

[Cite as *Turner v. Davis-Turner*, 2018-Ohio-2194.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106002

DION TURNER

PLAINTIFF-APPELLANT

vs.

KIM K. DAVIS-TURNER

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-16-363901

BEFORE: McCormack, P.J., Stewart, J., and Boyle, J.

RELEASED AND JOURNALIZED: June 7, 2018

ATTORNEY FOR APPELLANT

Carol Dillon Horvath
P.O. Box 42044
Brookpark, OH 44142

ATTORNEY FOR APPELLEE

J. Michael Drain
147 Bell Street, #202
Chagrin Falls, OH 44022

TIM McCORMACK, P.J.:

{¶1} Plaintiff-appellant Dion Turner (“Mr. Turner”) appeals the trial court’s judgment of June 19, 2017, in which the court terminated the marriage between Mr. Turner and Kim K. Davis (“Ms. Davis”) and ordered a division of the property of the parties. For the reasons that follow, we affirm.

Procedural History and Substantive Facts

{¶2} On September 21, 2016, Mr. Turner filed a complaint for divorce from Ms. Davis, which he twice amended. On March 21, 2017, the court held a trial on the matter, during which both Ms. Davis and Mr. Turner testified.

{¶3} The court, having heard the evidence and testimony presented by the parties, issued its final judgment entry on June 19, 2017. The judgment entry granted the parties a divorce and ordered the marriage dissolved. The court found that Ms. Davis was not a resident of Ohio at any time during the marriage and did not live in the marital relationship with Mr. Turner in Ohio, thus finding the court was without personal jurisdiction over Ms. Davis. The court also found that it did not have jurisdiction to determine custody of the minor child of the marriage, because the child resides with Ms. Davis in Florida, and Ohio is not the home state of the minor.

{¶4} In its entry, the court also found that the parties own real estate in Ohio, namely homes on Woodworth Avenue in East Cleveland (“Woodworth property”) and Glendale Avenue and Parkwood Drive in Cleveland (“Glendale property” and “Parkwood property,” respectively). In dividing the real property, the court awarded Mr. Turner all of Ms. Davis’s interest in the Woodworth property, and it awarded Ms. Davis all of Mr. Turner’s interest in the Glendale and Parkwood properties. The court also made certain findings with respect to the couple’s personal property:

Defendant testified that she has IRS debts for the years of 2013 and 2014 in the amounts of \$52,000 and \$20,000. The court finds there was sufficient evidence submitted to determine the remaining amounts of debt, if said debts were acquired during the marriage and were for marital purposes.

It is further ordered, adjudged, and decreed Defendant shall be
solely liable for the IRS debt and shall hold Plaintiff
harmless on such debt.

{¶5} Mr. Turner now appeals the trial court’s final divorce decree, in two assignments of error, alleging that the court failed to equitably divide the real property and it failed to provide sufficient information to allow meaningful appellate review.

Standard of Review

{¶6} We review a trial court’s determination in domestic relations cases under an abuse of discretion standard. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989).

Since it is axiomatic that a trial court must have discretion to do what is equitable upon the facts and circumstances of each case, * * * it necessarily follows that a trial court's decision in domestic relations matters should not be disturbed on appeal unless the decision involves more than an error of judgment.

Id., citing *Cherry v. Cherry*, 66 Ohio St.2d 348, 355, 421 N.E.2d 1293 (1981). This same standard applies to orders relating to the division of marital property. *Id.*, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 218, 450 N.E.2d 1140 (1983), and *Martin v. Martin*, 18 Ohio St.3d 292, 294, 480 N.E.2d 1112 (1985). And upon review, this court reviews a trial court's property division "as a whole, in determining whether it has achieved an equitable and fair division of marital assets." *Tyler v. Tyler*, 8th Dist. Cuyahoga No. 93124, 2010-Ohio-1428, ¶ 24, citing *Briganti v. Briganti*, 9 Ohio St.3d 220, 222, 459 N.E.2d 896 (1984).

{¶7} An abuse of discretion "connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore* at 219. And where there is some competent, credible evidence in the record to support the trial court's decision, there is no abuse of discretion. *Trolli v. Trolli*, 8th Dist. Cuyahoga No. 101980, 2015-Ohio-4487, ¶ 29, citing *Kapadia v. Kapadia*, 8th Dist. Cuyahoga No. 94456, 2011-Ohio-2255, ¶ 24.

Law and Analysis

{¶8} This appeal concerns the trial court's division of marital property. Mr. Turner contends that the distribution of the property is inequitable and the trial court failed to determine whether the property was separate or marital property. He also argues that the trial court failed to provide sufficient information concerning its decision to permit meaningful review on appeal.

