*” have been for the year 2012. According to Wife, this would have resulted in an appreciation, rather than depreciation, of the home’s value.

{¶55} Wife, however, failed to introduce any evidence to support her theory; rather, she merely offered a tenuous extrapolation to attempt to contradict the Board’s valuation of the home.

On this record, we cannot find that the trial court erred by relying on the Board’s evidence to ascertain the value of the marital home.

{¶56} Wife’s first assignment of error is, therefore, overruled.

Valuation of Contents in Marital Home

{¶57} For her second assignment of error, Wife contends that the trial court failed to take inventory of the personal property in possession of Husband within the marital home and determine its value. Wife’s argument in support of this alleged error consists of a single sentence, without citation to evidence.

{¶58} Our review of the record reveals that the evidence in the record relating to the miscellaneous items (furniture, tools, appliances, rugs, art, and computers) in the marital home, which was set forth in an exhibit attached to the parties’ prenuptial agreement, was reviewed by the magistrate. After his review, the magistrate attributed \$51,000 to Husband’s assets for the purpose of marital property distribution. “The valuation of marital assets is typically a factual

issue that is left to the discretion of the trial court.” *Roberts v. Roberts*, 10th Dist. Franklin No. 08AP-27, 2008 Ohio 6121, ¶ 18, citing *Berish*, 69 Ohio St.2d 318, 432 N.E.2d 183.

{¶59} We decline to disturb the trial court’s determination on this issue. Wife’s second assignment of error is therefore overruled.

III. Conclusion

{¶60} Under Husband’s appeal, his assignments of error are overruled, except as to the seventh assignment of error, under which it appears that the trial court did not adjust his spousal support obligation vis-a-vis it sustaining one of his objections to the magistrate’s decision. The case is therefore remanded for clarification on that issue.

{¶61} Under Wife’s appeal, both assignments of error are overruled.

{¶62} Judgment affirmed in part; case remanded in part for clarification. It is ordered that appellant/cross-appellee and appellee/cross-appellant split the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

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

LARRY A. JONES, SR., PRESIDING JUDGE

MARY EILEEN KILBANE, J., CONCURS;
EILEEN A. GALLAGHER, J., DISSENTS
WITH SEPARATE OPINION

EILEEN A. GALLAGHER, J., DISSENTING:

{¶63} I respectfully dissent from the opinion of my learned colleagues.

{¶64} I find the majority's reliance on *Bradley v. Bradley*, 8th Dist. Cuyahoga No. 78400, 2001 Ohio App. LEXIS 3028 (July 5, 2001), to be misplaced and inconsistent with our decisions since that case.

{¶65} The parties and wife's family went to the Aleman Mosque in New York City on August 25, 2001, with the intention of getting married. The Imam took personal information from the parties as part of a marriage ceremony but, according to husband, the Imam aborted the ceremony upon learning that the parties did not have a marriage license issued by the state of New York. According to husband, the marriage ceremony was not completed. Wife's brother, Saad Chraibi, testified that he was present, in accordance with Sharia Law, to authorize the marriage of his sister in the absence of their father and that the ceremony was concluded. Pictures document husband registering the parties' names in a book at the mosque. A Sharia marriage contract purporting to document the marriage was introduced into evidence but lacks signatures from the parties and, therefore, is of no value.

{¶66} Although conflicting testimony was presented regarding the completion of a religious marriage ceremony, wife admitted that the parties did not legally marry in New York in 2001 due to her illegal alien status and their concerns that a marriage could negatively impact husband's ability to obtain immigration status as a permanent resident. Wife admitted that the Imam advised her that they could not be married without a marriage license that they did not obtain in 2001. Husband testified that he consulted an attorney in New York after the interrupted marriage ceremony at the mosque and was advised that attempting to pursue a marriage license while wife was illegal could jeopardize his pending application for permanent residency.

Husband testified that he explained this information to wife and that she understood they had to wait to be married.

{¶67} Although the parties were not legally married at the mosque on August 25, 2001, they returned to wife's apartment and celebrated *as though* they had been married. This celebration was documented in the record with photographs depicting what the trial court aptly described as "a raucous party." Consistent with Moroccan traditions, wife wore multiple dresses throughout the celebration as well as a tiara. Husband denied that the photographs depicted a wedding celebration and damaged his credibility with a self-serving and unsupported claim that the photos were "fake" despite identifying himself in those photos.

