[Cite as *Humphrey v. Humphrey*, 2010-Ohio-968.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

SANDRA R. HUMPHREY,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2008-A-0077**
- vs -	:	
RALPH L. HUMPHREY,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 97 DR 684.

Judgment: Affirmed.

Gary S. Okin, Dworken & Bernstein Co., L.P.A., 60 South Park Place, Painesville, OH 44077 (For Plaintiff-Appellee).

Randil J. Rudloff, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Ralph L. Humphrey ("Ralph") appeals from the judgment of the Ashtabula County Court of Common Pleas requiring him to pay the remaining amount he owes appellee, Sandra R. Humphrey ("Sandra"), relating to the judgment dividing marital property entered in the court's November of 2000 final divorce decree. Ralph also challenges the trial court's judgment modifying his spousal support obligation. For the reasons discussed in this opinion, the judgment of the trial court is affirmed.

{¶2} The underlying case has a lengthy and tortuous history in both this court as well as the trial court. As the background of this case is relevant to certain issues

currently on appeal, it is necessary to summarize the case, as it has evolved, in its entirety.

{¶3} Ralph and Sandra separated on May 1, 1997 and, on November 18, 1997, Sandra filed a complaint for divorce. Over a three-day period, a final hearing on divorce was conducted culminating in a final decree of divorce entered on November 30, 2000. In the final order, the trial court set the marriage termination date on the date of separation, May 1, 1997. The trial court divided the parties' marital assets as follows: Sandra was awarded two parcels of real property valued at $260,000.00; Ralph was awarded other real property valued at $20,000.00. The parties' retirement accounts were ordered to be equitably divided; and the Humphrey Insurance Agency, Inc., ("Agency"), was equally divided.

{¶4} The Agency's stipulated value was $1,251,555.00 and comprised of two parts: the business itself and six parcels of real property. The business, which was valued at $579,551.00, was awarded to Ralph. The parcels of real property were valued at $672,000.00. Sandra was awarded $625,577.00, as her share of the Agency. The trial court further ordered that the Agency's real property be sold and that upon the sale of the last parcel, Sandra pay Ralph $46,026.00 to realize his one-half share of the stipulated value of the Agency. The court retained jurisdiction in order to make adjustments if either the real estate or business sold for an amount different than the stipulated value.

{¶5} In addition, the court awarded Sandra spousal support in the amount of $4,000.00 per month for a five year period. The court reserved jurisdiction concerning

spousal support so that it could adjust both the amount and the duration of the award. Ralph was also ordered to pay Sandra's attorney fees.

{¶6} Ralph appealed the trial court's judgment to this court and, on June 21, 2002, in *Humphrey v. Humphrey*, 11th Dist. No. 2000-A-0092, 2002-Ohio-3121 ("*Humphrey I"*), this court affirmed in part, reversed in part, and remanded the matter for further proceedings. On remand, the trial court was ordered to: (1) equitably divide the marital property pursuant to R.C. 3105.171(C) and the Ohio Supreme Court's opinion in *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93. *Humphrey I*, supra, at ¶36; (2) award Ralph, as separate property, three identified bank accounts and divide, as marital property, an identified checking account. Id. at ¶38; (3) develop an equitable plan allowing Ralph to retain ownership of the Agency's real property and order Ralph to pay Sandra the stipulated value of her interest in the Agency; if the parties and trial court are unable to develop such a plan, the property was to be sold, and the trial court must consider the tax consequences of the sale. Id. at ¶42. (4) Set forth the rationale the trial court used in awarding Sandra spousal support. Id. at ¶50; and (5) state its findings, pursuant to R.C. 3105.18(H), for awarding Sandra attorney fees. Id. at ¶56.

{¶7} During the pendency of the appeal, on May 8, 2001, the trial court ordered the parties to enter into a Qualified Domestic Relations Order ("QDRO") relating to the distribution of the parties' retirement benefits. Specifically, the order required Ralph to arrange for the preparation of the QDRO. By September of 2002, Ralph had yet to make the necessary arrangements to initiate the drafting of the QDRO. Accordingly, on September 5, 2002, Sandra filed a motion to show cause as to why Ralph should not be held in contempt for failure to comply with the trial court's May 8, 2001 order. The

motion to show cause was not formally addressed. However, on July 18, 2003, the parties submitted a mutually agreed upon QDRO establishing a segregation date of May 1, 1997, which would act to exclude any contributions to the retirement accounts deposited subsequent to that date. The trial court adopted the QDRO via judgment entry on July 21, 2003.

