[Cite as *Hoy v. Hoy*, 2021-Ohio-2074.]

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

ARRETHA LAVON HOY,	:	
	:	Case No. 19CA717
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT
	:	ENTRY
ROBERT EUGENE HOY, JR.,	:	
	:	
Defendant-Appellant.	:	**RELEASED: 05/21/2021**

APPEARANCES:

Ryan Shepler, Logan, Ohio, for Appellant.

K. Robert Toy, Athens, Ohio, for Appellee.

Wilkin, J.

{¶1} This is an appeal from a Vinton County Court of Common Pleas judgment entry of divorce. Appellant, Robert Eugene Hoy, Jr., appeals asserting that (1) the trial court erred by failing to require that appellee, Arretha Hoy, adequately trace commingled assets to separate funds, (2) the trial court erred in not finding that appellee committed financial misconduct, (3) the trial court erred in not valuing Ahoy Transportation, LLC, and (4) the trial court erred in failing to award him permanent spousal support. After reviewing the parties' arguments, the record, and applicable law, we reverse the trial court's judgment and remand the cause for further consideration consistent with this decision.

BACKGROUND

{¶2} On May 13, 2014, appellant filed a complaint seeking a divorce from appellee. Six days later, appellee also filed a complaint for divorce. The cases

were consolidated into the instant case. On May 19, 2014, the trial court issued a temporary order that among other things restrained both parties from selling, or otherwise "disposing of any and all property, real or personal, owned by both or either spouse * * *."

{¶3} On February 26, 2016, the trial court issued an order that stated:

> The Court has considered [appellant's] motion to order appraisal of Ahoy Transport. It appears the company is a marital asset and needs to be valued. [Appellant] however has not set forth a specific proposal as to who might do the appraisal or other details. One option would be for the Court to appoint a business evaluation expert who could prepare a report for the Court and parties. The cost would be paid from the marital assets. It is hereby ordered: (1) [Appellee] and [appellant] shall advise the Court how they wish to proceed with the appraisal by March 14, 2016.

{¶4} On June 13th and 14th, 2016, the trial court held a "final hearing" on the divorce. Appellee's expert witness, Richard Vedder ("Vedder"), testified that he appraised Ahoy Transport, LLC ("Ahoy"). Vedder testified that it had no worth except for two items: automobiles (mostly older models with substantial mileage) and some personal property (office furniture, etc.). He estimated that the vehicles were worth $150,000 (after paying off their loans) and the personal property was worth $5,000. He also "assumed" that Ahoy had $175,000 in a checking account, but that account would likely be used to pay outstanding bills. He further testified that the income from Ahoy was listed on appellee's personal income tax return. Vedder testified that appellee grossed as much as two million dollars over the last several years. However, he also testified that the Job and Family Services Contract, which paid Ahoy to transport Medicaid recipients to their medical providers, was personal to appellee. Therefore, he testified that

despite the fact that the company is worth a lot to appellee, the income did not impute to increase the company's value. On cross examination, Vedder admitted that although he had seen Ahoy's tax returns, he had not seen a balance sheet or loan documents. Both parties also testified regarding various issues pertaining to the divorce. The parties stipulated that their marriage had a "de facto termination date of May 1, 2014."

{¶5} After the hearing, the trial court issued an entry that addressed appellant's motion for spousal support, finding that a majority of factors in R.C. 3105.18 (e.g. income, earning potential, health, retirement benefits, etc.) supported awarding appellant spousal support. Therefore, the entry awarded appellant temporary spousal support in the amount of $2,000 per month, retroactive to July 14, 2014. The entry also addressed Vedder's testimony, noting its short comings, and ultimately found that "Dr. Vedder [sic] has not provided an adequate support for his conclusion as to liquidation value, and [appellee] did not testify as to the value of Ahoy and [appellant] stated he disagreed with the valuation." The entry concluded that because no evidence of Ahoy's valuation had been submitted at the hearing, the trial court could not make an equitable division of the assets, or determine whether spousal support should be permanent. Therefore, the entry ordered appellee to pay appellant $2,000 per month in temporary spousal support, but found it would be necessary to reopen the final hearing to permit an argument regarding the valuation of Ahoy.

