

[Cite as *Coors v. MacEachen*, 2010-Ohio-4470.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

MARTHA COORS, : APPEAL NO. C-100013  
Plaintiff-Appellant, : TRIAL NO. DR-0702011  
vs. : *DECISION.*  
RODERICK JOSEPH MACEACHEN, :  
JR., :  
Defendant-Appellee. :

Civil Appeal From: Hamilton County Court of Common Pleas,  
Domestic Relations Division

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 24, 2010

*Lindhorst & Dreidame* and *Jay R. Langenbahn*, for Plaintiff-Appellant,

*Wood & Lamping, LLP*, and *Jeffrey M. Rollman*, for Defendant-Appellee.

Please note: This case has been removed from the accelerated calendar.

**DINKELACKER, Judge.**

{¶1} Plaintiff-appellant, Martha Coors, appeals from a divorce decree ending her marriage to defendant-appellee, Roderick Joseph MacEachen. She takes issue with the trial court's award of spousal support. We find no merit in her three assignments of error, and we affirm the trial court's judgment.

*I. Facts and Procedure*

{¶2} The record shows that the parties were married for 26 years. They had two children, who were both emancipated by the end of the proceedings.

{¶3} Historically, MacEachen had earned 95% of the parties' income. He was self-employed until 2003, when his business failed. After that, he worked for CB Richard Ellis, Inc., selling commercial real estate on commission. He also paid his own business expenses. Although his income fluctuated, overall he earned substantial income. For example, in 2006 and 2007, he earned well over \$500,000.

{¶4} In 2008, the real-estate market collapsed due to the faltering economy. In that year, MacEachen earned approximately \$133,000, approximately 75% less than his previous years' earnings. His employer's business was down 95% and did not show signs of improving. It reduced commission rates, which will further reduce MacEachen's income.

{¶5} Coors had been employed by Xerox for many years until she took time off in 2001 to stay home with the parties' children. From 2001 through 2006, she engaged in some part-time work. She went back to work for Xerox full-time when MacEachen asked for a divorce and stopped paying most of her expenses, contending that they were "discretionary."

{¶6} Coors received a base salary plus commissions. In 2007, she earned approximately \$52,000, and in 2008, her earnings were about \$66,000. In 2009, her

base salary was \$49,200, and she estimated that she would earn approximately \$10,000 in commissions.

{¶7} Coors's employer reimbursed her for expenses, including mileage and parking. It provided her with a car, which she could use personally, for a charge of \$275 per month. It also gave her a gas card and paid for all maintenance on the car.

{¶8} The parties had enjoyed a good standard of living during the marriage. They had a large amount of monthly expenses and little savings or investments. They kept their finances separate during the marriage and effectively operated as two separate units. Both parties were college graduates and were in good physical and mental condition. Coors was ten or eleven years, and MacEachen was seven or eight years, from normal retirement age.

{¶9} Following a hearing, a magistrate determined that MacEachen's income was \$282,553, which was a ten-year average of his gross pay, and that Coors's was \$65,599. The magistrate found that MacEachen's earning capacity far exceeded Coors's earning capacity, and that, given the parties' ages and experience, that disparity would not change. He recommended that MacEachen pay Coors spousal support of \$6,000 per month for eight years, and that the court retain jurisdiction over the amount and duration of spousal support.

{¶10} MacEachen objected to the magistrate's decision. The trial court disagreed with the magistrate's recommendation to average MacEachen's income over ten years. It stated, "The Court finds that it would be inequitable to calculate Husband's income for spousal support purposes as the Magistrate has done in light of the demonstrable decline in the commercial real estate market. Rather, the relevant evidence is that the market in which he has been employed has suffered a massive downturn. The Court therefore \* \* \* finds that his income for purposes of calculating spousal support is \$103,582."

{¶11} The court then went on to find that Coors’s income was \$79,266, and thus, at that time, that MacEachen earned 56% of the family income and Coors earned 44%. It also found that “given the current economic condition, it seems unlikely that either one will be able to continue the lifestyle they enjoyed as a couple[.]” It then awarded Coors \$3,000 per month in spousal support for six years. It retained jurisdiction to modify the amount of support, but not the duration. The court incorporated these orders into the divorce decree, and this appeal followed.

***II. Spousal Support – Standard of Review***

{¶12} In all three of her assignments of error, Coors takes issue with the court’s determination of spousal support. R.C. 3105.18 provides that the trial court may award spousal support as is “appropriate and reasonable.”<sup>1</sup> In making its determination, the court must consider the factors set forth in R.C. 3105.18(C)(1). They include the income of the parties, the earning capacity of the parties, the duration of the marriage, and the standard of living during the marriage.<sup>2</sup>

{¶13} The trial court has broad discretion in determining the amount and duration of an award of spousal support.<sup>3</sup> This court will not reverse an award of spousal support absent an abuse of discretion.<sup>4</sup> An abuse of discretion connotes more than an error of law; it implies that the court’s decision was arbitrary, unreasonable, or unconscionable.<sup>5</sup> If some competent, credible evidence supports the court’s decision, it is not an abuse of discretion.<sup>6</sup>

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<sup>1</sup> *Metz v. Metz*, 1st Dist. No. C-050463, 2007-Ohio-549, ¶34; *Zerbe v. Zerbe*, 1st Dist. Nos. C-040035 and C-040036, 2005-Ohio-1180, ¶26.

<sup>2</sup> *Zerbe*, supra, at ¶26.

<sup>3</sup> *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67, 554 N.E.2d 83; *Metz*, supra, at 34.

<sup>4</sup> *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 131, 541 N.E.2d 597; *Novick v. Novick* (Dec. 14, 2001), 1st Dist. Nos. C-010172 and C -010193.

<sup>5</sup> *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218, 450 N.E.2d 1140; *Novick*, supra.

<sup>6</sup> *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 401, 1998-Ohio-403, 696 N.E.2d 575; *Novick*, supra.

*A. Income Averaging*

{¶14} In her first assignment of error, Coors contends that the trial court erred in determining MacEachen's income for purposes of spousal support. She argues that where the evidence shows that a party's income fluctuates significantly, the court errs in using only the most recent year's income to establish that party's earning capacity. This assignment of error is not well taken.

{¶15} Coors relies on a child-support statute that allows for income averaging when an obligor's income is unpredictable or inconsistent.<sup>7</sup> But courts interpreting that statute have stated that the decision whether to average income over a period of years lies within the trial court's discretion. It is not mandatory.<sup>8</sup>

{¶16} Further, no similar statute applies to spousal support.<sup>9</sup> Coors relies on cases where appellate courts, including this one, have affirmed a trial court's decision when it used income averaging to determine spousal support.<sup>10</sup> But in those cases, the use of income averaging was not specifically at issue. Further, simply because some courts have not reversed judgments involving income averaging does not mean that a court abuses its discretion by not using income averaging in every similar situation.

{¶17} In this case, the trial court considered the appropriate factors, and the award of spousal support was appropriate and reasonable. The court simply reached a different conclusion than the magistrate. It appropriately considered the downturn in the economy and its effect on the real-estate market.

{¶18} As the trial court pointed out, the couple had no savings, and neither of them would be able to maintain the standard of living that they had previously enjoyed.

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<sup>7</sup> R.C. 3119.05(D) and 3119.05(H).

<sup>8</sup> *Kranz v. Kranz*, 12th Dist. No. CA2008-04-054, 2009-Ohio-2451, ¶7-8; *Wright v. Wright*, 8th Dist. No. 91026, 2009-Ohio-128, ¶21-26.

<sup>9</sup> *Kranz*, supra, at ¶7.