{¶8} On December 22, 2003, the trial court conducted a hearing on remand. In addition to the issues set forth in *Humphrey I*, several additional matters arose requiring the trial court's attention. Specifically, the court was asked to resolve: (1) Sandra's motion to show cause pertaining to the preparation of the Qualified Domestic Relation Order; (2) whether certain additional contributions to Ralph's retirement account would be treated as marital or separate property; and (3) whether Sandra should be entitled to interest on any property settlement award.

{¶9} In the meantime, prior to the trial court's release of its judgment relating to the foregoing remand hearing, Sandra's spousal support terminated pursuant to the original divorce decree. As a result, on May 13, 2005, Sandra moved the trial court to continue and upwardly modify spousal support. Consistent with the generally torpid nature that issues in this case have managed, a hearing on this motion did not occur until June of 2008, and the motion was not finally ruled upon until November of that year. As a result, the court's ruling on Sandra's motion is an issue currently before us and shall be discussed in greater depth infra.

{¶10} In any event, on November 14, 2006, nearly three years after the remand hearing ordered in *Humphrey I*, the trial court entered its judgment which read, in pertinent part:

{¶11} "*** that it should have permitted for [Ralph] or the parties to develop a payment plan, which would allow the insurance business to remain in tact and to permit [Sandra] to receive compensation for her share of the Agency. Therefore, [Ralph] shall develop a plan to pay to [Sandra] her share of the stipulated value of the Agency's real estate. If such a plan cannot be developed, the real estate shall be sold and the proceeds divided as previously ordered.

{¶12} "Concerning the requirement in the remand that the Court should consider the tax consequences of the sale of a Sub Chapter S corporation's real property, that will be done, however, to do so at this time would be speculative and will be dealt with, if necessary, with testimony concerning the tax consequences of the sale of the real estate."

{¶13} Both parties appealed the November 14, 2006 judgment and on December 14, 2007, this court affirmed the trial court's decision in part, reversed it in part, and remanded the matter for future proceedings. See *Humphrey v. Humphrey,* 11th Dist. No. 2006-A-0083, 2007-Ohio-6738 (*Humphrey II).* With respect to the remand order, this court determined, in pertinent part, that the trial court failed to adhere to the specific dictates of the remand order set forth in *Humphrey I*. As a result, this court remanded the matter again, stridently emphasizing:

{¶14} "[t]he amount of assets to be divided was established with certainty in the original divorce decree[, namely, $625,577.00 for Sandra's share in the insurance agency, a former marital asset]. The only issue requiring attention was the manner in which the division would be accomplished: either by equitable payment plan, or if such a plan was unfeasible, a sale of the Agency's property. Our holding in *Humphrey I* was

clear, ONLY in the case of a sale would the court be required to consider the tax consequences of that sale. Instead of mandating one of these two limited options, the trial court chose not to act." *Humphrey II,* supra, at ¶19.

{¶15} Given these points, the trial court was ordered, on remand, "to specifically establish an equitable means by which Ralph will pay what he owes." *Humphrey II,* at ¶20. In other words, the trial court was ordered to issue a judgment providing a specific plan for Ralph to follow in order to satisfy his obligation. And, following the order of *Humphrey I*, that plan should consider the tax consequences of the transfer *only if* equity necessitated a sale of the insurance agency's real property. *Humphrey II*, at ¶15-21.

{¶16} After the release of *Humphrey II,* on February 26, 2008, the trial court issued a judgment entry regarding the issues pertaining to this court's remand order in that appeal. In particular, the court ordered counsel to enter into any written stipulations on the remanded issues no later than March 14, 2008 and provide the court with written closing arguments, together with proposed findings of fact and conclusions of law, no later than April 14, 2008. Pursuant to this order, Sandra filed her closing argument and proposed findings and conclusions on April 14, 2008. With respect to the proposed order, Sandra, drawing from the existing record, pointed out that Ralph had sufficient liquid funds to satisfy his obligation to Sandra regarding the property division *without* selling any real estate. Sandra's proposed order therefore concluded that appellant should "immediately make the payments due and owing to [Sandra] as and for the division of property without references to tax consequences, including interest accrued in accordance with the decision in *Humphrey II.*"

{¶17} And then there's Ralph. Instead of meeting the trial court's formal deadline set forth in the February 26, 2008 judgment, Ralph sought four extensions of time to file his closing argument and proposed findings and conclusions. While the trial court granted each of these motions, the last of which gave Ralph until June 30, 2008, he failed to file the pleadings ordered by the February 26 judgment.

{¶18} In the meantime, the parties again appeared in court for a two-day hearing on June 4 and 5, 2008. The hearing was held to address Sandra's May 13, 2005 motion to continue and increase spousal support. During the hearing, it was established that the original support order terminated in 2005 and the court, in its original divorce decree reserved jurisdiction to modify the same.

{¶19} With respect to substantive evidence, the record revealed, prior to the divorce, Ralph was earning approximately $150,000 annually, while Sandra earned approximately between $2,500 and $3,000 per year as a licensed social worker.[1] At the time of the hearing, Ralph had increased his income considerably to an annual average of $242,000, not including benefits he receives from his agency such as his vehicle, health insurance, and an ongoing, annual contribution of $26,400 from a profit-sharing plan. Moreover, the evidence showed Ralph receives approximately $28,000 annually in social security benefits; he has an SEP IRA account valued at nearly $625,000. Testimony further indicated that Ralph had no existing debt at the time of the hearing and, consequently, his monthly earnings far exceed his monthly expenses.

{¶20} In contrast, although Sandra testified at the final divorce hearing that she expected to ultimately earn $35,000 annually, she testified she was not able to pursue

1. The record indicated Sandra's peak income was $26,000 in 1989, but she never achieved near this amount in any subsequent year.

her work as a social worker due to mental and emotional stresses; at the time of the hearing, Sandra was not employed and, since the divorce, has only worked sporadically, "clerking in stores," earning between $6.25 and $7.50 an hour. She noted that it would be difficult to obtain employment as a clinical social worker given her age and her need to be re-licensed in New Mexico, the state in which she now resides. At the time of the hearing, Sandra was receiving $10,632 annually in social security benefits and she possessed an IRA account valued at $245,000, out of which she received investment income of $409 per month. Sandra estimated her monthly living expenses at $7,865. At the hearing, however, Ralph disputed this figure, pointing out that, mathematically, the basic necessities on which Sandra could live totaled approximately $3,800.

{¶21} After the hearing, the magistrate issued a lengthy, detailed decision granting Sandra's motion. To this end, the magistrate carefully considered and engaged in an assiduous analysis of the statutory factors necessary for modifying a spousal support award under R.C. 3105.18. After memorializing these considerations as they related to the facts of this case, the magistrate drew the following detailed legal conclusions:

{¶22} "The parties were married for forty years, a marriage of substantial length. At the time of the divorce, Mrs. Humphrey was 60, and Mr. Humphrey was 64 years of age. The parties are now 68 and 72 years of age. The parties raised three children together. During the marriage, Mrs. Humphrey worked sporadically, and Mr. Humphrey was the primary wage earner. There has always been a great disparity in the parties' incomes.

{¶23} "Over the course of the parties' long marriage, Mr. Humphrey was able to develop his insurance agency. He still, in fact, works at the agency on a daily basis and has substantial income from the business. On the other hand, Mrs. Humphrey, who was sixty years of age at the time of the divorce, had never developed her business to any significant degree. She moved out of state, where she was not professionally licensed and did not have an established business. For a number of years after the separation and divorce, she experienced emotional difficulties. Because of the protracted divorce litigation, and her inexperience with budgeting and finances, she also experienced financial difficulties.

{¶24} "When the spousal support order terminated in 2005, and she filed for a modification, Mrs. Humphrey was 66 years old. Mr. Humphrey's assertions about what Mrs. Humphrey should have been doing with her career at that point, and now, are out of context with the realities of Mrs. Humphrey's age and work history.

{¶25} "Currently, Mrs. Humphrey's income is limited to $10,632.00 annually in Social Security benefits, plus an estimated yield on her IRA of $409.00 per month. In 2007, Mr. Humphrey received $28,000.00 annually in Social Security benefits alone, $60,298.82 in interest income, a $24,959.00 distribution from his profit sharing, and $142,854 from his corporation.

{¶26} "Mr. Humphrey chooses to live very frugally, and to save, rather than spend, the substantial discretionary income he has available. Nonetheless, substantial income is available to him, and he has a choice as to whether he saves it, or spends it. The luxury of having the ability to save, or spend, [sic] discretionary income was part of the standard of living the parties enjoyed during the marriage.

{¶27} "Mr. Humphrey introduced extensive evidence of Mrs. Humphrey's spending habits. He considers her expenditures on furniture, charitable contributions, pet care, massages, clothing, books, classes, travel and dining out to be unnecessary and irresponsible. Yet, Mr. Humphrey is still able to travel extensively, and to save very substantial amounts of money, because he has a much greater amount of income available to him.

{¶28} "The Magistrate recognizes that a spousal support award does not need to equalize parties' incomes. The award, however, must be equitable in light of the factors in each case. 'To be equitable, the parties should, if feasible, enjoy a standard of living comparable to that enjoyed during the marriage, adjusted by the factors set forth in R.C. 3105.18.' *Gallo v. Gallo*. 11th Dist., No. 2000-L-208 [sic]

{¶29} "The Magistrate finds that it is appropriate and reasonable for Mr. Humphrey to pay spousal support in the amount of $7,000 per month. A spousal support award of $7,000 per month is equitable considering all of the factors set forth in R.C. 3105.18. ***."

{¶30} The magistrate proceeded to award the spousal support retroactively to May 13, 2005 in order to help replenish the assets she was required to deplete from not receiving spousal support since November of that year.

{¶31} On November 12, 2008, Ralph filed objections to the magistrate's decision which were overruled on November 21, 2008, when the trial court adopted the findings and conclusions of the magistrate. In addition to adopting the magistrate's decision, the trial court also addressed this court's remand order from *Humphrey II*, and concluded

that Ralph had sufficient resources available to pay Sandra what she is owed on the original property division. The court consequently ordered Ralph:

{¶32} "to pay *** Sandra *** the sum of $625, 577.00, less whatever amounts the Defendant has paid her. In the remand, the Court of Appeals stated that this Court may order the Defendant to pay the Plaintiff from funds immediately available to him; it may also order the sale of the property and, in doing so, be required to consider the tax consequences.

{¶33} "The record indicates that the Defendant received an inheritance of over $800,000.00 following his mother's death. He also has had ample time to accumulate sufficient savings to liquidate this obligation to the plaintiff. ***"

{¶34} Following the issuance of this judgment, Ralph filed a timely notice of appeal assigning three errors for our review. Before addressing the merits of Ralph's appeal, however, we must engage in some procedural housekeeping. After briefing, but prior to the hearing on appeal, Sandra filed a motion to dismiss Ralph's first and third assignments of error. Ralph's arguments under these assigned errors take issue with certain evidentiary foundations upon which the trial court's monetary judgment (vis-à-vis the property division) was premised. In her motion, Sandra asserts these arguments are moot because that portion of the appealed judgment has been satisfied through a garnishment process. This court held Sandra's motion in abeyance pending a final judgment in the matter.

{¶35} Courts have held that the voluntary satisfaction of a judgment renders any appeal of that judgment moot. See *Bank One Trust Company, N.A. v. Scherer*, 10th Dist. Nos. 06AP-70 and 06AP-71, 2006-Ohio-5097, at ¶9-11; *Atlantic Veneer Corp. v.*

Robbins, 4th Dist. No. 03CA719, 2004-Ohio-3710, at ¶17; *In re Contempt of Morris* (1996), 110 Ohio App.3d 475, 479. The trial court's judgment, as it pertained to the amount Ralph owed on the property division, was executed by Sandra through garnishment proceedings. The question, therefore, is not whether the judgment pertaining to the amount Ralph owed on the property division was satisfied, but whether the compulsory process of garnishment rendered that satisfaction involuntary.

