

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LORI COMPTON

Plaintiff-Appellee

-vs-

RONALD COMPTON

Defendant-Appellant

: JUDGES:

: Hon. William B. Hoffman, P.J.

: Hon. John W. Wise, J.

: Hon. Patricia A. Delaney, J.

: Case No. 2014CA00207

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Domestic Relations
Division, Case No. 2014DR00313

JUDGMENT:

AFFIRMED IN PART, REVERSED
IN PART, AND REMANDED

DATE OF JUDGMENT ENTRY:

October 13, 2015

APPEARANCES:

For Plaintiff-Appellee:

DAVID S. AKE
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Canton, OH 44718

For Defendant-Appellant:

RAYMOND T. BULES
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Delaney, J.

{¶1} Defendant-appellant Ronald L. Compton ("Husband") appeals from the November 3, 2014 Final Entry Decree of Divorce entered in the Stark County Court of Common Pleas, Domestic Relations Division. Plaintiff-appellee is Lori Compton ("Wife").

FACTS AND PROCEDURAL HISTORY

{¶2} Husband and Wife were married on May 5, 1990 and have three children together, although all three children were emancipated by the time of trial. Two children were still seniors in high school.

{¶3} Husband, age 45, has an advanced degree in computer information systems and works as a human resource representative at Diebold. His annual net salary is \$67,200.

{¶4} Wife, age 44, has two years of post-secondary education in medical assisting and described herself as a stay-at-home parent for most of the marriage. She worked at Eye Centers of Ohio from 2007 until 2010; in 2010 she made \$10,857. In 2011, Wife started her own business with friend and partner Judy Swartz selling crafts and home decor. Swartz provided money to start the business and made monthly contributions. Recordkeeping was admittedly lax. Swartz left the business in 2012 and an agreement was reached between Wife and Swartz stating Wife owed Swartz \$10,800. This amount grew to \$12,800 when Swartz loaned Wife additional money for attorney fees.

{¶5} In 2012, the business lost \$10,243. In 2013, the business earned \$10,380. From January through August 2014 the business lost \$6,321.70.

{¶6} Husband presented the testimony of a certified fraud examiner who investigated the business and testified Wife failed to report income in 2012 and 2013. The certified fraud examiner testified Wife misrepresented and concealed cash sales which were "skimmed from the business" but was unable to state in what amount.

{¶7} Wife filed for divorce on March 26, 2014; Husband filed an answer and counterclaim, and Wife replied to the counterclaim. The matter proceeded to trial on September 11, 2014 and the trial court entered its Final Entry Decree of Divorce on November 3, 2014. Relevant to this appeal, the trial court ordered Husband to pay spousal support in the amount of \$2000 per month for eight years.

{¶8} Husband appeals from the judgment entry of the trial court.

{¶9} Husband raises five assignments of error:

ASSIGNMENTS OF ERROR

{¶10} "I. THE TRIAL COURT ABUSED ITS DISCRETION IN ORDERING RONALD TO PAY SPOUSAL SUPPORT IN AN AMOUNT THAT WILL CAUSE HIS MONTHLY EXPENSES TO GREATLY EXCEED HIS INCOME."

{¶11} "II. THE TRIAL [COURT] ABUSED ITS DISCRETION IN REFUSING TO RETAIN JURISDICTION TO MODIFY RONALD'S SIGNIFICANT AND LENGTHY SPOUSAL SUPPORT OBLIGATION."

{¶12} "III. THE TRIAL COURT'S DETERMINATION OF LORI'S INCOME WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶13} "IV. THE TRIAL COURT INCORRECTLY CHARACTERIZED LORI'S ATTORNEY FEES AS MARITAL DEBT."

{¶14} "V. THE TRIAL COURT ERRED IN FAILING TO FIND THAT LORI COMMITTED FINANCIAL MISCONDUCT BY FALSIFYING HER TAX RETURN, WHICH RESULTED IN A REFUND FOR HER AND A TAX LIABILITY FOR RONALD."

ANALYSIS

I.

{¶15} In his first assignment of error, Husband argues the trial court abused its discretion in awarding spousal support in an amount which will cause his monthly expenses to exceed his income. We disagree.

{¶16} A trial court's decision concerning spousal support may be altered only if it constitutes an abuse of discretion. *Kunkle v. Kunkle*, 51 Ohio St.3d 64, 67, 554 N.E.2d 83 (1990). An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983). R.C. 3105.18(C)(1)(a) through (n) set forth factors a trial court is to consider in determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, terms of payment, and duration of spousal support:

(C)(1) In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors:

- (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;
- (b) The relative earning abilities of the parties;
- (c) The ages and the physical, mental, and emotional conditions of the parties;
- (d) The retirement benefits of the parties;
- (e) The duration of the marriage;
- (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;
- (g) The standard of living of the parties established during the marriage;
- (h) The relative extent of education of the parties;
- (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;
- (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;
- (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;

(l) The tax consequences, for each party, of an award of spousal support;

(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

(n) Any other factor that the court expressly finds to be relevant and equitable.

{¶17} Trial courts must consider all the factors listed in R.C. 3105.18(C). We have previously held that 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 that the evidence was not considered. *Hutta v. Hutta*, 177 Ohio App.3d 414, 2008–Ohio–3756, 894 N.E.2d 1282, ¶ 27 (5th Dist.), citing *Clendening v. Clendening*, 5th Dist. Stark No.2005CA00086, 2005–Ohio–6298, ¶ 16. The trial court must set forth only sufficient detail to enable a reviewing court to determine the appropriateness of the award. *Id.*, citing *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 518 N.E.2d 1197 (1988).

{¶18} Examining the trial court's findings relative to spousal support, we find no abuse of discretion and our review of the record reveals the presence of credible evidence supporting the trial court's determinations. The trial court noted it considered the factors set forth in R.C. 3105.18 in determining the amount of spousal support.

{¶19} The parties had been married for over 23 years, during which Wife's employment was sporadic. She was described as a stay-at-home parent for most of the marriage and her income was a fraction of Husband's income. Wife's earning ability was

significantly less than Husband's earning ability. See, *Kirkpatrick v. Kirkpatrick*, 5th Dist. Tuscarawas No. 2014AP050018, 2015-Ohio-427, ¶ 75.

{¶20} Husband argues the trial court's award of spousal support will not allow him to meet his expenses (and Wife that despite the award she will also be unable to meet her expenses). Creating negative cash flow does not necessarily lead to a finding of an abuse of discretion. See, *Taylor v. Taylor*, 5th Dist. Stark No. 2013CA00130, 2013-Ohio-4958, ¶ 23. The standard of living achieved by the parties during their marriage is often altered upon termination. See, *Kaechele*, supra, 35 Ohio St.3d at 95. Equity requires that a party receive sufficient sustenance alimony to bring him or her to a reasonable standard of living as that established during the marriage. See, *Buckles v. Buckles*, 46 Ohio App.3d 102, 946 N.E.2d 950 (10th Dist.1988). Here, the trial court ordered Husband to pay Wife \$2000 per month (after his child support obligation ends) for eight years. Based upon the record before us, the amount ordered is not an abuse of discretion and represents an effort to equalize the parties' income and liabilities. See, *Kennard v. Kennard*, 5th Dist. Delaware No. 02CA-F-11-059, 2003-Ohio-2800, ¶ 35, citing *State v. Eley*, 77 Ohio St.3d 174, 180-181, 672 N.E.2d 640 (1996) ["A trial court judge is presumed to know the applicable law and apply it accordingly."]

{¶21} Husband's first assignment of error is overruled.

II.

{¶22} In his second assignment of error, Husband argues the trial court should have retained jurisdiction to modify his spousal support obligation. To the extent that we find the trial court's decree to be ambiguous in this regard, we agree and remand for clarification whether the trial court retains jurisdiction.

{¶23} Pursuant to R.C. 3105.18(E), a trial court has authority to modify or terminate a spousal support award only if the divorce decree contains an express reservation of jurisdiction. Here the trial court did not make an express reservation and the language of the order contradicts itself. (Decree, 6-7).

{¶24} Generally we encourage trial courts to retain jurisdiction to modify a spousal support award, a result which would be supported in this case because Wife's earnings are highly changeable. To the extent the order is unclear whether or not the trial court retains jurisdiction over the award of spousal support, we sustain Husband's second assignment of error and remand this matter to the trial court for clarification.

III.

{¶25} In his third assignment of error, Husband argues the trial court's determination of Wife's income is against the manifest weight of the evidence and is not supported by competent, credible evidence. We disagree.