<sup>10</sup> See *Bils v. Bils*, 6th Dist. No. WD-09-026, 2009-Ohio-6679; *Cohen v. House-Cohen*, 10th Dist. Nos. 08AP-344 and 09AP-548, 2009-Ohio-6564; *Peters v. Peters*, 9th Dist. Nos. 03CA008306 and 03CA008307, 2004-Ohio-2517; *Burroughs v. Burroughs* (Mar. 10, 2000), 1st Dist. Nos. C-990001 and C-990031.

Further, the court retained jurisdiction to modify the amount of spousal support so that if MacEachen's income may rise significantly, the court can modify the award accordingly. The court's decision was not so arbitrary, unreasonable, or unconscionable as to connote an abuse of discretion.<sup>11</sup> Consequently, we overrule Coors's first assignment of error.

**B. Calculation of Income**

{¶19} In her second assignment of error, Coors contends that the trial court erred by using two different methods of determining the parties' incomes without explanation. She argues that the trial court used MacEachen's net income and her gross income, and that the disparity artificially equalized the parties' incomes. This assignment of error is not well taken.

{¶20} Coors relies on *Freeland v. Freeland*,<sup>12</sup> in which the appellate court reversed an award of spousal support because the trial court had not sufficiently indicated its reasons for its spousal-support award to enable the appellate court to determine that the award was "fair, equitable and in accordance with the law."<sup>13</sup> In determining the parties' incomes, the trial court had failed to explain why it had chosen to attribute income to the husband based upon his gross income, but to attribute income to the wife based on her net income. It had also failed to explain why it had relied on the wife's testimony about her income rather than on her income-tax returns.<sup>14</sup>

{¶21} In this case, the court did not use two different methods to determine income. It used the income for 2008, the last full year before the trial, for both parties. Both parties worked on commission, although Coors had a base salary as well.

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<sup>11</sup> See *Blakemore*, supra, at 218; *Zerbe*, supra, at ¶28.

<sup>12</sup> 4th Dist. No. 02CA18, 2003-Ohio-5272.

<sup>13</sup> Id. at ¶19.

<sup>14</sup> *Peters v. Peters*, 12th Dist. No. CA2009-04-037, 2009-Ohio-5929, ¶18; *Freeland*, supra, at ¶19.

MacEachen paid his own business expenses while Coors's company reimbursed her for hers and provided her with a car.

{¶22} To determine MacEachen's income, the court started with his gross income on his W-2 form and subtracted his business expenses. It stated that it was using his "net income," but actually it was using his gross income after business expenses but before taxes.

{¶23} In determining Coors's income, the court used her earnings statement, which listed her gross pay as \$79,266. It listed her salary as approximately \$69,000, which is the figure that Coors claimed that the court should have used. But her gross income also included her commissions as well as other compensation she received in lieu of salary, which more accurately reflected her true income.

{¶24} Competent, credible evidence supported the trial court's income determination, and, therefore, this court will not reverse it.<sup>15</sup> Further, the record provides a sufficient basis to allow us to determine that the award of spousal support is fair, equitable, and in accordance with the law.<sup>16</sup> We, therefore, overrule Coors's second assignment of error.

### ***C. Duration of Spousal Support***

{¶25} In her third assignment of error, Coors contends that the trial court erred in reducing the duration of spousal support and by declining to maintain jurisdiction over the duration. She argues that the court could not arbitrarily reduce the duration of the award of spousal support when neither party had specifically objected to the duration. This assignment of error is not well taken.

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<sup>15</sup> See *Middendorf*, supra, at 401; *Novick*, supra.

<sup>16</sup> See *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 97, 518 N.E.2d 1197; *Peters*, supra, at ¶17; *Freeland*, supra, at ¶19.

