[Cite as *Kraft v. Kraft*, 2009-Ohio-5444.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CYNDA K. KRAFT

Plaintiff-Appellee

-vs-

DAVID A. KRAFT

Defendant-Appellant

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Julie A. Edwards, J.

Case No. 08-CA-0039

O P I N I O N

CHARACTER OF PROCEEDING: Appeal from the Fairfield County Court of Common Pleas, Domestic Relations Division, Case No. 04-DR-38

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 7, 2009

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant David A. Kraft ("Husband") appeals the May 7, 2008 Judgment Entry/Decree of Divorce entered by the Fairfield County Court of Common Pleas, Domestic Relations Division, which inter alia ordered Husband to pay plaintiff-appellee Cynda K. Kraft ("Wife") spousal support in the amount of $1500/month.

STATEMENT OF THE CASE AND FACTS

{¶2} Husband and Wife were married on August 11, 1984. Two children were born as issue of the marriage, to wit: Micole (D.O.B. 2/8/87) and Bryan (D.O.B. 10/9/88). The parties separated in September, 2003. Wife filed an action for Legal Separation on January 27, 2004. Husband filed a Counterclaim for Divorce on February 6, 2004. Both children were emancipated by the time the trial court resolved all the issues in the matter.

{¶3} On November 14, 2005, the parties advised the trial court they had reached an agreement regarding property settlement. The agreement was reduced to writing in a Memorandum Agreement, which was filed on the same date. The trial court conducted a final hearing on the remaining issues of spousal support and attorney fees on May 31, 2006.

{¶4} The evidence adduced at trial revealed Husband is a butcher by training and works for CJ Kraft Enterprises, which is owned by his family and was not an asset at issue. CJ Kraft operates a slaughter house and grocery store. Husband's W-2 indicated he earned $20,352, from his employment with CJ Kraft. Husband and Wife jointly owned "Castaways, LTD", a restaurant located in Lancaster, Ohio. As a result of the property settlement reached in November, 2005, this asset was allocated to

Husband with a zero/negative value. Husband received no salary from Castaways. In the tax year 2004, the restaurant operated at a loss of $22,185. In 2005, Castaways earned a small profit of $2,263. Husband also received interest income from a land contract which paid him an average sum of $3,113/year.

{¶5} The parties acquired sixteen rental properties during the course of the marriage. The properties had a total of twenty-three rental units. Husband was allocated fifteen of these properties as part of the property settlement. Husband also retained the marital residence. Wife was allocated one rental property which contained two rental units. Subsequent to the filing of the Complaint, Husband became the record owner of one-half interest in three rental properties which he inherited from his mother. The other one-half interest in these properties was owned by Husband’s brother.

{¶6} The parties had a significant disagreement as to the actual income realized from the rental properties. Wife’s expert, Dana Lavelle, a certified public accountant, prepared a schedule of potential income from the various rental properties allocated to Husband. In preparing the schedule, Lavelle made a number of assumptions, including one hundred percent occupancy of the rental properties and the real estate taxes had been paid in previous years. Lavelle calculated Husband’s net rental income to be $101,938/year. Lavelle did not deduct any mortgage expenses from his calculations. He also included all of the income earned by the properties Husband inherited from his mother although Husband only owned a one-half interest in these properties. Lavelle acknowledged he based his calculations on the 2004 and 2005 tax returns which did not include deductions for real estate taxes, which he conceded would and should be included as an income deduction item.

{¶7} Husband argued the properties were not one hundred percent rented and the real estate taxes for the tax years 2004, 2005, and the first half of 2006, had not been paid. The mortgage expenses from the properties awarded to Husband in the property settlement totaled $49,908. Ronald Darst, a certified public accountant, testified on Husband's behalf on this issue. Darst explained the depreciation for tax purposes with respect to many of the rental units had been depleted and, as a result, the actual income realized from the rental properties would continue to decline in the future. Darst emphasized the rental revenue for 2004, and 2005, were artificially inflated due to the non-payment of real estate taxes. Further, the revenues with regard to the property Husband inherited from his mother had been incorrectly overstated, and the depreciation on these properties was included in Husband's 2005 tax returns, which inflated the depreciation figure on the return.