{¶68} The parties lived together continuously from August 2001 until they were legally married in Ohio on December 4, 2010. During this pre-legal marriage time period, wife did not work and husband was solely responsible for the parties' finances. The parties did not commingle any financial accounts during this time because wife had no earnings. Husband provided for wife and the parties' child and wife had unlimited access to husband's funds. Husband filed his tax returns as a single, unmarried individual until the parties' legal marriage in 2010. Wife testified that she was involved in the design, construction and decoration of the parties' Westlake home and that her role was to be a housewife, caring for the parties' child, cooking for the family and buying food and clothing.

{¶69} In *Bradley*, this court upheld the application of R.C. 3105.171(A)(2)(b) to a common law marriage established prior to the abolition of the practice. I disagree with the majority's application of *Bradley* to this case because I find the common law marriage and duration of marriage issues in *Bradley* to be inseparable.

{¶70} Furthermore, I cannot reconcile the majority’s application of *Bradley* in this instance with this court’s post-*Bradley* decisions constraining the trial courts’ discretion to extend the duration of a marriage into pre-marital periods of cohabitation. In applying R.C. 3105.171(A)(2)(b) since *Bradley* to non-common law marriage cases, this court has consistently limited a trial court’s selection of a pre-ceremonial marriage date as the beginning date for duration of marriage purposes to instances where the parties have been financially entangled such that equity demands a broader time period be considered for the purposes of determining marital property.

{¶71} In *Abernethy v. Abernethy*, 8th Dist. Cuyahoga No. 80406, 2002-Ohio-4193, we noted that R.C. 3105.171(A)(2)(b) gives the trial court discretion to select de facto dates when equitable. We explained that,

[i]n order to achieve an equitable distribution of property, the trial court must be allowed to use alternative valuation dates where reasonable under the particular facts and circumstances of the case.

Id. at ¶ 19, quoting *Glick v. Glick*, 133 Ohio App.3d 821, 828, 729 N.E.2d 1244 (8th Dist.1999). However, we reversed the trial court’s de facto marriage beginning date in *Abernethy* because it included periods of time that both parties were married to other people despite their cohabitation and economic partnership.

{¶72} In *D’Hue v. D’Hue*, 8th Dist. Cuyahoga No. 81017, 2002-Ohio-5857, we upheld a de facto marriage date more than two years prior to the parties’ ceremonial marriage where the parties began cohabitating and functioned as husband and wife both socially and economically. The parties’ finances were substantially as one and the wife worked in the husband’s medial office without pay in order to grow his medical practice and, in turn, his income.

{¶73} Finally, in *Bryan v. Bryan*, 8th Dist. Cuyahoga No. 97817, 2012-Ohio-3691, we upheld the use of a date six years prior to the marriage date where the parties cohabitated, earned approximately the same income and split the cost of rent, utilities and food. We noted that the wife's contributions towards the parties' living expenses allowed them to save money for a downpayment on a residence. The common thread amongst these cases is the financial entanglement of the cohabitating parties. This is a factor that does not exist in the present case because it is undisputed that wife did not work during the parties' pre-marital cohabitation and no evidence was presented that she brought any assets with her when she began living with husband.

The magistrate found that wife "did not contribute so much as a penny to the acquisition of any of the assets," and husband unilaterally made all the financial decisions without consulting her. In fact, the record reflects that wife was an illegal alien and could not legally find employment prior to December 2010.

{¶74} I am unpersuaded by the majority's perceived parallels between the present case and our decision in *D'Hue*. In *D'Hue*, the wife's unpaid work in the husband's medical office directly contributed to the growth of his practice. Here, the majority finds that wife's social contributions helped to build husband's medical practice. I can find no evidence to support this conclusion. There is nothing in the record to quantify an increase in husband's income based on her social activity or any specific evidence regarding referrals generated by her alleged social activity. The record does not even reveal the extent or frequency of wife's social activity. Furthermore, the record demonstrates that husband and wife intentionally deceived other members of their social circle because it is socially unacceptable for unmarried Muslims to cohabit and have children out of wedlock. Both parties would have suffered from social stigma had they not intentionally mislead other members of the Muslim community as to their marital status, however,

there is no evidence demonstrating that husband suffered any lost income once the fabrication was revealed.

{¶75} I find the majority's application of R.C. 3105.171(A)(2)(b) in the present instance to be in conflict with the well reasoned limitations established by this court in *D'Hue* and *Bryan*. The majority's decision dispenses with our prior limitations on a trial court's discretion in determining the duration of a marriage and potentially opens the flood gates for the expansion of pre-ceremonial marital dates to every instance where the parties cohabit prior to marriage and one party financially provides for the other. Applying R.C. 3105.171(A)(2)(b) to cohabitating parties without financial entanglement is a concerning erosion of our law on this topic and a slippery slope towards judicially reviving common law marriage under a different name.