{¶36} Given the limited information we possess, the garnishment process was a proceeding in which Ralph did not directly participate and, in light of his previous uncooperative behavior, it was a proceeding to which he was not likely amenable. Further, that proceeding resulted in an order which compelled a payment plan in which he had no say. Given his assigned errors (as well as the case history), it seems clear that Ralph would not have entered into such a plan without a judicial order requiring his compliance. These considerations reasonably support classifying the order of satisfaction as involuntary. See *In re Contempt of Morris,* supra. See, also, *State v. Fortson,* 8th Dist. No. 79501, 2002-Ohio-1 (after attorney was held in contempt, court's order that he pay fine before leaving the courthouse "did not reflect a voluntary situation but rather one where he paid the fine under duress." Id.) As the satisfaction was involuntary, Sandra's motion to dismiss Ralph's first and third assignments of error is therefore overruled.

{¶37} With this in mind, Ralph's first assignment of error provides:

{¶38} "The trial court erred when it entered a judgment in favor of appellee which did not state the sum certain due and owing – failed to state the exact amount for which judgment was being entered."

{¶39} Under this assigned error, Ralph argues the trial court's failure to completely specify the amount he owes Sandra renders the judgment unenforceable. In support, appellant cites several cases which reversed trial court judgments for failing to specify the exact monetary amount awarded to the victorious parties. See *St. Clair v. St. Clair* (1983), 9 Ohio App.3d 195 (in which a judgment entered "for alimony due and owing" without stating any amount due deemed unenforceable); *Eleven Ten Parkway Co. v. K. Amalia Enterprises, Inc.* (Feb. 11, 1997), 10th Dist. No. 96APE09-1151, 1997 Ohio App. LEXIS 533 (an award of attorney fees entered without specifying an amount was not a final appealable order); *Dick v. Perkins* (Sept. 30, 1994), 6th Dist. No. 93WD111, 1994 Ohio App. LEXIS 4331 (judgment awarding "one-half of the payment made by [plaintiff], excluding payments made by [plaintiff] from the parties' joint checking account" held insufficiently specific to determine what payments to which the judgment referred. Id at *11-*12).

{¶40} Unlike the cases cited by Ralph, the court in this case had a valid final judgment which had reduced Ralph's obligation to a specific monetary amount. In light of this judgment, and pursuant to this court's order in *Humphrey II*, the trial court set forth a sum certain that Ralph owed as a result of the property division. As discussed above, Ralph failed to file any proposed findings, despite being granted four time extensions, regarding the manner in which he would resolve the distribution issue. As a result, the trial court had no idea whether Ralph had or had not paid against his obligation. In other words, for all the court knew, the judgment entered in the original decree was the exact amount to which Sandra was entitled; by stating that the amount certain should be offset by any amount already paid by Ralph, the court was simply

acknowledging that Ralph should not have to pay twice if he has already met part of his obligation.

{¶41} The trial court specifically stated the amount originally owed and detailed the aspect of the original judgment upon which the figure was premised. Furthermore, the conditional language ordering a subtraction of any payments already made was a prophylactic clause which, in the long run, can be reasonably construed as a benefit to Ralph. Given the facts and circumstances of this case, we perceive no error in the way the trial court entered its monetary judgment.

{¶42} Even if there were a potential error related to the specificity of the judgment, we believe any such problem was invited by Ralph's failure to comply with the trial court's February 26, 2008 order. A party "invites error" when he attempts to take advantage of an error which he himself invited or induced the trial court to make. *Lester v. Leuck* (1943), 142 Ohio St. 91, at paragraph one of the syllabus.

{¶43} Here, Ralph had the opportunity, of which he failed to take advantage, to provide the court with a plan for meeting his obligation in the form of proposed findings of fact and conclusions of law. Despite being granted four time extensions to comply with the trial court's order, the final date to file his proposed plan came and went with no input from Ralph. Had he done so, however, he could have crafted a means of payment which subtracted any past payments, i.e., a plan which was based upon an amount for which he was actually responsible given any payments he had already made. Because Ralph could have cured the alleged defect in the specificity of the judgment by submitting a plan of payment on his obligation pursuant to the trial court's February 26, 2008 order, he, in effect, created the circumstances leading to the trial

court's conditional statement within the subject judgment. That is, Ralph's inaction facilitated or induced any potential error thereby inviting the very challenge he now assigns as error.

{¶44} Ralph's first assignment of error is without merit.

{¶45} For his second assignment of error, Ralph argues:

{¶46} "The trial court erred when it entered a judgment granting appellee continuing spousal support in a sum double what the evidence established as her monthly expenses."

{¶47} Under this assignment of error, Ralph first argues the trial court erred when it failed to find a "substantial change" in circumstances justifying the modification of spousal support as required by *Mandelbaum v. Mandelbaum,* 121 Ohio St.3d 433, 2009-Ohio-1222. We disagree.

{¶48} *Mandelbaum* came before the Court on a certification of a conflict between appellate districts. The certified question asked:

{¶49} "whether a trial court may modify a prior order of spousal support without finding that a substantial change in the circumstances of the parties has occurred and that the parties had not contemplated such a change at the time of the original divorce decree." Id.

{¶50} In answering the question in the negative, the court reaffirmed the common law rule requiring "a substantial and unforeseen change in circumstances before modifying a prior order of spousal support." Id at 438. The court recognized that R.C. 3105.18, the statute enabling a court to modify spousal support, did not codify the common-law requirement, but emphasized that "the *absence* of language to that effect

does not demonstrate that the General Assembly intended to abrogate what had become well-established law." (Emphasis sic.) *Mandelbaum*, supra, at 439.

{¶51} Prior to *Mandelbaum,* however, this district had declined to read the more restrictive, common-law standard into R.C. 3105.18. For instance, in *Buchal v. Buchal*, 11th Dist. No. 2005-L-095, 2006-Ohio-3879, this court pointed out that "*** a finding of a 'significant' or 'substantial' change of circumstance is neither necessary nor sufficient to support a modification of a spousal support award pursuant to R.C. 3105.18(E)." *Buchal,* supra, at ¶14. Clearly, *Buchal* was abrogated by the Supreme Court's decision in *Mandelbaum.*

{¶52} Notwithstanding this point, the trial court entered its judgment in the instant case on November 24, 2008, some four months before the Supreme Court released *Mandelbaum.* Because the standard announced in *Buchal* had not yet been abrogated when the trial court entered judgment, that standard was still controlling authority in this district. Nothing in *Mandelbaum* indicates that its standard has retroactive application. Thus, while all spousal support modification cases heard after March 24, 2009, the release date of *Mandelbaum*, must adhere to the common-law standard, those judgments issued prior to that date, such as the entry sub judice, are unaffected. Ralph's argument is overruled.

{¶53} Ralph next asserts that the post-decree award of spousal support, which is double the amount of Sandra's stated monthly needs, constitutes an abuse of discretion. Again, we disagree.

{¶54} After a party has properly invoked a trial court's jurisdiction to modify spousal support pursuant to R.C. 3105.18(E), it must determine whether the

modification is "appropriate and reasonable." R.C. 3105.18(C). While necessity clearly plays a role in the appropriateness and reasonableness of an award (as well as in its nature, amount and terms), necessity neither guides nor shapes the analysis. In fact, if support is deemed appropriate and reasonable, the nature, amount, and terms of payment is statutorily governed by the trial court's consideration of the fourteen factors set forth under R.C. 3105.18(C). "Monthly need" is *not* among the fourteen factors a court must consider. The Eighth Appellate District has recently underscored this point in *Janosek v. Janosek,* 8th Dist. Nos. 91882 and 91914, 2009-Ohio-3882:

{¶55} "'*** R.C. 3105.18, effective April 11, 1991, established a significantly different standard for awarding spousal support. The new 'appropriate and reasonable' standard is broader then [sic] the old 'necessary' standard. Thus, once the fourteen factors have been considered, the amount of spousal support is within the sound discretion of the trial court. ***'" (Internal citations omitted.) *Janosek,* supra, at ¶31, quoting *Pruden v. Pruden* (June 7, 1994), 10th Dist. No. 93APF10-1428, 1994 Ohio App. LEXIS 2623.

{¶56} Ralph's assertion that Sandra's monthly needs must define the amount of monthly support is therefore contrary to law.

{¶57} In any event, the evidence indicated, particularly in light of the lifestyle the couple enjoyed throughout their lengthy forty-year marriage, that the award was neither inappropriate nor unreasonable. In adopting the magistrate's decision, the trial court accepted, approved, and incorporated the magistrate's scrupulous analysis of each statutory factor under R.C. 3105.18(C) in light of the evidence submitted at the hearing.

Nothing in this analysis is out-of-step with the record at large or the testimony and evidence taken at the hearing.

{¶58} Nevertheless, Ralph's emphasis on Sandra's "needs" seems to ignore the relative luxuries the couple mutually enjoyed while married. With respect to this issue, the magistrate observed:

{¶59} "During the marriage the parties enjoyed a very comfortable standard of living. They had two homes, one in Ashtabula and one in New Mexico. On a regular basis, they traveled to foreign countries and within the United States. The parties have three children. They were able to send the children to private schools and pay for their college educations."

{¶60} In light of the materially privileged lifestyle the couple had while married, it seems disingenuous for Ralph to argue Sandra should only be entitled to, if anything, support for her bare necessities. Moreover, the magistrate acknowledged:

{¶61} "[Mrs. Humphrey's] very basic expenses total $3,500 monthly. This allows nothing for pet care, personal care, travel, gifts, entertainment, household items or cash spending.

{¶62} "Mr. Humphrey contends that Mrs. Humphrey has 'legitimate' expenses of only $3,000 per month, and that she has 'squandered' her money. Mrs. Humphrey admits that she has not always made the wisest financial decisions after the divorce, and that she does do a considerable amount of discretionary spending. She testified that during the marriage, Mr. Humphrey managed the money, and she therefore, lacked experience with the budgeting and finances.

{¶63} "Additionally, however, Mrs. Humphrey has been financially handicapped by the delays in the court system, [sic] and the distribution of assets to her. ***"

{¶64} The findings in the magistrate's decision are supported by the record and the trial court did not abuse its discretion in awarding the spousal support modification.

{¶65} Finally, Ralph argues the trial court's retroactive award of spousal support to May of 2005 was an abuse of discretion where there was no evidence submitted of her actual needs at the time the motion was filed. We disagree.

{¶66} First of all, as discussed above, to the extent Ralph presupposes Sandra's "needs" are the foundation of an award of spousal support, whether retroactive or prospective, his argument is overruled.

{¶67} Regardless of this defect, Sandra submitted an exhibit entitled "Cash Flow Timeline and Reconciliation 2001-2007." This exhibit, prepared by Molly Balunek, Sandra's financial planner, provided an estimated accounting of Sandra's general monthly (as well as annual) income and expenses from the years 2001-2007. Although the expenses were not specifically itemized, Sandra's living expenses in 2005 (which included both luxuries and necessities) totaled $126,300; in 2006, these expenses totaled $140,000. These figures demonstrate the court had some evidence before it to provide a basis for its award.

{¶68} Furthermore, Sandra did provide a detailed survey of her expenses, both necessary and discretionary, for the year 2007. In that year, Sandra submitted her average monthly expenses totaling $7,342.48, for a total of $88,109.80. While this total is considerably lower than the living expenses Sandra estimated for the years 2005 and 2006 in the Cash Flow Timeline, the expenses set forth in the Timeline were not

itemized like the 2007 worksheet. Still, the record reflects that Sandra's lifestyle, habits, and hobbies, did not appreciably change or devolve between 2005 and 2007. As a result, the magistrate could have used the detailed expense sheet submitted for 2007 as circumstantial evidence to draw the reasonable inference that Sandra's expenses for the previous two years were substantially similar to those in 2007.

{¶69} Finally, it is worth pointing out that the expenses Sandra incurred over the period in question were paid for by Sandra personally, despite the outstanding motion to modify spousal support. The magistrate properly considered this in fashioning the retroactive award, concluding "[a] retroactive award to May 13, 2005, will provide Mrs. Humphrey approximately $242,000 to replenish the assets she was required to deplete because she has not received spousal support since November of 2005. This amount, if invested, should generate an additional $400.00 per month, based on the performance of her current IRA which is of a similar amount."

{¶70} Viewing the evidence as a whole, we hold the court did not act arbitrarily, unreasonably, or unconscionably in ordering the modified spousal support amount retroactive to the date of the filing of the motion to modify.

{¶71} Appellant's second assignment of error lacks merit.

{¶72} Appellant's third assignment of error alleges:

{¶73} "The trial court erred when it failed to consider the tax consequences to appellant as to real estate he sold in order to pay appellee."

{¶74} Under his final assignment of error, Ralph argues the trial court ignored this court's mandate in *Humphrey II* by ordering him to pay Sandra "624,577.00, less whatever amounts [Ralph] has paid her." Although his argument is somewhat vague,

he appears to argue that the trial court should have considered the tax consequences of the sale of the real property of his insurance agency because such was (or will be) necessary to meet his obligation under the November 24, 2008 order. The problems with this position are twofold: (1) The trial court's November 24 order specifically found that Ralph's liquid assets were sufficient to meet the obligation *without* sale of the property; and (2) nothing in the record indicates Ralph has sold (or will be required to sell) any real property to meet his obligations.

{¶75} In *Humphrey II*, this court ordered the trial court to specifically issue a judgment whereby Ralph would be legally bound to satisfy his obligation either by an order to pay the obligation directly or an order requiring the sale of the insurance agency's property. Id. at ¶19-20. However, consistent with our holding in *Humphrey I,* this court unequivocally stated "*** ONLY in the case of a sale would the court be required to consider the tax consequences ***." *Humphrey II,* supra, at ¶19. Shortly after the issuance of the *Humphrey II* remand order, the trial court ordered both parties to submit their respective positions and preferences relating to the manner of distribution in the form of closing arguments and proposed findings and conclusions.

{¶76} Sandra submitted her proposal in compliance with the order, asserting Ralph could meet his obligations without a sale because he possessed identifiable liquid assets to cover the outstanding obligation. Ralph, as repeatedly noted, failed to offer any proposal. Subsequently, in light of the record, the trial court accepted Sandra's proposal and ordered Ralph to pay Sandra any remaining amount owed on the obligation through the available, and quite considerable, savings he had amassed. Specifically, the trial court determined:

{¶77} "The record indicates that [Ralph] received an inheritance of over $800,000.00 [in 2002]. He also has had ample time to accumulate sufficient savings to liquidate this obligation to [Sandra], as the Magistrate found in the Decision of July 17, 2008, that over the last five years [Ralph] has averaged $242,432.60 [i]ncome, or an increase of nearly $100,000.00 since the final hearing in this matter.

{¶78} The trial court obviously did not order a sale of the agency's real property and the record reflects that Ralph had not sold nor did he intend to sell any agency property towards the end of satisfying his obligation under the original property division order.[2] Accordingly, the trial court specifically adhered to this court's mandate in *Humphrey II* by ordering a cash payment from Ralph's available liquid funds. Because, no sale of assets was contemplated or required, the court was not required to consider the tax consequences of the ordered transfer.

{¶79} Ralph's final assignment of error lacks merit.

2. We acknowledge that Ralph takes issue with the trial court's failure to consider the tax consequences of his previous sale of two parcels of agency property which occurred prior to the December 2003 hearing. However, there was no evidence submitted at the December 2003 hearing indicating the sales occurred for the purpose of paying Sandra to satisfy his obligation under the original property division order. Furthermore, even assuming Ralph were to utilize a portion of the proceeds from these sales for that purpose, he submitted no evidence of the tax consequences of these past sales. "Where the parties do not produce evidence of tax consequences in the trial court, such consequences are merely speculative and need not be considered." *Bolden v. Bolden,* 11th Dist. No. 2006-G-2736, 2007-Ohio-6249, at ¶8, citing *Rice v. Rice,* 11th Dist. Nos. 2006-G-2716 and 2006-G-2717, 2007-Ohio-2056, at ¶31. Accordingly, Ralph's past sale of agency property does not affect the validity of the trial court's judgment.

{¶80} For the reasons discussed above, Ralph's three assignments of error are overruled and the judgment of the Ashtabula County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.