{¶26} When presented with an allegation the trial court's order is against the manifest weight of the evidence, we must review the record before us and determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. *Stephens v. Stephens*, 5th Dist. Ashland No. 04-00A-027, 2004-Ohio-4640, ¶ 14. If the judgment is supported by competent and credible evidence going to all the essential elements of the case, we may not reverse as being against the manifest weight of the evidence. *Id.*, citing *C.E. Morris Company v. Foley Construction Company*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

{¶27} Husband contends the trial court ignored evidence regarding income of Wife's business, specifically the opinion of the certified fraud examiner that she was

"skimming" from the business. It is the trial court's province to determine the credibility of the evidence before it. *Harvey v. Harvey*, 5th Dist. Muskingum No. CT99-0023, 2000 WL 1901454, *3 (Dec. 28, 2000). In support of his argument here, Husband points to the fact that Wife's 2013 income tax return was filed "single" and with one dependent child, but the certified fraud examiner testified this mistake was corrected. (T. 75). The witness admitted he could not determine how much Wife made from the business due to the limited scope of his investigation.

{¶28} Ultimately we are not fact-finders and we neither weigh the evidence nor judge the credibility of witnesses; instead, "[o]ur role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment." *Smith v. Smith*, 5th Dist. Perry No. 00-CA-7, 2001 WL 1775390, *1 (May 18, 2001), citing *Cross Truck v. Jeffries*, Stark App. No. CA-5758, unreported (Feb. 10, 1982). The trial court imputed income to Wife of \$16,848 per year, an amount which is not against the manifest weight of the evidence based upon Wife's earning history and ability.

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

IV.

{¶30} In his fourth assignment of error, Husband asserts the trial court should not have assessed Wife's attorney fees as marital debt. Wife concedes the trial court's judgment entry is inconsistent.

{¶31} We note the concluding final orders state "Each party shall pay his/her attorney fees and costs" (Decree, 13). The Property Distribution Exhibit, though, includes a \$360 debt to a law firm along with the \$2000 loan from Judy Swartz for

attorney fees and an additional \$8000 loan from Wife's parents for attorney fees. We are charged with reviewing the trial court's decision for an abuse of discretion but in light of the ambiguity we remand this matter to the trial court for clarification as to the allocation of attorney fees.

{¶32} Therefore, to the extent the remand is for the trial court to clarify the assignment of attorney fees, Husband's fourth assignment of error is sustained.

V.

{¶33} In his fifth assignment of error, Husband argues the trial court should have found Wife committed financial misconduct. We disagree.

{¶34} R.C. 3105.171(E)(3) provides “[i]f a spouse has engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets, the court may compensate the offended spouse with a distributive award or with a greater award of marital property.” The burden of proving financial misconduct is on the complaining spouse. In *Mikhail v. Mikhail*, Lucas App. No. L-03-1195, 2005-Ohio-322, the Sixth District found that financial misconduct must be based on “wrongdoing.” In describing the wrongdoing, the court stated “[t]ypically, the offending spouse * * * either profit[s] from the misconduct or intentionally defeat[s] the other spouse's distribution of marital assets.” *Id.* at paragraph 28. In *Eggeman v. Eggeman*, 3rd Dist. Auglaize No. 02-04-06, 2004-Ohio-6050, the Court also found that “[b]efore a compensating award is made * * * there must be a clear showing that the offending spouse either profited from the alleged misconduct or intentionally defeated the other spouse's distribution of assets.” *Id.* at ¶ 24. The Court found while the husband did engage in financial misconduct, the distributive award to the wife was not warranted

because the record failed to show the husband personally gained or profited from his misconduct or that the wife's interest was defeated. *Id.*

{¶35} The trial court has discretion in determining whether a spouse committed financial misconduct, subject to a review of whether the determination is against the manifest weight of the evidence. *Boggs v. Boggs*, 5th Dist. Delaware No. 07 CAF 02, 2008–Ohio–1411 at ¶ 73, citing *Babka v. Babka*, 83 Ohio App.3d 428, 615 N.E.2d 247 (1992).

{¶36} We have reviewed the record in this case and find that the trial court's failure to find financial misconduct by Wife is not against the manifest weight of the evidence. The record fails to show that Wife personally gained or profited from the alleged "skimming" or that Husband's interest was defeated. The certified fraud examiner first testified the "victim" of Wife's alleged underreporting was not Husband but "the taxpayer" (T. 82), before correcting himself to state *if* he could establish cash was skimmed, Husband was victimized. Wife acknowledged she sometimes took small amounts of cash from the business but the record does not establish a clear showing she either profited from the alleged misconduct or intentionally defeated Husband's distribution of assets.

{¶37} Husband's fifth assignment of error is therefore overruled.

CONCLUSION

{¶38} Husband's second and fourth assignments of error are sustained and the remaining assignments of error are overruled. The judgment of the Stark County Court of Common Pleas, Domestic Relations Division is therefore reversed in part and sustained in part. We remand this matter to the trial court for further proceedings consistent with this opinion.

By: Delaney, J. and

Hoffman, P.J.

Wise, J., concur.