[Cite as *Holmes v. Holmes*, 2009-Ohio-5720.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	JUDGES:
JOHN C. HOLMES	:	Sheila G. Farmer, P.J.
	:	John W. Wise, J.
Plaintiff-Appellee	:	Julie A. Edwards, J.
	:	
-vs-	:	Case No. 09 CA 0017
	:	
	:	
BEVERLEY J. HOLMES	:	O P I N I O N
Defendant-Appellant		

CHARACTER OF PROCEEDING:	Civil Appeal from Licking County Court of Common Pleas, Domestic Relations Division, Case No. 07 DR 01637
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	October 22, 2009
APPEARANCES:	
For Plaintiff-Appellee	For Defendant-Appellant
ALAN P. GUSTAFSON P.O. Box 484 Utica, Ohio 43080	ERIC L. ANDERSON 29 S. Park Place Newark, Ohio 43055

Edwards, J.

{¶1} Defendant-appellant, Beverly Holmes, appeals from the January 27, 2009, Judgment Entry Decree of Divorce issued by the Licking County Court of Common Pleas, Domestic Relations Division.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant Beverly Holmes and appellee John Holmes were married on April 27, 2002. No children were born as issue of such marriage.

{¶3} On November 2, 2007, appellee filed a complaint for divorce against appellant. Appellant filed an answer and counterclaim on December 12, 2007.

{¶4} A trial was held on October 16, 2008. As memorialized in a Judgment Entry Decree of Divorce filed on January 27, 2009, the trial court awarded each party all of the personal property and household good in his/her control or possession. The trial court also awarded appellant the following specified property:

{¶5} "The computer in her possession, Lane recliner, mission bed, one-half the pots, pans, linens, wall hangings, one bunk bed, three fans, one dehumidifier, her clothes and personal effects, the new sweeper, the new DVD, the Christmas items, her own pictures, frames, knickknacks, phone and recorder, piano/keyboard, coffee maker, blender and the Ford fire ladder. In addition, the defendant shall receive the Michigan/OSU commemorative picture, one-half of the blankets and one-half of the pillows." The trial court, in its Judgment Entry, found that such a division was equitable.

{¶6} The trial court further found that appellant had retirement benefits through the School Employees Retirement System (SERS) that the court valued at $14,574.00.

The court found that the same was marital property and used the $14,574.00 figure on the asset/debt distribution sheet attached to its Judgment Entry.

{¶7} A Nunc Pro Tunc entry to correct three items in the asset/debt distribution sheet was filed on February 2, 2009.

{¶8} Appellant now raises the following assignments of error on appeal:

{¶9} "I. THE TRIAL COURT ERRED BY NOT EQUITABLY DIVIDING THE HOUSEHOLD GOODS AND PERSONAL PROPERTY.

{¶10} "II. THE TRIAL COURT ERRED BY USING AN INCORRECT VALUE FOR DEFENDANT'S SCHOOL EMPLOYEES RETIREMENT SYSTEM."

I

{¶11} Appellant, in her first assignment of error, argues that the trial court erred by not equitably dividing the parties' household goods and personal property. We disagree.

{¶12} An appellate court generally reviews the overall appropriateness of the trial court's property division in divorce proceedings under an abuse of discretion standard. *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 421 N.E.2d 1293. In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶13} R.C. 3105.171 explains a trial court's obligation when dividing marital property in divorce proceedings as follows: "(C)(1) Except as provided in this division or division (E)(1) of this section, the division of marital property shall be equal. If an equal division of marital property would be inequitable, the court shall not divide the marital

property equally but instead shall divide it between the spouses in the manner the court determines equitable. In making a division of marital property, the court shall consider all relevant factors, including those set forth in division (F) of this section." See also *Cherry,* supra, at 355, 421 N.E.2d 1293.

{¶14} R.C. 3105.171(F) reads as follows:

{¶15} "In making a division of marital property and in determining whether to make and the amount of any distributive award under this section, the court shall consider all of the following factors:

{¶16} "(1) The duration of the marriage;

{¶17} "(2) The assets and liabilities of the spouses;

{¶18} "(3) The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage;

{¶19} "(4) The liquidity of the property to be distributed;

{¶20} "(5) The economic desirability of retaining intact an asset or an interest in an asset;

{¶21} "(6) The tax consequences of the property division upon the respective awards to be made to each spouse;

{¶22} "(7) The costs of sale, if it is necessary that an asset be sold to effectuate an equitable distribution of property;

{¶23} "(8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses;

{¶24} "(9) Any retirement benefits of the spouses,….

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

{¶26} As is stated above, the trial court, in the Decree, awarded each party all personal property and household goods in his/her possession, but expressly awarded appellant specific property. Appellant now contends that appellee was "granted the lion's share of the household goods and property, while the trial court merely carved out small exceptions for [appellant] to possess."

{¶27} Appellant, in support of her argument that the trial court's award was not equitable, specifically points to the following testimony adduced at trial during appellee's testimony:

{¶28} "Q. The majority of the property inside of the residence that we did not purchase together does that belong to me [appellant]?

{¶29} "A. What's the majority?

{¶30} "Q. What things in the house belong to me [appellant] that you're aware of?

{¶31} "A. The dining room set, dresser in the bedroom.

{¶32} "Q. Hope chest, hutch, the oak…

{¶33} "A. Okay. Yeah, that.

{¶34} "Q. The oak hutch?

{¶35} "A. (No audible response.)

{¶36} "Q. Dining room tables?

{¶37} "A. I already said dining room table.

{¶38} "Q. Chairs?

{¶39} "A. The dining room set, end table, and end table and a coffee table and lamp.

{¶40} "Q. The bed upstairs?

{¶41} "A. What bed upstairs?

{¶42} "Q. The missionary bed, the oak missionary bed.

{¶43} "A. That's marital property.

{¶44} "Q. Was that a gift?

{¶45} "A. Not that I'm aware of.

{¶46} "Q. What other furniture - - - in the house is mine [appellant's]? The bunk beds?

{¶47} "A. Yeah. Bunk beds.

{¶48} "Q. Where are they located now?

{¶49} "A. They're' in Autumn's room.

{¶50} "Q. Mattresses?

{¶51} "A. Yeah.

{¶52} "Q. Bedding, dishes, pots, pans?

{¶53} "A. Yes.

{¶54} "Q. Would you say the majority of the household items, except for what we purchased together, belong to me [appellant]?

{¶55} "A. Yeah.

{¶56} "Q. And you would relinquish them to me [appellant] without…No problem.

{¶57} "A. Okay. That's great." Trial Transcript at 134-135. (Emphasis added).

{¶58} However, as an appellate court, we generally review a trial court's property division in its entirety, rather than examining individual awards in a piece-meal fashion. *Espenschied v. Espenschied,* Tuscarawas App.No.2002AP030021, 2002-Ohio-5119, ¶ 19, citing *Briganti v. Briganti* (1984), 9 Ohio St.3d 220, 459 N.E.2d 896. While the trial court may not have awarded appellant all of the household personal property that appellee agreed appellant could have, viewing the award in its entirety, we do not find the trial court abused its discretion in dividing the parties' marital property. See *Koegel v. Koegel* (1982), 69 Ohio St.2d 355, 432 N.E.2d 206 (emphasizing that a trial judge should be given wide latitude in dividing property between the parties). As demonstrated by the Decree and the trial court's Nunc Pro Tunc Entry, the trial court made an equal division of property as a whole. As evidenced by the asset/distribution worksheet attached to the Nunc Pro Tunc Entry, both parties were awarded assets totaling $15,228.00.

{¶59} We note that appellant does not argue in this assignment that the trial court failed to grant her her separate property.

{¶60} We further note that the trial court did not assign values to individual items of household goods and personal property. The trial court made a division of these items and stated that that division was an equitable division. Appellant argues that the appellee received the "lion's share" of the household goods and personal property, but does not argue any specific monetary value for the items.

{¶61} Appellant's first assignment of error is, therefore, overruled.

II

{¶62} Appellant, in her second assignment of error, argues that he trial court erred by using an incorrect value for appellant's School Employees Retirement System [SERS] benefits. We disagree.

{¶63} The trial court, in its Judgment Entry found that the value of appellant's retirement account through the SERS was $14,574.00. Appellant now argues that this value was incorrect because she was not fully vested with SERS because she had only three years of service rather than the five years required in order to be vested. Appellant notes that if she were no longer working as of the time of trial, she would have only been entitled to a refund of contributions to SERS totaling $8,182.34. Appellant contends that the trial court should have used this figure in valuing appellant's SERS account and that the failure to do so, "resulted in an improper distribution of assets to [appellant's] detriment."

{¶64} An unvested pension may be a marital asset. *Lemon v. Lemon* (1988), 42 Ohio App.3d 142, 144, 537 N.E.2d 246. In determining whether an unvested pension plan is a marital asset, and in determining its value as an asset, the court should take into consideration the time left before the pension becomes vested, the length of the marriage, and the contributions of both parties to the pension plan. Id.

{¶65} Appellee, at the trial in this matter, introduced Exhibit 18, which was a report prepared by Pension Evaluators. In its evaluation, Pension Evaluators stated, in relevant part, as follows:

{¶66} "After reviewing biographical and plan information which is detailed on the following Client Data Sheet, it is our opinion that the fair market value [of appellant's

SERS account] on October 3, 2008 is $14,575.00. Because all the pension was earned during the marriage, the amount subject to equitable distribution remains $14,574.00.

{¶67} "Please note that this amount reflects a reduction to account for the fact that the annuitant is not yet vested in this benefit."

{¶68} At the trial in this matter, Susan Moussi, who is a certified public accountant who was contacted by appellant,[1] testified that appellant did not give her any information that would indicate that appellant was going to terminate her employment before she had five years of service. Thus, there was no indication in the record that appellant would not become vested.

{¶69} Finally, we note that the trial court, in its February 2, 2009 Nunc Pro Tunc entry, indicated that, with respect to appellee's Ariel Corporation Profit Sharing Plan, it had failed to include both the vested and non-vested value of such plan on its asset/debt distribution sheet. Only the vested value of the same, which was $1,696.00, was included on the distribution sheet attached to the original Decree. However, in the worksheet attached to the Nunc Pro Tunc entry, the trial court included the total value of such plan vested and non-vested. The total value was $8,328.00. Thus, the trial court treated both appellant and appellee's unvested plans equally.

{¶70} Based on the foregoing, we find that the trial court did not err in valuing appellant's SERS account.

{¶71} Appellant's second assignment of error is, therefore, overruled.

[1] While Moussi prepared a report for appellant concerning financial matters, the report was not admitted at trial.

{¶72} Accordingly, the judgment of the Licking County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Edwards, J.

Farmer, P.J. and

Wise, J. concur

s/Julie A. Edwards

s/Sheila G. Farmer

s/John W. Wise

JUDGES

JAE/d0724

[Cite as *Holmes v. Holmes*, 2009-Ohio-5720.]

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

JOHN C. HOLMES	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
BEVERLEY J. HOLMES	:	
Defendant-Appellant	:	CASE NO. 09 CA 0017

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Licking County Court of Common Pleas, Domestic Relations Division, is affirmed. Costs assessed to appellant.

s/Julie A. Edwards

s/Sheila G. Farmer

s/John W. Wise

JUDGES