{¶76} Based on the above authority, I would conclude that the trial court abused its discretion in determining August 25, 2001 to be the de facto beginning date of the parties' marriage. There is no dispute that the parties were not legally married as of that date, leaving only the discretion afforded to the trial court pursuant to R.C. 3105.171(A)(2)(b) as a means to expand the parties' duration of marriage into their pre-marital cohabitation period. However, our case law reveals that discretion is not without limitation. Although the parties cohabitated, disingenuously held themselves out to be husband and wife socially and wife was financially dependent upon husband, this case bears none of the financial entanglement factors found in our decisions in *Abernethy*, *D'Hue* and *Bryan*.

{¶77} Accordingly, I would sustain husband's first, second and third assignments of error.

APPENDIX

A. HUSBAND'S ASSIGNMENTS OF ERROR

Assignment of Error No. 1

The trial court erred and abused its discretion in determining that the duration of the marriage for purposes of division of assets pursuant to RC 3105.171 was from August 25, 2011 through September 20, 2013 in that said finding was contrary to the clear and unequivocal testimony of the plaintiff/appellant and defendant/appellee that the parties were not married in August of 2001 and did not consider themselves married in August of 2001, or thereafter, but were married on

December 4, 2010 after obtaining a marriage license in Ohio and being married on said date before an Imam at a Cleveland mosque, and the trial court erred by improperly applying legal fictions of “intent” to marry and “financial dependency” and using old common law marriage like indicia to justify its decision.

Assignment of Error No. 2

The trial court, in its decision, erred and abused its discretion by ignoring statutory law (abolishment of common law marriages [R.C.] 3105.12(B)(1)) and ignoring recent case law precedent (*Ward v. Ward*, 2012 Ohio 5658, 2012 Ohio App. LEXIS 4905, and *Bryan v. Bryan*, 2012 Ohio 3691, 2012 Ohio App. LEXIS 3261) and creating legal fictions (“intent to marry”) (dependency factor - one party being supported by another) that do not legally exist and in using elements of abolished common law case to justify dividing appellant’s premarital financial accounts which not only caused an injustice in the instant case, but creates a precedent that would foment frivolous future litigation based on uncertainty of the law created by the trial court’s decision as to when a marriage commences for purposes of division of property.

Assignment of Error No. 3

The trial court erred and abused its discretion by improperly applying RC 3105.171(A)(2)(b) to expand the dates of marriage from the date of the parties’ actual marriage, December 4, 2010, to a fictitious date one and one-half years earlier of August 25, 2001, which circumvents Ohio law concerning the abolishment of common law marriages pursuant to RC 3105.12(B)(1).

Assignment of Error No. 4

The trial court erred and abused its discretion in failing to find that there was a defacto end of the marriage on September 9, 2011 when defendant/appellee left the marital residence with no intention of returning or staying married.

Assignment of Error No. 5

The trial court erred and abused its discretion in ordering the appellant to pay appellee the sum of nine thousand dollars (\$9,000) per month in spousal support by failing to give any consideration in accordance with ORC 3105.18(C)(1)(a)(b)(f) and (n) to the amount of time, energy and demands placed on appellant who, as custodial parent, has been solely responsible for the minor child []’s care and treatment of cancer in determining (a) appellant’s income (b) earning ability (f) the impact of appellant being the custodial parent of a child with a life threatening illness (n) and other economic factors that would impact appellant’s ability to pay spousal support.

Assignment of Error No. 6

The trial court erred and abused its discretion in ordering appellant to pay appellee the sum of nine thousand dollars (\$9,000) per month in spousal support for an indefinite period of time rather than using a termination date based upon the parties' length of marriage of less than three years and where the trial court has found that appellee's mental health issues were "exacerbated" by her own actions.

Assignment of Error No. 7

The trial court erred and abused its discretion in calculating appellee's income for purposes of spousal support by failing to take into consideration the additional income the appellee will derive from receiving fifty percent (50%) of appellant's financial accounts pursuant to the trial court's property division and further erred in calculating appellant's income and earning ability for purposes of spousal support by ignoring the testimony of appellant and his employer.

B. WIFE'S ASSIGNMENTS OF ERROR

Assignment of Error No. 1:

The trial court's decision regarding the fair market value of the marital residence was not based upon some competent credible evidence and was therefore against the manifest weight of the evidence and contrary to law.

Assignment of Error No. 2:

The trial court failed to take inventory of the personal property in possession of appellant Husband within the marital residence and to determine the value of the personal property.