{¶26} Civ.R. 53 “contemplates that a written magistrate’s decision shall be filed with the clerk and served on the parties, that the parties shall have an opportunity to object, and that the trial court shall rule on any objections and then either adopt, reject, or modify the magistrate’s decision before entering a judgment.”<sup>17</sup> When a party files objections to a magistrate’s decision, the trial court must independently review the objections “to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law.”<sup>18</sup>

{¶27} A magistrate’s purpose is to “assist courts of record.”<sup>19</sup> A magistrate’s oversight is not a substitute for the trial court’s judicial functions, but only an aid to them.<sup>20</sup> An essential component of a trial court’s judicial function is to review and ratify a magistrate’s decision before it becomes effective.<sup>21</sup> A magistrate’s decision is interlocutory and is not effective unless adopted by the court.<sup>22</sup>

{¶28} Though the magistrate in this case recommended that spousal support last for eight years, the trial court reduced the duration to six years. Coors’s claim that neither party had specifically objected to the duration of spousal support is incorrect; she herself argued that spousal support should last for ten years. But even if she had not, the trial court always had the discretion to modify the magistrate’s report, with or without hearing more evidence.<sup>23</sup>

{¶29} The trial court reviewed the transcript of the proceedings before the magistrate and disagreed with the magistrate’s recommendations.<sup>24</sup> The court ruled on the parties’ objections, as Civ.R. 53 requires, and modified the magistrate’s

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<sup>17</sup> *Yantek v. Coach Builders, Ltd.*, 1st Dist. No. C-060601, 2007-Ohio-5126, ¶9.

<sup>18</sup> Civ.R. 53(D)(4)(d); *Chan v. TASR*, 1st Dist. No. C-070275, 2008-Ohio-1439, ¶8.

<sup>19</sup> Civ.R. 53(C)(1); *Yantek*, supra, at ¶10.

<sup>20</sup> *Yantek*, supra, at ¶10, citing *Hartt v. Munobe*, 67 Ohio St.3d 3, 6, 1993-Ohio-177, 615 N.E.2d 617.

<sup>21</sup> *Id.* at ¶11.

<sup>22</sup> Civ.R. 53(D)(4)(a); *Alexander v. LJF Mgmt., Inc.*, 1st Dist. No. C-090091, 2010-Ohio-2763, ¶12; *Yanek*, supra, at ¶12.

<sup>23</sup> See Civ.R. 53(D)(4); *Feldman v. Feldman*, 8th Dist. No. 92015, 2009-Ohio-4202, ¶15-27; *State ex rel. Dann v. Coen*, 5th Dist. No. 2008 CA 00050, 2009-Ohio-4000, ¶38-41.

<sup>24</sup> See Civ.R. 53(D)(3)(b).



decision. Its decision to change the duration of spousal support was supported by competent, credible evidence and was not so arbitrary, unreasonable, or unconscionable as to connote an abuse of discretion.<sup>25</sup>

{¶30} Coors also contends that the trial court erred in failing to maintain jurisdiction over the duration of spousal support. A trial court must specifically reserve jurisdiction in a divorce decree to modify an award of spousal support.<sup>26</sup> The decision whether to retain jurisdiction lies within the court's discretion.<sup>27</sup>

{¶31} In this case, the trial court retained jurisdiction over the amount of spousal support so that it could be modified in the event of changes in the parties' incomes. We cannot hold that its failure to retain jurisdiction over the duration of the support was an abuse of discretion.<sup>28</sup> Coors has proven earning ability, and the record does not show that she will need spousal support for a longer period of time. Consequently, we overrule Coors's third assignment of error, and we affirm the trial court's judgment.

Judgment affirmed.

**HILDEBRANDT, P.J., and MALLORY, J., concur.**

*Please Note:*

The court has recorded its own entry this date.

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<sup>25</sup> See *Blakemore*, supra, at 218; *Novick*, supra.

<sup>26</sup> R.C. 3105.18(E); *Kimble v. Kimble*, 97 Ohio St.3d 424, 2002-Ohio-6667, 780 N.E.2d 273, syllabus.

<sup>27</sup> *Sutphin v. Sutphin*, 1st Dist. Nos. C-030747 and C-030773, 2004-Ohio-6844, ¶30.

<sup>28</sup> See *Kimble*, supra, at ¶4-10; *Sutphin*, supra, at ¶30-35.