{¶8} The rental property Wife received in the property settlement was a double unit, with the lower unit occupied by Wife's mother. Wife's mother paid $6600/year as rent. The monthly mortgage payment on the property was $325, or $3900/annually. The real estate taxes on the property were approximately $1100/year.

{¶9} The parties also disputed Wife's ability to work. Wife was a high school graduate and obtained her LPN in 1980. She worked on a part-time basis as an LPN from 1980, until 1997. In 1997, Wife left her job after being diagnosed with breast cancer. Wife's license expired in 1998. From 1998 to 2006, Wife worked five to ten hours/week at the parties' restaurant. Wife opened the restaurant, conducted the banking, ordered inventory, and ran any necessary business errands. Wife was not

compensated for any of the work she performed on behalf of the restaurant, and she did not have a retirement or savings account.

{¶10} Husband presented the testimony of Barbara Millisor, a vocation evaluator, who performed a vocational assessment on Wife. Millisor testified, based upon the history Wife provided, Wife was employable in the food service industry as a manager, with an earning ability of $35,300/year.

{¶11} Wife presented the testimony of Dr. Mark Carroll, D.O., her family physician, and Dr. John Mason, Ph.D., a clinical psychologist. Dr. Carroll detailed the medical issues Wife had experienced since 1985. Wife's health history included breast cancer, vertigo, left bundle branch block (cardiomyopathy), an abnormal MRI of the brain in December, 2004, major depression, and anhedonia. Dr. Carroll opined Wife was unable to work due to her various medical and emotional issues. On cross-examination, Dr. Carroll acknowledged Wife's cancer was in remission; the cause of her vertigo was undiagnosed, but resolved on its own; her depression, which had originally been diagnosed in 1991, had been successfully treated; and the abnormal MRI was followed by a clean bill of health by doctors at the Cleveland Clinic. Dr. Carroll further stated all of Wife's medical issues had been successfully treated except for some cardiomyopathy as a result of the left bundle branch block. As a result of this condition, Wife might experience some fatigue. In 2004, Wife informed her doctor at the Cleveland Clinic her depression had been successfully treated with Prozac. Dr. Carroll also acknowledged many individuals with depression are able to work forty hour work weeks.

{¶12} Dr. John Mason, who had been counseling Wife for approximately six months at the time of the hearing, testified Wife was depressed, which he attributed to some of her physical concerns; issues regarding her minor child, Bryan; and the pending divorce. The doctor diagnosed Wife with recurrent major depression and symptoms of agoraphobia, and believed Wife would qualify for social security disability based upon her mental health status. Dr. Mason concluded she did not have the ability to work. On cross-examination, Dr. Mason acknowledged all of the information he obtained about Wife's medical history had been through her own self-reporting, and he had not reviewed any of her medical records. Dr. Mason stated Wife's depression was stressed-based, and noted resolution of the external stress would positively impact her depression. With regard to Wife's medical issues, Dr. Mason opined Wife suffers from "physical overconcern". He acknowledged the timing of her symptomatology was suspect, but attributed such to stress. Although Dr. Mason believed if an individual has the capacity to work he/she should do so as work is therapeutic, he noted work, however, would not be therapeutic for Wife as it would cause an increase in her stress and anxiety.

{¶13} Dr. Lee Howard, Ph.D. a clinical psychologist, conducted an independent medical examination of Wife at Husband's request. Dr. Howard specialized in disability claims and, in particular, disability claims for workers' compensation, social security, and the Bureau of Vocational Rehabilitation. Dr. Howard conducts approximately 1500 disability evaluations each year, and over his twenty-five years of practice, had performed 30,000 to 35,000 disability assessments. Dr. Howard performed the Shipley

IQ test on wife. Wife's test score was 118, which is in the high normal range. The doctor also tested Wife for problems with short term and long term memory loss, determining her memory functions were within normal ranges. Additional testing revealed no suggestion of any cognitive function problem. Dr. Howard also administered the MMPI-2 test, which revealed a normal profile, and the Structured Inventory Malingering Symptomatology test, which measures the specific tendencies of an individual to engage in stimulation of symptomatology or malingering in specific areas. The results of the SIMS test suggested Wife has a tendency to present complaints more severely than the true clinical picture. Dr. Howard testified Wife would be able to perform work activities within today's workforce without significant limitations.

{¶14} Dr. David Randolph, who is board certified in occupational medicine, evaluated Wife's medical issues, by taking a history from Wife and conducting a thorough medical examination. The medical examination revealed no abnormalities. Dr. Randolph noted, in 2004, Wife had an EKG, which revealed a bundle branch block. This block resulted in cardiomyopathy, which could cause Wife to feel winded after climbing stairs or possibly fatigued. Dr. Randolph believed Wife was capable of work activity, specifically sedentary or light work activities with lifting limited to twenty-five pounds and no repetitive motions. The doctor also stated Wife has convinced herself that she is disabled, but had the capabilities of sustained remunerative employment.

{¶15} The magistrate issued a decision on May 21, 2007. The magistrate found Wife was not disabled and not unable to work; therefore, imputed income to her in the amount of $14,248/year. The magistrate further found Wife has interest income from the property settlement in the amount of $11,769 as well as rental property income in

the amount of $1600/year, for a total annual income of $27,617. With respect to Husband's income, the magistrate found he had a total annual income of $79,230.60, which included $20,352 as wages from CJ Kraft Enterprises, $55,765.60 in rental income, and $3013 in interest income from a land contract. The magistrate ordered Husband to pay wife spousal support in the amount of $1500/month until April 1, 2017. The spousal support obligation would terminate upon Wife's death, Husband's death, or Wife's remarriage or cohabitation with an adult male.

{¶16} Both parties filed objections to the magistrate's decision. Via Entry filed January 9, 2008, the trial court approved the magistrate's decision, finding the parties' objections not well taken. The trial court ordered Husband's counsel to draft a judgment entry/decree of divorce incorporating the terms of the property settlement as well as the magistrate's decision. After some dispute concerning the wording, the trial court journalized its Judgment Entry/Decree of Divorce on May 7, 2008.

{¶17} Husband filed a timely Notice of Appeal. Husband also filed a Civ.R. 60(B) Motion for Relief from Judgment as well as a motion with this Court requesting a remand to the trial court to address the Civ.R. 60(B) motion. This Court sustained the motion and remanded the matter to the trial court. The trial court subsequently sustained Husband's motion. Neither party appealed this decision.

{¶18} It is from the May 7, 2008 Judgment Entry/Decree of Divorce Husband appeals, raising the following assignments of error:

{¶19} "I. THE DECISION OF THE TRIAL COURT REQUIRING APPELLANT TO PAY SPOUSAL SUPPORT IN THE SUM OF $1,500.00 PER MONTH UNTIL April 1,

2017, SUBJECT TO THE COURT'S CONTINUING JURISDICTION, WAS AN ABUSE OF DISCRETION AND REVERSIBLE ERROR.

{¶20} "II. THE DECISION OF THE TRIAL COURT THAT APPELLEE HAD ANNUAL EARNING ABILITY OF $14,248.00 WAS UNSUPPORTED BY ANY COMPETENT, CREDIBLE EVIDENCE AND WAS AN ABUSE OF DISCRETION.

{¶21} "III. THE MAGISTRATE ERRED IN REFUSING TO STRIKE FROM THE RECORD THE OPINION OF APPELLEE'S FORENSIC ACCOUNTANT FOR THE REASON THAT SAID OPINION DID NOT MEET THE REQUIREMENTS OF EVID.R. 702."

I, II

{¶22} Because Husband's first and second assignments of error both relate to the trial court's spousal support order, we shall address these assignments of error together. In his first assignment of error, Husband contends the trial court's decision ordering him to pay spousal support in the amount of $1500/month until April 1, 2017, was an abuse of discretion. In his second assignment of error, Husband asserts the trial court's decision to impute an annual earning ability of $14,248 to Wife was unsupported by the evidence; therefore, was an abuse of discretion. Husband challenges the trial court's spousal support order on three grounds: 1) the amount of spousal support; 2) the duration of the spousal support order; and 3) the trial court's retention of jurisdiction over the issue.