{¶6} On August 21, 2017, appellant moved for litigation expenses to enable him to hire an expert to appraise Ahoy, and for a lump sum payment of spousal support arrears. On December 19, 2017, the trial court ordered appellee to pay appellant $6,000 in litigation expenses to pay for an evaluation of Ahoy, and this amount was to be credited against the support arrears that appellee owed appellant. On Feb. 6, 2018, an agreed entry was issued to sell vehicles from Ahoy.

{¶7} On March 12, 2018, appellant filed a motion for appellee to show cause why she should not be held in contempt for failing to comply with the trial court's December 19, 2017 order, seeking costs and attorney fees.
On March 13, 2018, the trial court issued an entry ordering appellee to appear and show cause why she should not be held in contempt.

{¶8} August 14, 2018, the trial court held a second final hearing and also a hearing to consider appellant's motion for contempt. On August 30, 2019, the trial court issued findings of fact and conclusions of law that in pertinent part found: (1) that the parties stipulated that their marriage de facto terminated on May 1, 2014; (2) that there was no financial misconduct by appellee in large part because the evidence relied upon to prove that allegation occurred after the de facto date of the divorce (May 1, 2014); (3) that due to a change in circumstances appellee "is no longer able to work, she is retired, and is no longer employed by Ahoy" so her obligation to pay support was terminated, effective August 14, 2018; (4) that appellee paid appellant the $10,000 she owed in legal fees, but failed to pay the $6,000 for an appraisal of Ahoy; (5) that the value of

Ahoy remained undetermined, but it no longer existed; (6) that Ahoy's assets were sold at auction and the $83,107.30 in net proceeds were deposited in appellee's counsel's trust account; (7) that appellee was in contempt of court for failing to pay $67,000 in spousal support to appellant, and imposed a 30-day jail sentence; (8) that appellee's jail sentence could be purged by payment of $67,000 to appellant from the $83,107.30, in net proceeds being held in a trust account with the balance to be distributed to appellee; (9) that the Creola-Hue and Canoe Livery properties, which were purchased after May 1, 2014, were appellee's separate property, and (10) that appellee's retirement account, worth $350,000 at the hearing date, had a martial value of $126,000, which was its value on May 1, 2014.

{¶9} It is this judgment that appellant appeals, asserting four assignments of error.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED BY FAILING TO REQUIRE THAT APPELLEE ADEQUATELY TRACE COMMINGLED ASSETS TO ALLEGEDLY SEPARATE FUNDS

II. TRIAL COURT ERRED BY REFUSING TO FIND THAT APPELLEE COMMITTED FINANCIAL MISCONDUCT

III. THE TRIAL COURT ERRED BY FAILING TO VALUE AHOY TRANSPORORT LLC BY A PREPONDERENCE OF THE EVIDENCE

IV. THE TRIAL COURT ERRED BY FAILING TO AWARD PERMANENT SPOUSAL SUPPORT

ASSIGNMENT OF ERROR I

{¶10} Appellant argues the mere fact that separate property is commingled with other property "does not destroy the identity of the separate property as separate property, except when the separate property is not traceable." R.C. 3105.17(A)(6)(b). He further asserts that the burden of proving such property is separate property is upon the party asserting that it is separate property by a preponderance of the evidence.

{¶11} Appellant argues that during the pendency of this case, appellee spent a million and a half dollars on real and personal property. Appellant alleges that the undisputed evidence indicated that appellee could not trace these funds to her as separate property earned after the de facto divorce date, May 1, 2014. Appellant further alleges that appellee spent money from an unknown source in three following instances, which the trial court found to be appellee's separate property, including the "Creola-Hue" and "Canoe Livery" properties, and a $53,000 deposit to appellee's retirement account. Appellant alleges that the trial court erred in awarding this property as separate property in that appellee could not prove the "source or disposition of any of her funds."

{¶12} Finally, appellant complains that the trial court had an obligation to order appellee to update her financial affidavits required by R.C. 3105.171(E)(3). Appellant argues that the affidavit filed by appellee "contains no information about [appellee's] property, whether marital or separate."

{¶13} In response, appellee agrees with the applicable law, but argues the "Creola-Hue" and the "Canoe Livery" properties were purchased with monies

appellee earned "after the de facto termination of marriage date." She further alleges that the $53,000 contribution to her retirement account was "made after the stipulated date of divorce." Therefore, she argues that the trial court did not err in finding this property to be her separate property.

{¶14} Finally, appellee argues that she submitted numerous exhibits at the two hearings in this case, which included various documents pertaining to appellee's finances including, but, not limited to, appellee's income and expenses, tax returns, valuation of Ahoy, appraisals, etc. Appellee alleges that she did "more than enough to supplement her financial affidavit."

Law and Analysis

{¶15} In a divorce proceeding, a trial court shall determine "what constitutes marital property and what constitutes separate property" and then "shall divide the marital and separate property equitably between the spouses * * *." R.C. 3105.171(B). " '[M]arital property' is '[a]ll real and personal property that currently is owned by either or both of the spouses, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage[.]' " *Jenkins v. Jenkins*, 4th Dist. Lawrence No. 14CA30, 2015-Ohio-5484, ¶ 25, quoting R.C.3105.171(A)(3)(a)(i). Marital property includes "all *income* * * * of either of the spouses that occurred *during the marriage*." (Emphasis added.) *Barkley v. Barkley*, 119 Ohio App. 3d 155, 164, 694 N.E.2d 989, 995 (4th Dist. 1997). Generally, a trial court should award each spouse his or her separate property, and then distribute the marital estate

equally, unless an equal division would be inequitable. *Stotts v. Stotts*, 4th Dist. Athens No. 16CA14, 2017-Ohio-5738, ¶ 11, citing R.C. 3105.171(C) and (D).

{¶16} "It is well settled that the party seeking to have a particular asset classified as separate property has the burden of proof to trace the asset back to pre-marital separate property." *McDonald v. McDonald*, 4th Dist. Highland No. 96CA912, 1998 WL 614603, *5 (Aug. 27, 1998), citing *Modon v. Modon*, 115 Ohio App.3d 810, 815, 686 N.E.2d 355 (9th Dist. 1996); *Peck v. Peck*, 96 Ohio App.3d 731, 734, 645 N.E.2d 1300 (12th Dist. 1994). That party must prove that the property at issue is separate property by a preponderance of the evidence. *Jenkins v. Jenkins*, 4th Dist. Lawrence No. 14CA30, 2015-Ohio-5484, ¶ 25 citing, *Hurte v. Hurte,* 164 Ohio App.3d 446, 2005-Ohio-5967, 842 N.E.2d 1058, ¶ 21 (4th Dist.), citing *Campbell v. Campbell,* 11th Dist. Lake No.2014–L–015, 2014-Ohio-5614, ¶ 21.

{¶17} " '[A] trial court's characterization of property as separate or marital is reviewed under a manifest weight of the evidence standard of review." *Jenkins*, at ¶ 23, *quoting Nance v. Nance*, Pike App. No. 95CA553, 1996 WL 104741, (Mar. 6, 1996) *5. Therefore, a court's characterization of property as marital or separate "will not be reversed if it is supported by some competent, credible evidence." *Id.* "A reviewing court should be guided by a presumption that the findings of a trial court are correct, since the trial judge is best able to view the witnesses and observe their demeanor, gestures, and voice inflections, and use those observations in weighing the credibility of the testimony." *Barkley*, 119 Ohio App. 3d 155, 159, 694 N.E.2d 989, 992 (4th Dist. 1997), citing *In re Jane*

Doe I, 57 Ohio St.3d 135, 566 N.E.2d 1181 (1991).

{¶18} Appellee testified that the funds she used to purchase the two properties, and to make the deposit in her retirement account, were earned after the de facto date of the parties' divorce. However, the trial court never acknowledged this testimony, or cited any other evidence indicating these funds were appellee's separate property. Instead, the trial court reasoned that the Creola-Hue and Canoe Livery properties were appellee's separate properties because they were "*acquired* after the de facto date of termination of the marriage." (Emphasis added) The mere fact these properties were purchased after the de facto date of the divorce is not dispositive of whether the properties were appellee's separate property. The critical question is whether the funds used to purchase these two properties were appellee's separate funds or marital funds. The mere fact that the funds were spent after the de facto divorce date does not alleviate the appellee from proving that the funds used to make those transactions were her separate property.

{¶19} With regard to appellee's retirement account, the trial court found that it was worth $126,000 at the date of the de facto divorce, but was worth $350,000 at the time of the divorce hearing in 2018. The trial court found that $126,000 of her retirement fund was marital property, so consequently $244,000 would be appellee's separate property, which included the $53,000 deposit made after the date of the facto divorce. Therefore, the trial court implicitly found the $53,000 to be appellee's separate property without analysis as to whether these were appellee's separate funds.

{¶20} Typically we review a trial court's classification of property as marital or separate under a manifest weight of the evidence standard of review wherein we give deference to the trial court's credibility determinations. However, where a trial court fails to properly apply the law, our review is de novo. *Simon v. Aulino*, 4th Dist. Adams No. 18CA1076, 2020-Ohio-6962, -- N.E.3d --, ¶ 85. In this case, the trial court erred in finding that the properties in question and the deposit into appellee's retirement account were appellee's separate property primarily on the basis that these properties were "acquired," and the deposit in appellee's retirement was made, after the de facto date of the parties' divorce. Therefore, we sustain appellant's first assignment of error, reverse the trial court's findings that the Creola-Hue and Canoe Livery properties, and the deposit made in appellee's retirement account were appellee's separate property; and remand the matter for the trial court to determine whether appellee can prove by a preponderance of the evidence that the funds used to purchase these properties and make said deposit were made with appellee's separate property.

ASSIGNMENT OF ERROR II

{¶21} In his second assignment of error, appellant argues that appellee committed financial misconduct by dissipating marital assets during the pendency of this case depriving him of his equitable share of said assets. Appellant argues that the trial court erred in finding that the appellee did not commit financial misconduct merely because her conduct occurred after the de facto date of their divorce on May 1, 2014. Appellant cites R.C. 3105.171(E)(5), which in pertinent part states: "If a spouse has substantially and willfully failed to

disclose marital property, *separate property*, or other assets, debt or income as required under division (E)(3) of this section, the court may compensate the offended spouse with a distributive award or with a greater award of marital property * * *." (Emphasis appellant). Appellant argues that the plain language of this statute, in particular the highlighted language, permits a trial court to find financial misconduct and make a distributive award even where a party conceals "separate" property. Consequently, appellant argues that the trial court erred when it concluded that it could not find financial misconduct because appellee's spending took place after the de facto divorce date of May 1, 2014.

{¶22} In response, appellee argues that "the parties stipulated to a de facto date terminating their marriage on May 1, 2014." (Appellee's brief pg. 20). She further argues that "The court considered the separate property as required by R.C. 3105.171 (E)(5)" and because

> all property was acquired was after the date of May 1, 2014, R.C. 3105.171 (D) requires that a court must award a spouse's separate property to him or her. Here, the Court, as a result of a stipulation by the parties as to the de facto date terminating the marriage, awarded each appellant and appellee their own, respective separate properties.

Law and Analysis

{¶23} "R.C. 3105.171(E)(4) authorizes a trial court to make a distributive or greater award of marital property to one spouse upon a finding that the other spouse 'has engaged in financial misconduct, including but not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets.' " *Vulgamore*, 4th Dist. Pike No. 16CA876, 2017-Ohio-4114, ¶ 30, quoting *Jacobs v. Jacobs,* 4th Dist. Scioto No. 02CA2846, 2003-Ohio-3466, ¶ 25. The

complaining spouse must make "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 ¶ 23, quoting *Wideman v. Wideman,* 6th Dist. Wood No. WD-02-30, 2003-Ohio-1858, ¶ 34. The trial court's decision whether to make an award under this statute is reviewed for an abuse of discretion. *Jacobs*, at ¶ 22, citing *Donnelly v. Donnelly,* 2nd Dist. Greene App. No.2002-CA-53, 2003-Ohio-1377, ¶ 4; *Hissa v. Hissa,* 8th Dist. Cuyahoga Nos. 79994 & 79996, 2002-Ohio-6313, ¶ 45; *Gallo v. Gallo,* 11th Dist. Lake No.2000-L-208, 2002-Ohio-2815, ¶ 43. "An abuse of discretion connotes more than a mere error of judgment; it implies that the court's attitude is arbitrary, unreasonable or unconscionable." *Pryor v. Pryor,* 4th Dist. Ross No. 09CA3096, 2009-Ohio-6670, ¶ 22, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶24} The trial court stated that "the evidence is not sufficient to prove financial misconduct. Much of the evidence relied upon by the [appellant] to support his claim relates to *activity after the de facto date of the termination of the marriage*." (Emphasis added.) The trial court does not specify what "activity" it is addressing, but based on the record we believe that the trial court is addressing expenditures that appellee made after the de facto divorce date.

{¶25} Typically, in reviewing a trial court's determination as to whether a party committed financial misconduct, we apply an abuse of discretion standard of review. However, similar to our analysis regarding the identification of separate property in appellant's first assignment of error, we find the trial court

erred in finding that the appellee did not engage in financial misconduct because "much of the evidence" of appellee's "activities" occurred after the parties' de facto divorce date. For example, if appellee's expenditures were made with funds that existed before the de facto divorce date with the purpose of intentionally defeating the other spouse's distribution of assets, then that is financial misconduct, irrespective of when the expenditures were made. Therefore, we find that the trial court erred in concluding that there was no financial misconduct merely because appellant's expenditures occurred after the de facto divorce date.

{¶26} Accordingly, we sustain appellant's second assignment or error, reverse the trial court's finding that appellee did not engage in financial misconduct, and remand this matter to the trial court to determine whether appellant can make a clear showing that appellee either profited from the alleged misconduct or intentionally defeated appellant's distribution of assets. We note that unlike the first assignment of error, on remand appellant will have the burden of proving that appellee engaged in financial misconduct.

ASSIGNMENT OF ERROR III

{¶27} In his third assignment of error, appellant argues that the trial court erred by failing to value Ahoy, a marital asset. Appellant argues that a trial court has a duty to value assets in a divorce case so that they may be equitably divided between the parties. Appellant argues that the trial court gave no value to Ahoy whatsoever, not even a zero valuation, which he alleges was error.

{¶28} Appellee argues that appellant effectively waived his right to any other valuation when he agreed to the liquidation sale. Appellee argues that on February 6, 2018, the parties agreed to the liquidation sale from which appellant "received most of the income." Appellee further notes that the contract from Job and Family Services and Ahoy no longer exists.

Law and Analysis

{¶29} Trial courts have discretion to equitably divide marital property between spouses. *Smith v. Smith*, 4th Dist. Hocking No. 18CA11, 2019-Ohio-899, ¶ 28. But before a trial court can divide the parties' property, it must "first determine what constitutes marital property and what constitutes separate property." *Knight v. Knight* , 4th Dist. Washington App. No. 99CA27, 2000 WL 426167 (Apr. 12, 2000), citing R.C. 3105.171(B). Then "[the court] must determine the value of the parties' marital assets." *Machesky v. Machesky*, 4th Dist. Ross No. 10CA3172, 2011-Ohio-862, ¶ 11, citing *King v. King*, 4th Dist. Adams App. No. 99 CA 680, 2000 WL 326131 (March 20, 2000) *4. And "[a]lthough the court has discretion in assessing a value to the parties' property, it has no discretion to omit valuation altogether." *Id*.

{¶30} Appellant has consistently and persistently argued that Ahoy must be valued and he sought funds to be able to retain an appraiser to value the business. In September 2015, appellant sought an order for a market appraisal of Ahoy. The trial court agreed, finding, "It appears the company is a marital asset and needs to be valued." Appellee identified Richard Vedder as her expert witness to testify about the valuation of Ahoy. Vedder subsequently testified and

submitted a two-page analysis that was admitted into evidence at the June 2016 hearing. The trial court rejected Vedder's analysis, finding that he, "has not provided adequate support for his conclusion as to the liquidation value" and "he has not provided a liquidation value." As a result, the trial court determined that a second hearing was needed with additional evidence on Ahoy's value because, "no valuation of Ahoy Transport, LLC was submitted into evidence. Ahoy is a substantial marital asset, regardless of the method of evaluation."

{¶31} Appellant asked the trial court for funds so that he could retain an expert to appraise Ahoy. The trial court granted his request and ordered, "appellee shall pay the sum of $6[,]000 to appellant within 14 days of this order, for purposes of paying the expense of an appraisal of Ahoy Transport, LLC." Appellee never paid the $6,000 appraisal expense despite two subsequent contempt motions appellant filed seeking compliance.

{¶32} Although appellee never paid appellant the $6,000 appraisal expense, the trial court held a second, final hearing on the valuation of Ahoy in August 2018. At the second hearing, the trial court found that appellee never paid appellant the $6,000 to allow him to retain an appraiser to evaluate the value of Ahoy and "no value could be determined from the evidence. Accordingly the value remains undetermined."

{¶33} The parties did agree in February 2016 to the sale of certain enumerated motor vehicles owned by Ahoy at public auction and that the net proceeds, after paying debt on the vehicles, would be placed in a trust account until further order of the court. However, this agreement in no way waived or

forfeited appellant's right to have Ahoy valued. Appellant asked to have it valued, he asked for funds to assist him in that effort, and he sought two separate contempt orders against appellee for her repeated failure to comply with the court's order to pay him $6,000 for the appraisal fee. Ahoy was marital property and should have been properly valued and included in the division of the marital property. The trial court erred in failing to do so. Therefore, we sustain appellant's third assignment of error.

{¶34} We note that the agreed sale of the Ahoy vehicles resulted in net proceeds of $83,107.30 that were deposited in appellee's counsel's trust account. However, the trial court distributed $67,000 of the proceeds to appellant to pay for appellee's spousal support arrears. We find this distribution to be inequitable because it effectively relieved appellee from paying support she already owed, and reduced appellant's equitable share of the proceeds from the sale of the vehicle. Accordingly, we vacate this award and order the trial court to reconsider its distribution on remand.

ASSIGNMENT OF ERROR IV

{¶35} Appellant argues that the trial court erred in failing to award him permanent spousal support by failing to impute income to appellee. He alleges that appellee's retirement was merely a means to escape paying spousal support. He asserts that during much of the pendency of this case appellee continued to operate Ahoy making at least $250,000 to $300,000 per year though the end of 2017. He questions appellee's credibility for her retirement being a "mini stroke," in light of the fact that it happened subsequent to the trial court

ordering her to pay appellant support. He also claims that after appellee's "retirement," Ahoy continued to operate under her son's guidance using the same name, logo and vehicles for several months. Finally, he alleges that appellee made a number of expenditures after her retirement at the end of 2017, including the withdraw of $50,000.00, to cover payroll for her son Dustin, depositing $53,000 into her retirement account, and paying a "Christmas Bonus" to her son Dustin in the amount of $5,222.50, which raise the issue of whether appellee was "truly retired." Appellant argues that appellee is capable of resuming her role as owner of Ahoy and earning in excess of $300,000 per year. Therefore, appellant argues that because appellee is voluntarily under employed, while he is subsisting on social security payments and part-time work, the trial court erred in not awarding him spousal support.

{¶36} In response, appellee argues that she is no longer able to work, she has retired, and she is no longer employed; thus, she cannot afford support and should not be imputed income. Therefore, she argues the trial court did not abuse its discretion in failing to impute income to her, and ultimately in denying spousal support to appellant.

LAW AND ANALYSIS

{¶37} **"**A trial court evaluating the propriety of a spousal support award must consider all the statutory factors [listed in R.C. 3105.18(C)] and not base its determination upon any one factor taken in isolation." *Martindale v. Martindale*, 4th Dist. Athens No. 18CA17, 2019-Ohio-3028, ¶ 90, citing *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 518 N.E.2d 1197 (1988), paragraph one of the

syllabus. "[R]elative earning abilities of the parties" is one of the factors in R.C. 3105.18(C) that a trial court shall consider in determining whether spousal support should be ordered. *Machesky*, 4th Dist. Ross No. 10CA3172, 2011-Ohio-862, ¶ 18. "None of the factors set forth in R.C. 3105.18(C)(1) require a trial court to impute income to unemployed or underemployed spouse." *Gallo v. Gallo*, 10th Dist. Franklin No. 14AP-179, 2015-Ohio-982, ¶ 50, citing *Walpole v. Walpole,* 8th Dist. Cuyahoga No. 99231, 2013-Ohio-3529, ¶ 60; *Valentine v. Valentine,* 9th Dist. Medina No. 11CA0088-M, 2012-Ohio-4202, ¶ 4; *Petrusch v. Petrusch,* 2d Dist. Montgomery No. 15960, 1997 WL 102014 (Mar. 7, 1997). "However, a trial court may, in its discretion, impute income when considering the R.C. 3105.18(C)(1)(a) and (b) factors, which require a court to examine the parties' incomes and relative earning abilities." *Id*., citing *Havanec v. Havanec,* 10th Dist. Franklin No. 08AP-465, 2008-Ohio-6966, ¶ 9, 23; *Weller v. Weller,* 11th Dist. Geauga No.2001-G2370, 2002-Ohio-7125, ¶ 47; see also *Handschumaker v. Handschumaker*, 4th Dist. Washington No. 08CA19, 2009-Ohio-2239, ¶ 33, citing *Weller* at ¶ 47. (We recognized that a trial court "may in its discretion impute income for purposes of spousal support based on a party's earning ability."); *Moore v. Moore*, 12th Dist. Clermont No. CA2006-09-066, 2007-Ohio-4355, ¶ 66.

{¶38} "Trial courts generally have broad discretion and 'wide latitude' when evaluating the appropriateness, reasonableness, and amount of a spousal support award." *Martindale*, 4th Dist. Athens No. 2019-Ohio-3028, ¶ 88, citing *Kunkle v. Kunkle*, 51 Ohio St.3d 64, 67, 554 N.E.2d 83 (1990); *Bolinger v.*

Bolinger, 49 Ohio St.3d 120, 122, 551 N.E.2d 157 (1990); *Cherry v. Cherry*, 66 Ohio St.2d 348, 421 N.E.2d 1293 (1981); *Clifford v. Skaggs*, 4th Dist. Gallia No. 17CA6, 2017-Ohio-8597, 2017 WL 5513569, ¶ 9. Therefore, "a reviewing court will not reverse a trial court's spousal support decision absent an abuse of discretion." *Id*., citing *Clifford* at ¶ 9. "An abuse of discretion includes a situation in which a trial court did not engage in a ' " 'sound reasoning process.' " ' " *Eichenlaub v. Eichenlaub*, 4th Dist. Scioto No. 18CA3825, 2018-Ohio-4060, ¶ 11, 120 N.E.3d 380, quoting *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34, quoting *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). Despite having discretion "to determine whether a spousal support award 'is reasonable and appropriate, [a trial court] must consider the statutory factors and must indicate the basis for a spousal support award in sufficient detail to enable a reviewing court to determine that the award complies with the law.' " *Copley v. Copley*, 4th Dist. Pike No. 19CA901, 2020-Ohio-6669, ¶ 24, quoting *Martindale v. Martindale*, 4th Dist. Athens No. 18CA17, 2019-Ohio-3028, 2019 WL 3414735, ¶ 90, citing *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 518 N.E.2d 1197 (1988), paragraph two of the syllabus.

{¶39} In an August 11, 2017 entry, the trial court issued temporary orders for appellee to pay $2,000 per month in spousal support, retroactive to July 14, 2014. In doing so, the trial court stated that it considered each factor in R.C. 3105.18, and found six of them - relative earning ability of the parties, health and

age, retirement benefits, length of marriage, and standard of living - strongly supported awarding appellant spousal support, while the other factors were neutral or of little value in evaluating the issue.

{¶40} Two years later at the hearing to reopen the final entry of the divorce, appellee testified that running Ahoy was stressful, and in August 2017 she had a "mini stroke" ("TIA")[1] and had also developed high blood pressure. She testified that she retired from Ahoy on her doctor's advice that she needed to reduce her stress. In an entry issued after the hearing, the trial court found: "Based on the evidence the Court finds that there has been a change in circumstances in that [appellee] is *no longer able to work*, she has retired, and is no longer employed by Ahoy. The order of spousal support is therefore terminated, effective August 14, 2018." (Emphasis added.)

{¶41} It is unclear from the record and the trial court's decision whether medical conditions necessitated appellee's retirement from just Ahoy, or from any, and all, work. Although earning capacity is only one of several factors a court considers in determining whether to award spousal support, we find that the trial court's decision pertaining to appellee's earning capacity and whether she was voluntarily unemployed lacks specificity to determine whether its decision denying appellant spousal support was within its discretion. *Copley*, 4th Dist. Pike No. 19CA901, 2020-Ohio-6669, ¶ 24.

{¶42} Accordingly, we sustain appellant's fourth assignment of error, and remand the matter to reconsider appellee's earning capacity and whether she is

[1] The Mayo Clinic describes a "mini stroke or "TIA" (transient ischemic attack) as a "temporary period of symptoms similar to those of a stroke. A TIA usually lasts only a few minutes and doesn't cause permanent damage." https://www.mayoclinic.org/diseases-conditions/transient-ischemic-attack/symptoms-causes/syc-20355679.

voluntarily unemployed, and if necessary to reevaluate whether appellant should be awarded spousal support under the applicable statutory factors.

CONCLUSION

{¶43} In conclusion, we sustain all of four of appellant's assignments of error, vacate the trial court's distribution of property, its distribution of the $83,107 from the trust fund, its finding of no financial misconduct by appellee, and its denial of spousal support; and remand the matter to the trial court for consideration of these matters consistent with our decision herein. We note that our reversal does not necessarily indicate that appellant will prevail upon remand, only that the trial court must review the matters we reversed and remanded consistent to our holding herein.

JUDGMENT REVERSED AND REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED AND REMANDED TO THE TRIAL COURT and costs be assessed to appellee.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Vinton County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.