

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

NANCY JANE SMITH,	:	
	:	
Plaintiff-Appellee,	:	Case No. 02CA47
	:	
v.	:	
	:	
STEPHEN LINDSEY SMITH,	:	<u>DECISION AND JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	<u>RELEASED 9/30/03</u>

APPEARANCES:

COUNSEL FOR APPELLANT:	Norman L. Folwell 215 Second Street Marietta, Ohio 45750
COUNSEL FOR APPELLEE:	Randall G. Burnworth 429 Second Avenue Marietta, Ohio 45750

EVANS, P.J.

{¶1} Defendant-Appellant Stephen Lindsey Smith appeals the judgment of the Washington County Court of Common Pleas, which awarded Plaintiff-Appellee Nancy Jane Smith \$1,000 per month in spousal support. Appellant argues that the spousal support award is excessive and not supported by the evidence presented at the support hearing.

{¶2} For the reasons that follow, we disagree and affirm the judgment of the trial court.

Lower Court Proceedings

{¶3} In December 2001, Plaintiff-Appellee Nancy Jane Smith sought a divorce from her husband of approximately thirty-two years, Defendant-Appellant Stephen Lindsey Smith. Subsequently, appellant filed his answer, and the trial court entered temporary orders, which in part granted appellee \$1,000 per month in spousal support, of which \$500 was to be withheld from appellant's employment income and \$500 withdrawn from joint funds held in a savings account. Thereafter, appellant filed an amended answer and counter-claim for divorce.

{¶4} In June 2002, the trial court held a hearing in this matter, at which both parties testified. The parties settled all issues concerning the property division and presented that agreement to the trial court during the hearing. Further, appellee withdrew her complaint for a divorce, while the case proceeded on appellant's counter-claim. The testimony at the hearing established that appellant is a union employee in the heating and air conditioning industry whose current earnings approximate \$35,000 per year plus benefits. The testimony also demonstrated that appellee currently works at Marietta College in the housekeeping department about twenty-five hours per week, earns \$6.00 per hour, and receives no benefits through her employment. However, through the majority of the parties' marriage, appellee was a stay-at-home mother, and

appellant's earnings approximated \$40,000 per year. Furthermore, both parties are in their early fifties.

{¶5} Following the hearing, the trial court ruled from the bench, granting the parties a divorce and ordering that appellant pay appellee \$1,000 per month in spousal support and half of appellee's cost of obtaining COBRA insurance coverage.

{¶6} Subsequently, appellant moved the trial court for findings of fact and conclusions of law, and the parties filed proposed findings of fact and conclusions of law. The trial court issued its own findings of fact and conclusions of law and a journal entry reflecting its judgment.

The Appeal

{¶7} Appellant timely filed his notice of appeal and presents the following assignment of error for our review: "The Trial Court erred when it ordered the Defendant/Counter-claimant [sic] to pay \$1,000.00 per month as and for spousal support, as well as one-half of the Plaintiff's insurance coverage under COBRA when his expenses exceeded his income by approximately \$310.00 per week."

I. Standard of Review

{¶8} A trial court has broad discretion when determining an appropriate amount of spousal support. See *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67, 554 N.E.2d 83; *Bolinger v. Bolinger* (1990), 49 Ohio St.3d 120, 122, 551 N.E.2d 157; *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 131, 541 N.E.2d 597. However, the relevant factors

set forth in R.C. 3105.18(C)(1)(a)-(n) must guide the trial court's discretion. See *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 355, 421 N.E.2d 1293. This Court must give deference to a trial court's decision regarding spousal support unless the trial court abused its discretion. See *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140, syllabus; see, also, *Bechtol v. Bechtol* (1990), 49 Ohio St.3d 21, 24, 550 N.E.2d 178. An abuse of discretion involves more than an error of judgment or law; it implies an attitude on the part of the trial court that is unreasonable, unconscionable, or arbitrary. See *Blakemore v. Blakemore*, 5 Ohio St.3d at 219; *Masters v. Masters*, 69 Ohio St.3d 83, 85, 1994-Ohio-483, 630 N.E.2d 665. When applying the abuse of discretion standard, a reviewing court may not substitute its judgment for that of the trial court. See *In re Jane Doe 1*, 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181, citing *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 559 N.E.2d 1301. An appellate court must be guided by the presumption that the findings of the trial court are correct because the trial court is in the best position to view the witnesses and weigh the credibility of the testimony. See *id.*; see, also, *Brown v. Brown*, Pike App. No. 02CA689, 2003-Ohio-304, at ¶8.

II. Spousal Support

{¶9} In determining whether to award spousal support, and the amount of that spousal support if any is awarded, the trial court must consider 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." R.C. 3105.18(C).

{¶10} In its entry, the trial court clearly considered the factors relevant to the award of spousal support. Furthermore, appellant does not contend that spousal support should not have been awarded. Appellant's sole argument is that when added to his basic living expenses, the amount awarded appellee as spousal support exceeds appellant's income. Appellant's arguments center around the dollar amounts used by the trial court in determining that he should pay appellee \$1,000.

{¶11} First, appellant argues that the trial court erroneously found that he earns \$40,000 per year. However, appellant's interpretation of the trial court's judgment is erroneous. The trial court found that in the past, appellant's earnings "had usually been in the \$40,000 range." The trial court also found, however, that appellant's current income is about \$35,000 per year.

{¶12} Second, appellant asserts that he is only earning \$27,000 per year and that due to the nature of his employment, he is subject to periodic layoffs. However, a perusal of the record reveals no support for a finding that appellant earns \$27,000 per year.

{¶13} Third, appellant argues that the trial court failed to consider the significant assets divided between the parties. Again, we find no support for this assertion in the record. The trial court was presented with testimony concerning the sale of the marital home and the equal division of the proceeds of that sale. Further, the trial court was presented with testimony establishing that both

parties had to use a substantial portion of those assets in order to meet their monthly living expenses, and for appellant his monthly support obligation.

{¶14} Ultimately, appellant's main argument is that the amount of the trial court's spousal support award is unreasonable. "[A]n award of sustenance alimony must not exceed an amount which is reasonable." *Kunkle v. Kunkle*, 51 Ohio St.3d at 71. Further, "to the extent feasible, each party should enjoy, after termination of a marriage, a standard of living comparable to that established during the marriage ***. The starting point is to place both parties on a parity with the marriage standard of living (not necessarily equality) after divorce considering all the factors of R.C. 3105.18." *Buckles v. Buckles* (1988), 46 Ohio App.3d 102, 110, 546 N.E.2d 950. The trial court found that when comparing the two parties, appellant had a greater ability to reduce his expenses and earn a greater income for the remainder of his life than appellee. The trial court found that appellee had little chance of improving her earning ability beyond minimum wage. We note at this juncture that it will be nearly impossible for the parties to maintain the standard of living they enjoyed while married. Although their standard of living was conservative, the parties are now trying to maintain two separate households based on the same income that supported one household during their marriage. This will unavoidably be a challenge and involve some hardship and sacrifice.

{¶15} We are unconvinced by appellant's arguments that the spousal support award is unreasonable or that he is presently unable to pay the award. Furthermore, the trial court retained jurisdiction over the issue of spousal support and can revisit the issue should the parties' circumstances change. Accordingly, we conclude that the trial court did not abuse its discretion in awarding appellee \$1,000 per month in spousal support.

{¶16} Appellant's sole assignment of error is overruled.

Conclusion

{¶17} Since the trial court did not abuse its discretion in awarding appellee \$1,000 per month in spousal support, we overrule appellant's assignment of error. Thus, we affirm the judgment of the trial court.

Judgment affirmed.

Harsha, J., and Abele, J.: Concur in Judgment and Opinion.

FOR THE COURT

BY:

David T. Evans
Presiding Judge