{¶23} A review of a trial court's decision relative to spousal support is governed by an abuse of discretion standard. *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 421 N.E.2d 1293. We cannot substitute our judgment for that of the trial court unless, when

considering the totality of the circumstances, the trial court abused its discretion. *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 541 N.E.2d 597. In order to find an abuse of that discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶24} R.C. 3105.18(C)(1)(a) through (n) sets forth the factors a trial court must consider in determining whether spousal support is appropriate and reasonable and in determining the nature, amount, terms of payment and duration of spousal support. These factors are:

{¶25} "(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;

{¶26} "(b) The relative earning abilities of the parties;

{¶27} "(c) The ages and the physical, mental, and emotional conditions of the parties;

{¶28} "(d) The retirement benefits of the parties;

{¶29} "(e) The duration of the marriage;

{¶30} "(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;

{¶31} "(g) The standard of living of the parties established during the marriage;

{¶32} "(h) The relative extent of education of the parties;

{¶33} "(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

{¶34} "(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;

{¶35} "(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;

{¶36} "(l) The tax consequences, for each party, of an award of spousal support;

{¶37} "(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

{¶38} "(n) Any other factor that the court expressly finds to be relevant and equitable." Id.

{¶39} A trial court need not acknowledge all evidence relative to each and every factor listed in R.C. 3105.18(C), and we may not assume the evidence was not considered. *Barron v. Barron,* Stark App. No.2002CA00239, 2003-Ohio-649 at paragraph 25. The statute directs the court to consider all fourteen factors, and a reviewing court will presume the trial court did so absent evidence to the contrary. *Cherry*, supra. The court must only set forth sufficient detail to enable a reviewing court to determine the appropriateness of the award. See, e.g., *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 518 N.E.2d 1197.

{¶40} Husband sets forth two grounds upon which he predicates his argument the trial court abused its discretion in determining the amount of spousal support he was obligated to pay Wife. First, Husband asserts the trial court's determination Wife had the ability to earn an annual income of only $14,248, was against the manifest weight of the evidence. Husband also argues the trial court erred in including rental income in the amount of $55,765, as part of his annual income for spousal support purposes.

{¶41} In order to compute an obligor's spousal support obligations, a trial court must determine both parties' annual incomes. See R.C. 3105.18. The trial court herein imputed to Wife an annual income of $14,248, or minimum wage for forty hours/week. Husband contends such figure is unsupported by the evidence as the only vocational expert to testify stated Wife was capable of earning over $35,000/year as a restaurant manager.

{¶42} After conducting a vocational assessment of Wife, Barbara Millisor, a certified vocational evaluator, determined Wife was capable of earning $35,300/year as a restaurant manager. A review of Millisor's testimony reveals she conducted the assessment without reviewing Wife's medical records, and acknowledged Wife's employability could be negatively affected by her medical conditions. Wife's experts, her physician and her psychologist, both stated their beliefs Wife was disabled and unable to work at all.

{¶43} Dr. Lee Howard, a clinical psychologist, conducted an independent medical examination of Wife. Dr. Howard, who specializes in disability claims in workers' compensation and social security matters, administered to Wife an IQ test, the MMPI-2, and the Structured Inventory Malingering Symptomatology (SIMS) test. The

IQ test revealed Wife was in the high normal range, and did not indicate any problems with Wife's cognitive ability. The MMPI-2 reflected Wife had a normal profile. The SIMS indicated Wife had a tendency to magnify her symptoms and present any complaints as more severe than the actual clinical picture. Dr. Howard opined Wife would be able to perform work activities without significant limitations.

{¶44} Dr. David Randolph, who described himself as an occupational physician, evaluated Wife's medical issues. Dr. Randolph's evaluation led him to the opinion Wife was capable of work activity with limitations on lifting. Dr. Randolph noted Wife had become comfortable in her "disabled lifestyle", and needed help to overcome the situation.

{¶45} Upon review of the record, we find there was sufficient evidence upon which the trial court could determine Wife was capable of earning only minimum wage. Wife had been working in the parties' restaurant only 5 to 10 hours/week, since 1998. Wife opened the restaurant, handled the banking, ordered inventory, and ran assorted errands. Wife was not paid for her services. Although the trial court found Wife was not disabled and could work, the trial court recognized Wife's limitations. Accordingly, we find the trial court did not abuse its discretion in imputing to Wife an annual income of $14,248.

{¶46} Next, Husband argues the trial court erred in including rental income in the amount of $55,765, as part of his annual income for spousal support purposes. Husband submits the rental income is the result of the agreed property settlement between the parties, and he must utilize the rental income to pay the cash property settlement he owes Wife; therefore, requiring him to pay spousal support calculated with

the inclusion of such income is a “double dip”. Husband further asserts the trial court erred in failing to reduce the rental income by the depreciation on these properties. We disagree.

{¶47} R.C. 3105.18(C)(1)(a) specifically requires the trial court to consider ‘[t]he 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”*. (Emphasis added). In light of the statutory mandate, the income generated from the rental properties retained by Husband pursuant to the division of marital assets, along with the other 18(C) factors, needed to be evaluated and considered by the trial court in determining the appropriate amount of spousal support. *Hutta v. Hutta* (2008), 177 Ohio App.3d 414, 421. In addition, the double-dipping argument advanced by Husband has been rejected by this Court in *Bagnola v. Bagnola,* Stark County App. No. 2003-CA-00120, 2003-Ohio-5916, 2003 WL 22501764 (basing division of marital assets on business valuations which were based on husband's earned income from three businesses, while also basing award of spousal support on same earned income, did not result in improper “double dipping”). Id.

{¶48} As part of the parties’ settlement agreement, Husband received 16 rental properties. Wife received only one parcel of real property as part of the property division, and the remainder in a cash settlement. The parcels of real property have value based upon the land and structures, as well as the income producing abilities. The trial court included rental income in calculating both party’s incomes for spousal support purposes. The trial court also included the interest income Wife earns from the

property settlement. We cannot conclude the trial court abused its discretion in including the rental incomes as part of Husband's and Wife's incomes.

{¶49} We now turn to Husband's assertion the trial court erred in failing to reduce the rental income by the depreciation on the properties. Husband acknowledges depreciation is not deducted from an individual's income for child support purposes pursuant to R.C. 3119.01(C)(9)(b), but contends because a similar statute does not exist with respect to spousal support, the maxim of expressio unius est exclusion alterius is applicable herein. We disagree.

{¶50} In *Helfrich v. Helfrich* (Sept. 17, 1996), Franklin App. No. 95APF12-1599, unreported, the Tenth District Court of Appeals recognized the theory behind income for child support purposes is different from income for tax purposes. The *Helfrich* Court stated:

{¶51} "* * * the purposes underlying the Internal Revenue Code and the child support guidelines are vastly different. The tax code permits or denies deduction from gross income based on myriad economic and social policy concerns which have no bearing on child support. The child support guidelines in contrast are concerned solely with determining how much money is actually available for child support purposes. To this end, R.C. 3113.215(A)(2) includes nontaxable income in 'gross income' for purposes of calculating child support. This recognized the economic reality that all money earned by a parent, irrespective of its taxability, is in fact income to that parent." Id. at *3.

{¶52} We find the same rationale applies in the spousal support context. Further, there is no logical reason the calculation of an individual's income for spousal

support purposes should include or exclude items not included or not excluded from the calculation of an individual's income for child support purposes.

{¶53} Husband also takes issue with the duration of the spousal support order.

{¶54} "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 v. Kunkle* (1990), 51 Ohio St.3d 64, 67 at paragraph one of the syllabus.