{¶9} R.C. 3105.171(C)(1) mandates an equal division of marital property, or "if an equal division is inequitable, the court must divide the marital property equitably." *Strauss v.*

Strauss, 8th Dist. Cuyahoga No. 95377, 2011-Ohio-3831, ¶ 37, citing *Neville v. Neville*, 99 Ohio St.3d 275, 2003-Ohio-3624, 791 N.E.2d 434, ¶ 5. In order to determine what is equitable, the trial court must consider the factors outlined in R.C. 3105.171(F). *Id.* Such factors include, among others, the duration of the marriage, the assets and liabilities of the spouses, tax consequences of the property division, and any retirement benefits of the spouses, and “[a]ny other factor the court expressly finds to be relevant and equitable.” R.C. 3105.171(F)(1)-(10).

{¶10} Moreover, the trial court must take into account the parties’ marital debt when dividing marital property. *Kehoe v. Kehoe*, 2012-Ohio-3357, 974 N.E.2d 1229, ¶ 14 (8th Dist.), citing *Barkley v. Barkley*, 119 Ohio App.3d 155, 169, 694 N.E.2d 989 (4th Dist.1997).

{¶11} In a divorce proceeding, marital property includes:

(I) All real and personal property that currently is owned by either or both of the spouses, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(ii) All interest that either or both of the spouses currently has in any real or personal property, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(iii) Except as otherwise provided in this section, all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage * * *.

R.C. 3105.171(A)(3)(a)(i)-(iii).

{¶12} Marital property does not, however, include separate property.

R.C. 3105.171(A)(3)(b). “Separate property” is any real and personal property and any interest in real or personal property that was acquired by one spouse prior to the date of the marriage.

R.C. 3105.171(A)(6)(a)(ii). The commingling of separate property with other property does not destroy the identity of the separate property “except when the separate property is not traceable.”

R.C. 3105.171(A)(6)(b). The party seeking to have certain property classified as “separate property” has the burden of proof in tracing the separate property. *Strauss*, 8th Dist. Cuyahoga No. 95377, 2011-Ohio-3831 at ¶ 49, citing *Peck v. Peck*, 96 Ohio App.3d 731, 734, 645 N.E.2d 1300 (12th Dist.1994). Assets and debts incurred during a marriage are presumed to be marital, unless it can be proven that they are separate property. *Kehoe* at ¶ 14, citing *Vergitz v. Vergitz*, 7th Dist. Jefferson No. 05 JE 52, 2007-Ohio-1395, ¶ 12.

{¶13} Here, Ms. Davis testified that she and Mr. Turner married on June 30, 2012. She stated that she owns and operates a business presently known as Kim’s Tax Service in Maple Heights in which she prepares tax returns and is paid on commission. She stated that Mr. Turner has never contributed funds to her business. She noted that she will net approximately \$6,000 this year from her business. She opened the business in 2007 as Brown’s Tax Service, and she filed articles of incorporation for the business in 2015. She testified that she leases office space for the business. Ms. Davis further testified that she receives an adoption subsidy of \$276 per month “for the first check, and then a second one [for] \$250 [per] month” for her older child, and she receives a county subsidy of \$282 per month for her younger child (minor child of the marriage).

{¶14} Ms. Davis testified concerning certain real property.¹ According to Ms. Davis, the couple acquired the Woodworth property in 2011. Mr. Turner paid \$350 cash for this property, and it is in his name. She stated that she did not invest any money in the Woodworth property, and this property was the first they purchased.

¹Ms. Davis testified that she purchased Florida timeshares in 2010, before her marriage to Mr. Turner. This property, however, is not located within the state of Ohio and the trial court did not exercise jurisdiction over the property.

{¶15} Ms. Davis also testified that in September 2012, she purchased the Glendale property for approximately \$10,500, using income from her business. She stated that Mr. Turner's name is on the property because she was still living in Section 8 housing at the time. The couple previously rented the home on Glendale, and there is a current tenant in the home who is not yet paying rent. Ms. Davis noted that she had been managing the property and the leases, collecting the rent, and paying the bills. She testified that Mr. Turner has contributed nothing to this property. Concerning the Parkwood property, Ms. Davis testified that she purchased the property in April 2013 for approximately \$12,000, and the couple lived in that home from April 2013 until August 2015, when they moved to Florida. The property is presently uninhabitable. Ms. Davis testified that Mr. Turner did not contribute to the household "at all." Mr. Turner did not object to this statement or to Ms. Davis's testimony concerning the real property.

{¶16} Ms. Davis also testified about the marital debt incurred. She provided that an IRS tax audit revealed that she owed \$52,000 for back taxes in 2013 and \$20,000 for back taxes in 2014. Ms. Davis also testified that she has incurred the following debt: \$5,190 in eviction debt in Florida; \$4,600 debt to Carmax; \$1,000 property taxes for the Glendale property; \$1,750 property taxes for the Parkwood property; more than \$1,000 in outstanding utility bills for the Parkwood property; and more than \$7,000 in credit card debt.

{¶17} Mr. Turner testified on his own behalf, stating that he is currently homeless. He worked as an Uber driver for a couple of months in 2016 through early 2017, earning approximately \$500, and he worked maintenance for Scioto Services for approximately four months, until he was injured at work in February 2017. He stated that he is currently employed by Scioto Services but is not working due to the injury. Mr. Turner testified that he received a legal settlement check

for \$12,500 while in Florida in June 2016. Although he stated that he gave Ms. Davis half of the settlement, Ms. Davis denied receiving any of the settlement from Mr. Turner.

{¶18} Mr. Turner also testified that he and Ms. Davis contributed approximately \$100 each for the purchase of the Woodworth property and he put in approximately \$1,200 of cleaning and landscaping work into the property. Mr. Turner conceded that Ms. Davis owns the Parkwood property but stated that because they were married, “I guess it’s both our properties.” He testified that he owns the Glendale property and he intended to live there while fixing it up for new tenants that he secured, but for Ms. Davis’s “illegal discretions and contracts” concerning the property. Mr. Turner claimed that he has now lost rental income, as he has not received rent from either Glendale or Parkwood properties.

{¶19} Mr. Turner testified that he has incurred the following marital debt: \$469 due and owing on a US Bank credit card and more than \$600 in outstanding utility bills for the Glendale property.

{¶20} We first address the appellant’s contention that the trial court failed to determine whether the real property was separate or marital property. The parties testified concerning three Ohio properties — Woodworth, Glendale, and Parkwood properties. The Woodworth property is arguably separate property. Ms. Davis conceded at trial that Mr. Turner purchased the Woodworth property for \$350 in 2011 (several months before the couple’s 2012 marriage) and she did not contribute to the property. Mr. Turner, however, asserts on appeal that all three properties are marital property. The trial court stated in its journal entry that “[t]he court * * * finds that the parties own real estate located in the state of Ohio,” and it awarded Ms. Davis’s interest in the Woodworth property to Mr. Turner and Mr. Turner’s interest in the Glendale and Parkwood properties to Ms. Davis. In so doing, the court evidently found the real property to be marital

property. And neither party presented evidence demonstrating that the real properties are separate properties sufficient to overcome the presumption that assets acquired during a marriage are marital.

{¶21} Mr. Turner also contests the division of the real property. He contends that by awarding him the Woodworth property, which purportedly has little value, and awarding Ms. Davis the Parkwood property, which allegedly has a higher value, the court's division of the property was inequitable.

{¶22} On appellate review, we must view the trial court's property division as a whole in determining whether it has achieved an equitable and fair division of marital assets. *Briganti*, 9 Ohio St.3d at 222, 459 N.E.2d 896. And as previously stated, the trial court must consider the parties' marital debt when dividing marital property. *See Kehoe*, 2012-Ohio-3357, 974 N.E.2d 1229, at ¶ 14; R.C. 3105.171(F). Although an exhaustive discourse is not necessary, "there must be a 'clear indication that the statutory factors were considered and played a role in the ultimate division of property.'" *Renz v. Renz*, 12th Dist. Clermont No. CA2010-05-034, 2011-Ohio-1634, ¶ 36, quoting *Heslep v. Heslep*, 7th Dist. Monroe No. 825, 2000 Ohio App. LEXIS 2777 (June 14, 2000).

{¶23} Here, the largely un rebutted evidence shows that Mr. Turner has been essentially unemployed since February 2017, while Ms. Davis has continued working during tax season since opening her business in 2007; Mr. Turner has contributed to the Woodworth property, while Ms. Davis contributed to the Glendale and Parkwood properties; and both parties accumulated debt during the marriage. Neither party testified regarding the current value of the marital assets. Rather, the parties testified as to the purchase prices of \$350 (Woodworth), \$10,500 (Glendale), and \$12,000 (Parkwood). Mr. Turner stated that he was unsure whether the Woodworth property

was condemned, and Ms. Davis provided that the Parkwood property is uninhabitable. Mr. Turner's debt includes a credit card bill of \$469 and outstanding utility bills for the Glendale property in excess of \$600. Ms. Davis testified that she has incurred several thousand dollars in debt, including property taxes for the Glendale and Parkwood properties, outstanding utility bills for the Parkwood property, and \$72,000 in back taxes.

{¶24} Based upon the foregoing, we find there is competent, credible evidence in the record to support the trial court's decision in awarding the Woodworth property to Mr. Turner and the Glendale and Parkwood properties to Ms. Davis. We therefore find no abuse of discretion. Moreover, the trial court's journal entry clearly indicates that it considered the marital debt in dividing the property when it ordered Ms. Davis "solely liable for the IRS debt," yet it found "insufficient evidence submitted to determine the remaining amounts of debts, [and] if said debts were acquired during the marriage and were for marital purposes."

{¶25} Under the facts of this case, we cannot say that the trial court's distribution of property was inequitable.

{¶26} Mr. Turner's assignments of error are overruled.

{¶27} Judgment affirmed.

It is ordered that appellee recover of appellant 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 common pleas court, domestic relations division, 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.

TIM McCORMACK, PRESIDING JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR