**[Cite as *In re Sertz v. Sertz*, 2012-Ohio-2120.]**

**IN THE COURT OF APPEALS**

**ELEVENTH APPELLATE DISTRICT**

**LAKE COUNTY, OHIO**

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|---|---|---|
| IN RE THE MARRIAGE OF: DONNA LYNNE SERTZ, | : | **O P I N I O N** |
| Petitioner-Appellee, | : | **CASE NO. 2011-L-063** |
| - and - | : | |
| STEPHEN THOMAS SERTZ, | : | |
| Petitioner-Appellant. | : | |

Civil Appeal from the Lake County Court of Common Pleas, Domestic Relations Division, Case No. 08 DI 000468.

Judgment: Affirmed.

*Nicholas A. D'Angelo*, Morganstern, MacAdams & DeVito Co., L.P.A., 623 West St. Clair Avenue, Cleveland, OH 44113-1204 (For Petitioner-Appellee).

*Patrice F. Denman*, Patrice F. Denman Co., L.P.A., 1111 Mentor Avenue, Painesville, OH 44077 (For Petitioner-Appellant).

MARY JANE TRAPP, J.

**{¶1}** Appellant, Stephen Sertz, appeals from the judgment of the Lake County Court of Common Pleas, Division of Domestic Relations, granting appellee's, Donna Sertz, motion for relief from judgment pursuant to Civ.R. 60(B), and awarding her attorney fees. The trial court's decision vacated an earlier dissolution of the Sertzes' marriage and returned the parties to a pre-dissolution position. Because the evidence before the trial court clearly supports a finding that Mr. Sertz fraudulently induced Mrs.

Sertz to sign the separation agreement that became the basis for the decree of dissolution, we affirm the decision of the trial court to vacate the dissolution and award attorney fees to Mrs. Sertz.

**Substantive Facts and Procedural History**

**{¶2}** Stephen and Donna Sertz married in 1998, and had one child in 2000. Mr. Sertz was consistently employed throughout the marriage, while Mrs. Sertz's employment was more sporadic. Mr. Sertz controlled all of the couple's finances and tracked all income produced and expenditures made by his wife. The couple would meet once a year to discuss the family financial situation and plan for the upcoming year, but Mrs. Sertz had no role in managing the couple's finances, nor was there any evidence that she was consulted regarding investments.

**{¶3}** Tension existed between the Sertzes relating to the difference between what Mrs. Sertz earned over the years and what she spent, and Mrs. Sertz testified that her husband had berated her on a number of occasions for her spending habits. Mrs. Sertz claimed to have expressed interest in taking a more active role in the household finances, but was not permitted to do so by her husband.

**{¶4}** By 2007 the Sertzes were having marital trouble, and Mr. Sertz began the process of preparing a separation agreement. Neither party retained an attorney during either the separation agreement drafting or subsequent dissolution petition processes; Mr. Sertz prepared every document related to the separation agreement and eventual dissolution petition. Mrs. Sertz agreed not to seek counsel at her husband's urging, because she believed him when he told her everything would be fair. She also relied on his representations that the agreement was a necessary part of the process of working

through their marital problems, as he had concerns related to their finances and parenting of their son that he needed to have addressed in writing.

**{¶5}** In August 2007, Mr. Sertz presented Mrs. Sertz with a shared parenting agreement, the separation agreement, and an affidavit of income and expenses he had prepared for her. He prepared a similar affidavit for himself. Mrs. Sertz confirmed that she saw the separation agreement and the shared parenting plan before she was asked to sign them some seven months later, but she denies she saw either financial affidavit before the couple went to the bank to sign the documents in front of a notary in April of 2008. She was not provided with copies of any of the documents.

**{¶6}** The separation agreement listed a separation date of June 23, 2007. The agreement provided that, as of that date, each party would be financially independent and any monies realized after June 23, 2007 would be considered separate property. The agreement also provided that each of their individual retirement accounts would be separate property.

**{¶7}** Mr. Sertz alleges that this date was chosen to benefit his wife, because she had quit her paralegal position with Thompson Hine, LLP on June 22, 2007, without prior consultation with him. She was pursuing a wrongful termination action and, thus, would be entitled to the full amount realized from any settlement or judgment arising out of the wrongful termination action. Mrs. Sertz did settle her case in November 2008 for $33,000, with a net distribution to her of $22,000.

**{¶8}** Mrs. Sertz argues the date is a critical component of her husband's plan to shelter marital assets from division, unbeknownst to her, upon the sale of his employer in May 2007. Mr. Sertz elected to roll over his Employer Stock Option Plan ("ESOP")

into an IRA he had set up specifically to accept these funds on May 30, 2007. The settlement date for the rollover, June 27, 2007, was four days after the date of separation unilaterally chosen by Mr. Sertz when he drafted the separation agreement. Prior to June of 2007, this money was speculative at best and could not have been realized until the company was sold.

**{¶9}** The Separation Agreement was drafted to allow Mr. Sertz to recoup monies from his wife after the date of separation, as he sought to defray the loss of her income and the excess spending he determined she had incurred throughout the marriage. Specifically, Mr. Sertz charged his wife one-half of the state and federal taxes due in March 2008 (despite the fact that he earned twice what she did); 100% of pet care costs for the family cat; one-half of his expenses incurred in preparing the dissolution documents; 100% of her health care expenses; 100% of gasoline expenses for her vehicle; and 35% of food and household expenses. As the trial court found, the financial breakdown gave Mrs. Sertz no financial consideration for transportation and miscellaneous expenses connected with their child or the household in general.

**{¶10}** According to Mr. Sertz, the separation agreement went through many drafts, with Mrs. Sertz submitting numerous changes via red markings on the document, until the parties came to the terms in August 2007. Mr. Sertz then put the documents away until April of the following year, when the parties signed the documents before a bank notary on April 4, 2008. But Mrs. Sertz denies that she requested numerous changes, and no drafts were offered during the hearing. Despite the separation documents having been signed in April 2008, Mr. Sertz held on to them in a locked cabinet until August of that year when they were filed.

**{¶11}** The parties continued to live with one another during this time, and Mrs. Sertz was under the impression there was a possibility the marriage could be saved. This impression grew out of representations by her husband that the preparation and execution of a separation agreement was a necessary part of the effort to save their marriage. She did not believe that signing the documents would result in termination of their marriage. Mrs. Sertz stated that she signed the documents because she "trusted Stephen implicitly * * * I signed tax returns without reading them. I signed – you know I would countersign checks without reading them. If he would ask me to endorse something, I would sign it."

**{¶12}** After the dissolution petition was filed, Mrs. Sertz did consult with a domestic relations attorney on one occasion, but when she told her husband of the consultation, Mrs. Sertz said her husband "went ballistic," and she agreed not to return to the attorney for any substantive advice. The parties continued to live together, and even took a number of family vacations.

**{¶13}** At an October 2008 hearing, a Decree of Dissolution was issued. The marriage was dissolved, a shared parenting plan was approved, assets were allocated pursuant to the Separation Agreement, and Mrs. Sertz was required to pay Mr. Sertz $499.03 per month for child support.

**{¶14}** In the summer of 2009, Mrs. Sertz filed a Motion to Modify the Shared Parenting Plan as well as the child support amount. During a discussion with Mr. Sertz regarding the requested modification, Mrs. Sertz claims she first learned that Mr. Sertz had received retirement funds through the ESOP. Mrs. Sertz claims she was completely unaware of this ESOP payout, while Mr. Sertz claims he informed her at

every step in the process, including the rollover, and that she still agreed to relinquish her rights to his retirement funds, despite the large disparity between her accounts and his. Upon realization of Mr. Sertz's perceived dishonesty, Mrs. Sertz filed a Civ.R. 60(B) motion to vacate the decree, claiming that Mr. Sertz had purposely failed to inform her of the ESOP payout in an effort to induce her to sign the separation agreement that he had prepared for her. She sought relief under subsections (1), (2), (3), and (5) of the rule.

**The Magistrate's Decision**

**{¶15}** The trial court referred the motion to a magistrate for hearing. Mr. and Mrs. Sertz were the only two witnesses. They each provided dramatically different testimony as to the nature of their relationship and Mr. Sertz's disclosure, or lack thereof, of the ESOP payout. In a lengthy, thorough, and well-reasoned decision, the magistrate sustained Mrs. Sertz' motion to vacate the final decree.

**{¶16}** The magistrate specifically found that the separation agreement and subsequent decree were the result of undue influence, and that the separation agreement, as a result, was "shockingly one-sided." The magistrate also noted a fundamental flaw in the separation agreement, in that husbands and wives may not contract to alter their legal relations with one another, except that they may agree to an immediate separation. The magistrate found that the Sertzes had failed to separate immediately upon signing the separation documents, because they were not filed with the court until October 2008, a full seven months after they had been signed. The magistrate further found that Mrs. Sertz was under the impression that "signing the separation agreement would somehow be a step toward reconciling or saving the

marriage because husband had told her that the separation agreement would help organize their financial and marital issues. Because there was no actual separation, and no intent to separate in the near future, the separation agreement signed by the parties amounts to an invalid contract * * *."

**{¶17}** In reviewing the separation documents, the magistrate also found that the "separation agreement does not list values for the retirement assets and merely recites that all retirement benefits and accounts shall be retained by the current owner. Had the values been listed in the separation agreement for the [ ] ESOP and the [ ] 401(k), retained by husband, the court, at the dissolution of marriage hearing, would have been alerted that a vastly uneven distribution was being proposed, and may have inquired further before approving the agreement."

**{¶18}** As a result, the magistrate vacated the dissolution decree and ordered the parties to pay their own attorney fees.

**The Trial Court's Independent Review**

**{¶19}** Mr. Sertz filed objections to the magistrate's findings, and the trial court sustained the magistrate's ultimate determination in another lengthy, thorough, and well-reasoned judgment entry.

**{¶20}** The trial judge did reject the magistrate's finding of undue influence, determining the facts instead supported a finding of fraud in the inducement pursuant to Civ.R. 60(B)(3). The trial court specifically found that Mr. Sertz did not provide Mrs. Sertz with documents as to the value of the ESOP rollover prior to the execution of the separation agreement, nor the value of his MMC pension. Mr. Sertz "drafted the separation agreement to shelter his IRA rollover from the ESOP, his [ ] pension, and all

other investments held in his name which he perceived as 'his.'" The trial judge further found that Mr. Sertz had "induced Wife to cooperate as to the preparation of a separation agreement; he induced her to sign the separation agreement, financial affidavit and shared parenting plan through his fraud and misrepresentation; specifically that by doing so she would be saving their marriage. Furthermore, Husband induced Wife to proceed without legal counsel throughout 2007 and 2008. As a result, she received a massively inequitable disproportionate property distribution as to the marital assets."

**{¶21}** Laying out the elements of fraud in the inducement, as this court elucidated in *Cefaratti v. Cefaratti*, 11th Dist. No. 2004-L-091, 2005-Ohio-6895, the trial court wrote, "Husband intentionally fraudulently misled Wife by his statements to her he needed to prepare and have a signed separation agreement to save their marriage. Wife relied on Husband's statements to induce her to sign the separation agreement, financial affidavit and shared parenting plan to save their marriage, to her overwhelming financial detriment. * * * The span of time between Husband's preparing the documents and the dissolution hearing does not negate his pattern of fraudulent actions and misrepresentations to Wife as to the status of their marriage by lulling her into believing the marriage was viable throughout 2007 and 2008."

**{¶22}** The trial judge also noted that Mrs. Sertz had satisfied all three prongs of *GTE Automatic Elec. Inc. v. ARC Industries,* 47 Ohio St.2d 146 (1976), to prevail on a Civ.R. 60(B) motion: 1) timeliness, 2) meritorious claim or defense if relief granted, and 3) entitlement to relief under one of the grounds stated in Civ.R. 60(B)(1)-(5).

**{¶23}** Lastly, after having held a separate hearing on both parties' motions for attorney fees associated with the motion to vacate, the trial judge awarded fees to Mrs. Sertz in the amount of $8,629.00.

**{¶24}** Mr. Sertz timely appealed the grant of the Civ.R.60(B) motion and now brings the following assignments of error:

**{¶25}** "[1.] The trial court erred in granting appellee's motion to vacate court's judgment entry filed October 9, 2008 pursuant to Ohio Civil Rule 60(B)."

**{¶26}** "[2.] The trial court erred in its failure to apply the principles of contract law in determining the validity of the separation agreement."

**{¶27}** "[3.] The trial court abused its discretion when it awarded appellee attorney fees."

**The Civ.R. 60(B) Motion**

**{¶28}** In his first assignment of error, Mr. Sertz argues that the trial court improperly granted Mrs. Sertz' motion to vacate the dissolution decree. He asserts that the trial court's findings that Mrs. Sertz satisfied all three prongs of the *GTE Automatic Elec. Inc.* test was against the manifest weight of the evidence because Mrs. Sertz failed to present any evidence to corroborate her testimony. Mr. Sertz further alleges that the trial court mistakenly held him to a higher evidentiary standard of proof than that required of the movant, Mrs. Sertz.

**{¶29}** Because we review the grant of a Civ.R. 60(B) motion for abuse of discretion only, and because the trial court clearly weighed the evidence before it, found Mrs. Sertz more credible than Mr. Sertz, and carefully reviewed the documents submitted, we find no error.

**Standard of Review**

**{¶30}** At the outset, we note that in reviewing a Civ.R. 60(B) determination, we do so under an abuse of discretion standard**.** *Stone v. Stone,* 11th Dist. No. 2005-P-0072, 2006-Ohio-3420, ¶29.

**{¶31}** As this court recently stated, the term "abuse of discretion" is one of art, "connoting judgment exercised by a court, which does not comport with reason or the record." *State v. Underwood*, 11th Dist. No. 2008-L-113, 2009-Ohio-2089, ¶30, citing *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). The Second Appellate District also recently adopted a similar definition of the abuse-of-discretion standard: an abuse of discretion is the trial court's "failure to exercise sound, reasonable, and legal decision-making." *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11. As Judge Fain explained, when an appellate court is reviewing a pure issue of law, "the mere fact that the reviewing court would decide the issue differently is enough to find error (of course, not all errors are reversible. Some are harmless; others are not preserved for appellate review). By contrast, where the issue on review has been confined to the discretion of the trial court, the mere fact that the reviewing court would have reached a different result is not enough, without more, to find error." *Id.* ¶67.

**{¶32}** "In order to prevail on a Civ.R. 60(B) motion for relief from judgment, the movant must establish that '(1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time * * *.'" *Stone* at ¶29, citing *State ex rel. Russo v. Deters*, 80 Ohio St.3d 152, 153-154 (1997).

**Substantial, Credible Evidence Supports the Trial Court's Decision**

**{¶33}** A careful review of the trial transcript and evidentiary materials submitted by both parties reveals that the trial court did not abuse its discretion in granting Mrs. Sertz' motion to vacate. We extend considerable deference to the trial court's determination, because "the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co., Inc. v. City of Cleveland*, 10 Ohio St.3d 77, 80 (1984).

**{¶34}** Mrs. Sertz provided substantial testimony regarding the evolution of the separation agreement and subsequent dissolution. Mr. Sertz provided an equivalent of testimony as to the same subjects, but with a considerably different view of what took place. We must defer to the trial court's determination of credibility, and it is clear, from both the magistrate's findings of fact and the trial court's independent review of the testimony and documentary evidence, that Mrs. Sertz was found more credible than her husband. The parties provided testimony that, at times, was completely contradictory, and the trial court ultimately believed Mrs. Sertz as it sought to reconcile such disparate accounts of what had occurred.

**{¶35}** The trial court methodically analyzed the documents submitted at the Civ.R. 60(B) hearing, as well as those filed at the time of the dissolution hearing in October of 2008, and applied the appropriate legal standard regarding fraud in the inducement. That standard is whether there has been a knowing, material misrepresentation with the intent to induce reliance by the other party and the other party has relied upon the misrepresentation to his or her detriment. *Cefaratti*, *supra,* at

¶28, citing *ABM Farms, Inc. v. Woods*, 81 Ohio St.3d 498, 502 (1998). The trial court specifically noted the lack of certain financial disclosures in the separation agreement as support for its finding that Mr. Sertz had engaged in dishonest behavior in an effort to induce Mrs. Sertz into agreeing to the separation and, ultimately, the dissolution.

**{¶36}** The trial court specifically relied on *Cefaratti*, *supra*, in finding that Mr. Sertz had "through fraud, secured a separation agreement and shared parenting plan which were overwhelmingly beneficial to his own financial interests at the expense of his Wife." In *Cefaratti,* this court upheld the granting of a Civ.R. 60(B) motion based upon strikingly similar circumstances. Mr. Cefaratti induced his wife to enter into a separation agreement he solely prepared by telling her alimony no longer existed in Ohio. That agreement, as the trial court found, "resulted in a clear undue advantage" to the husband. He encouraged his wife not to retain legal counsel in the dissolution proceedings, and he also told her reconciliation would occur after the dissolution of their marriage. The wife relied upon the husband's representations when she agreed to enter into the separation agreement and when she consented on the day of the dissolution hearing. The court found he was the "driving force behind the preparation of the separation agreement and dissolution proceedings." *Cefaratti* at ¶29-30.

**{¶37}** Also cogent to our consideration, the *Cefaratti* court found that "[t]hese circumstances, in addition to evidence that certain property was not fully disclosed or valued," supported the conclusion that there was "competent credible evidence before the trial court to support a finding of fraud in the inducement." *Id.* at ¶32.

**{¶38}** Our court is not alone. The Sixth District, in *Rettig v. Rettig*, 6th Dist. No. WD-09-040, 2010-Ohio-2122, held that the trial court did not abuse its discretion in

determining that Mr. Rettig had "perpetuated a fraud during the course of the parties' dissolution in order to deprive appellee of her shares of his SARS [Stock Appreciation Rights]." *Id.* at ¶28. In the *Rettig* case, the court inferred from the facts that the husband, a corporate CEO, had concealed the fact that he would profit from the sale of the company. Because Mrs. Rettig proved by a preponderance of the evidence that her husband had perpetrated a fraud during the course of their dissolution in order to deprive her of marital property, no abuse of discretion was present in granting the Civ.R. 60(B) motion.

**{¶39}** Just as in *Cefaratti* and *Rettig*, the trial court specifically found that Mrs. Sertz had met her burden of proof by offering *clear and convincing evidence* that Mr. Sertz had induced her into signing the separation agreement, by suggesting their marriage could be saved if she did so, strongly discouraging her from seeking counsel, and concealing certain retirement assets by failing to provide her with documents as to the value of the ESOP sale in May 2007 (prior to the parties' execution of the separation agreement) and the value of his pension.

**{¶40}** We find no support in this record for the argument that the trial court held Mr. Sertz to a higher evidentiary standard of proof than that required of Mrs. Sertz. In a Civ.R. 60(B) proceeding, the movant carries the burden of proof to demonstrate why a legally valid judgment is equitably voidable. *See GTE Automatic Elec. Inc., supra.* Simply put, the movant "must demonstrate that he has a meritorious defense or claim, he is entitled to relief under one of the grounds stated in Civ.R. 60(B), and his motion is made within a reasonable time." *Binion v. Makis*, 11th Dist. No. 98-T-0020, 1998 Ohio App. LEXIS 6004, *5 (Dec. 11, 1998), citing *GTE Automatic Elec. Inc., supra.* "If any

one of the three elements is not satisfied, relief must be denied." *Id*., citing *Moore v. Emmanuel Family Training Ctr*., 18 Ohio St.3d 64, 67 (1985).

**{¶41}** In response to Mr. Sertz' objections to the magistrate's findings, the trial court noted that "Husband belabors Wife's lack of supporting witnesses to conversations she claimed they had. However, Husband overlooks that he is in precisely the same position as Wife for lack of supporting witnesses to numerous conversations he claimed he and Wife had prior to the dissolution." Mr. Sertz argues this indicates that the parties were held to the same standard of proof. This simply is not the case.

**{¶42}** Rather than holding the parties to the same standards, the trial court was merely pointing out that the Sertzes provided similar types of evidence, reducing the situation to a determination of credibility. The trial court, when faced with the limited forms of evidence from both sides, simply gave more weight to Mrs. Sertz' account of what had occurred. Between Mrs. Sertz' testimony and a review of the documents provided by both parties, the court was provided with sufficient operative facts to meet the Civ.R. 60(B) standard and grant Mrs. Sertz relief.

**{¶43}** From a review of the record below we find no abuse of discretion and no error in vacating the October 2008 dissolution. Mr. Sertz' first assignment of error is without merit.

**The Application of Principles of Contract Law in a Dissolution**

**{¶44}** In his second assignment of error, Mr. Sertz argues that "[w]hen a separation agreement has been entered into without fraud or misrepresentation, the trial

court must apply the principles of contract law in determining the validity of the agreement."

**{¶45}** The trial court found that Mrs. Sertz' assent was induced by fraud. We have found that decision to be well-supported; thus, Mr. Sertz's argument has no merit.

**{¶46}** Mr. Sertz cites to a number of cases in which the movant did not actually prevail in their effort to vacate the judgment. *See*, *e.g., Wine v. Wine*, 4th Dist. No. 06CA6, 2006-Ohio-6995; *Lewis v. Lewis*, 10th Dist. No. 09AP-594, 2010-Ohio-1072. Here, the trial court specifically found that Mrs. Sertz had been fraudulently induced into signing the separation agreement, therefore the principles of contract law no longer apply in determining the validity of the separation agreement, and the agreement is determined to no longer have legal effect. *See*, *e.g*., *Irwin v. Irwin*, 11th Dist. No. 95-L-102, 1996 Ohio App. LEXIS 4210, *14 (Sept. 27, 1996); *J. Mitchell v. E. Mitchell*, 11th Dist. No. 1064, 1983 Ohio App. LEXIS 12424, *4 (Aug. 12, 1983), quoting *Nellis v. Nellis*, 98 Ohio App. 247 (6th Dist.1955). Mr. Sertz' second assignment of error is without merit.

**Award of Attorney Fees**

**{¶47}** In his final assignment of error, Mr. Sertz argues that the trial court improperly awarded Mrs. Sertz attorney fees incurred in prosecuting the motion to vacate. Mr. Sertz suggests that Mrs. Sertz did not establish fraud or misrepresentation by clear and convincing evidence, and therefore should not be entitled to an award of attorney fees.

**Standard of Review**

**{¶48}** Generally, "the decision whether to award attorney fees is [a] matter within the sound discretion of the trial court." *Frederick v. Frederick*, 11th Dist. No. 98-P-0071, 2000 Ohio App. LEXIS 1458, *25 (Mar. 31, 2000). Absent a clear abuse of discretion, a reviewing court will not reverse the judgment of the trial court. *Birath v. Birath*, 53 Ohio App.3d 31, 39 (10th Dist.1988).

**{¶49}** A trial court, however, will rarely award attorney fees, due in great part to the limited circumstances permitted under Ohio law for such awards. As a general rule, attorney fees are not recoverable and each party is to bear its own litigation costs and attorney fees. *Krasny-Kaplan Corp. v. Flo-Tork, Inc.*, 66 Ohio St.3d. 75 (1993); *Vance v. Roedersheimer*, 64 Ohio St.3d 552 (1992). An award of attorney fees is improper "in the absence of statutory authorization or a finding of conduct that amounts to bad faith." *Pegan v. Crawmer*, 79 Ohio St.3d 155, 156 (1997).

**R.C. 3105.73(B) Authorizes Attorney Fees Associated With Post-Decree Motion Practice**

**{¶50}** Pursuant to R.C. 3105.73(B), "[i]n any post-decree motion or proceeding that arises out of an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that motion or proceeding, the court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' income, the conduct of the parties, and any other relevant factors the court deems appropriate, but it may not consider the parties' assets."

**{¶51}** In awarding attorney fees to Mrs. Sertz, the court looked to this statute for authorization and guidance. The trial court found a partial award of attorney fees to Mrs. Sertz equitable because her earned income was less than half of Mr. Sertz'. The

court cited Mr. Sertz' "conduct prior to dissolution" – i.e., his "subterfuge and continued misrepresentation" – as the basis for the both the decision to vacate the decree of dissolution and an award of attorney fees pursuant to the statute.

**{¶52}** The trial court, in the exercise of its discretion, carefully considered all factors and determined a partial award of attorney fees to be equitable. Mr. Sertz has pointed to no failure to exercise sound, reasonable, and legal decision-making by the trial court in awarding statutorily authorized attorney fees. Therefore, Mr. Sertz' third assignment of error is without merit.

**{¶53}** For the foregoing reasons, the judgment of the Lake County Court of Common Pleas, Domestic Relations Division, is affirmed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.