{¶55} "[A] marriage of long duration 'in and of itself would permit a trial court to award spousal support of indefinite duration without abusing its discretion or running afoul of the mandates of *Kunkle.*' " *Vanke v. Vanke* (1994), 93 Ohio App.3d 373, 377, quoting *Corpac v. Corpac* (Feb. 27, 1992), 10th Dist. No. 91AP-1036. "Generally, marriages lasting over 20 years have been found to be sufficient to justify spousal support of indefinite duration." *Hiscox v. Hiscox,* Columbiana App. No. 07CO7, 2008-Ohio-5209, at ¶ 47. See, also, *Bowen v. Bowen* (1999), 132 Ohio App.3d 616, 627; *Soley v. Soley* (1995), 101 Ohio App.3d 540, 550; *Vanke* at 376-77; *Taylor v. Taylor* (Aug. 4, 1998), Scioto App. No. 97CA2537, unreported; *Wolfe v. Wolfe* (July 30, 1998), Scioto App. No. 97CA2526, unreported.

{¶56} The parties were married almost 20 years. As such, we find the trial court did not abuse its discretion in ordering Husband to pay Wife spousal support for a period of thirteen years, especially since the court retained jurisdiction over the issue.

{¶57} We, likewise, find no error in the trial court's decision to retain jurisdiction over the spousal support order. The decision to retain jurisdiction to modify an award of spousal support is left to the sound discretion of the trial court. *Johnson v. Johnson* (1993), 88 Ohio App.3d 329. A reviewing court must consider the totality of the circumstances and the specific facts of each case in determining whether a trial court abused its discretion in retaining or declining to jurisdiction.

{¶58} Here, the trial court imposed a definite period of spousal support of thirteen years. Husband contends the trial court erred in choosing to retain jurisdiction because he could be exposed to another trial relating to Wife's alleged disability, which would be expensive and time-consuming. The trial court specifically found Wife was not disabled. Wife did not appeal this finding. Any future attempt by Wife to relitigate the issue would be barred by the doctrine of res judicata absent a change of Wife's circumstances. Husband may find the trial court's retention of jurisdiction inures to his benefit in the future. Given the specific facts of this case, we cannot say the trial court abused its discretion.

{¶59} Husband's first and second assignments of error are overruled.

III

{¶60} In his third assignment of error, Husband argues the magistrate erred in refusing to strike the opinion of Wife's forensic accountant as such opinion did not meet the requirements of Evid. R. 702.

{¶61} The admission or exclusion of evidence rests in the sound discretion of the trial court. *Tate v. Tate,* Richland App. No. 02-CA-86, 2004-Ohio-22, ¶ 63, citing *State v. Sage* (1987), 31 Ohio St.3d 173, 180, 510 N.E.2d 343. Nonetheless, error may

not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and in case the ruling is one admitting evidence, a timely objection appears in the record stating the specific ground of the objection, if the specific ground was not apparent from the context. *Stark v. Stark,* Delaware No. 01 CAF06020, 2002-Ohio-90, citing Evid.R. 103(A)(1).

{¶62} Husband specifically objects to the methodology utilized by Wife's CPA, Dana Lavelle. Husband explains Lavelle did not use a recognized computer program for making his calculations and rendering his opinions. Rather, Lavelle used a computer program he designed and which was untested and not available to others. Husband adds Lavelle admitted he was not a computer programmer.

{¶63} Evid. R. 702 provides:

{¶64} "A witness may testify as an expert if all of the following apply:

{¶65} "(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

{¶66} "(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

{¶67} "(C) The witness' testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:

{¶68} "(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;

{¶69} "(2) The design of the procedure, test, or experiment reliably implements the theory;

{¶70} "(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result." Id.

{¶71} Assuming, arguendo, the trial court erred in failing to strike Lavelle's opinion testimony, we, nonetheless, find Husband has not shown he was prejudiced by such error.

{¶72} Husband's third assignment of error is overruled.

{¶73} The judgment of the Fairfield County Court of Common Pleas, Domestic Relations Divisions, is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Edwards, J. concur

s/ William B. Hoffman ___________________
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin_______________________
HON. W. SCOTT GWIN

s/ Julie A. Edwards____________________
HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CYNDA K. KRAFT	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
DAVID A. KRAFT	:	
Defendant-Appellant	:	Case No. 08-CA-0039

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Fairfield County Court of Common Pleas, Domestic Relations Divisions, is affirmed. Costs to Husband-Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS