

[Cite as *Chatman v. Chatman*, 2009-Ohio-4516.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

LONNIE CHATMAN, JR.

C. A. No. 24514

Appellant

v.

DIANNE CHATMAN

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2007-02-0468

Appellee

DECISION AND JOURNAL ENTRY

Dated: September 2, 2009

WHITMORE, Judge.

{¶1} Plaintiff-Appellant, Lonnie Chatman, Jr. (“Husband”), appeals from the judgment of the Summit County Court of Common Pleas, Domestic Relations Division, overruling his objections to the magistrate’s decision. This Court reverses.

I

{¶2} Husband and Defendant-Appellee, Dianne Chatman (“Wife”), were married on December 24, 2000. The couple did not have any children during their marriage. On February 16, 2007, Husband filed a complaint for divorce. Wife filed an answer and a counterclaim for divorce. The matter proceeded to a trial before a magistrate on May 1, 2008. On August 4, 2008, the magistrate issued her decision, granting the parties’ divorce and determining their property rights. The trial court adopted the magistrate’s decision the same day. Pursuant to the decision, Husband was ordered to pay Wife \$775.00 per month in spousal support, beginning on July 1, 2008 and continuing for a five year period.

{¶3} On August 18, 2008, Husband filed objections to the magistrate’s decision, primarily challenging the spousal support award. The trial court overruled Husband’s objections on October 29, 2008.

{¶4} Husband now appeals from the trial court’s ruling and raises two assignments of error for our review. For ease of analysis, we rearrange the assignments of error.

II

Assignment of Error Number Two

“THE MAGISTRATE ABUSED HER DISCRETION IN THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, WHICH WAS ADOPTED BY THE COURT, IN ITS DECISION AS SAME WERE NOT SUPPORTED BY THE EVIDENCE PRESENTED TO THE COURT.”

{¶5} In his second assignment of error, Husband argues that the trial court erred by adopting the magistrate’s decision because it is not supported by evidence in the record. Specifically, he argues that the record does not support the conclusion that Wife suffers from and will continue to suffer from a physically debilitating condition, necessitating the amount and duration of spousal support that the magistrate ordered. We agree.

{¶6} Generally, this Court reviews a trial court’s action with respect to a magistrate’s decision for an abuse of discretion. *Fields v. Cloyd*, 9th Dist. No. 24150, 2008-Ohio-5232, at ¶9. “In so doing, we consider the trial court’s action with reference to the nature of the underlying matter.” *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009-Ohio-3139, at ¶18. A trial court’s decision regarding spousal support will not be reversed on appeal absent an abuse of discretion. *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 130-31. Where, as here, a statute provides factors for the trial court to consider when reaching its decision, the trial court’s discretion is guided and limited by the consideration of the relevant factors listed in the statute. *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67; *Figetakis v. Figetakis* (May 13, 1992), 9th Dist.

No. 15358, at *1; *Latimer v. Latimer*, 9th Dist. No. 08CA0007-M, 2008-Ohio-5655, at ¶11. The trial court has discretion to determine what weight, if any, it will assign to each factor. See, e.g., *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶19.

{¶7} When awarding spousal support in this case, the trial court made factual findings relevant to the statutory factors. Husband argues that the trial court’s factual findings are not supported by the evidence. Under the civil weight of the evidence standard, this Court must examine “the evidence underlying the trial judge’s decision [as] a prerequisite to determining whether the trial court’s judgment is supported by some competent, credible evidence.” *Wilson* at ¶40.

{¶8} Initially, we note that Wife did not file an appellate brief in this matter. Accordingly, “this Court may accept [Husband’s] statement of the facts and issues as presented in [his] brief as correct and reverse the judgment of the trial court if [his] brief reasonably appears to sustain such action.” *Polen Implement, Inc. v. Toth*, 9th Dist. No. 07CA009280, 2008-Ohio-3211, at ¶8; App.R. 18(C).

{¶9} “When determining whether spousal support is reasonable, a trial court must consider the factors enumerated in R.C. 3105.18(C)(1).” *Downey v. Downey*, 9th Dist. No. 23687, 2007-Ohio-6294, at ¶24, quoting *Schaaf v. Schaaf*, 9th Dist. No. 05CA0060-M, 2006-Ohio-2893, at ¶27. The nonexclusive list of factors directs the court to consider items such as the parties’ relative earning abilities, physical conditions, and accustomed standard of living as well as other items such as the duration of the marriage, the parties’ assets, and “[a]ny other factor that the court expressly finds to be relevant and equitable.” R.C. 3105.18(C)(1)(n).

{¶10} The magistrate’s order, as adopted by the trial court, set forth several findings regarding Wife’s physical condition. The magistrate found that Husband’s act of domestic

violence against Wife “at least contributed to [her] physical limitations.” The magistrate further found that Wife presented credible testimony that she: (1) has continuously suffered from neck and back pain since the domestic violence incident; (2) expects to undergo two surgeries to repair damage to her neck and back; and (3) would have no source of income during any recovery and rehabilitative periods without spousal support. In awarding Wife spousal support for five years, the magistrate specified that:

“An award of spousal support is reasonable and appropriate. [Wife] should be afforded an opportunity to obtain the medical care she requires to treat her neck injuries. This requires an award of support for a longer period than might ordinarily be ordered after a marriage of this duration.”

Neither the magistrate, nor the trial court, set forth any reasoning for selecting the amount of \$775.00 per month in spousal support.

{¶11} The facts of this case are not in dispute. We review them to determine whether the trial court’s findings are supported by some competent, credible evidence. The record reflects that Husband and Wife were married in December 2000 and separated in May 2006 after Husband was arrested for domestic violence. Accordingly, Husband and Wife lived together for less than six years before they separated. Husband and Wife were the only witnesses who testified at the hearing before the magistrate. Husband testified that Wife suffered from fibromyalgia, a chronic condition resulting in muscle pain, during their marriage. Husband admitted, however, that he had no personal knowledge of Wife’s current medical condition. Wife testified that she routinely suffered from muscle pain, numbness, and weakness, all of which she believed was set off by Husband’s attack in May 2006. Wife did not present any medical evidence of her own, but Husband introduced several of Wife’s treatment records through cross examination. Wife admitted that her treatment records from May and June 2006 indicated that she had no numbness and tingling and “greatly reduced” headache pain. She also

admitted that none of the medical treatment records introduced into evidence showed that Husband's actions either caused or contributed to her injuries. The record is devoid of any evidence of any post-June 2006 treatment records.

{¶12} The magistrate admitted in her order that Wife did not present any records of her current medical treatment or any medial evidence establishing her need for any surgery. The record also reflects, however, that the magistrate sustained Husband's objection when Wife attempted to testify as to what her doctor told her about her need for future surgeries. The testimony for which the objection was sustained was the only testimony regarding any future surgeries that Wife might need. Moreover, the record reflects that Wife never testified that she would be without a source of income during any periods of recovery and rehabilitation if she were to have surgery. Wife only testified that she presently works for a grocery store and presently has no other source of income. Wife indicated that she felt she was entitled to a lifetime of spousal support because she sustained Husband's abuse, not because she anticipated surgery and would be in dire financial need.

{¶13} The trial court did not hold a hearing upon Husband's objections in this matter. Rather, the trial court indicated that it adopted the magistrate's decision based on its review of the transcript, the pleadings, and "other documents of record." After examining the evidence underlying the trial judge's decision, we cannot conclude that the trial court's judgment is supported by some competent, credible evidence. We recognize that "[m]ere disagreement with the trial court's findings is not sufficient to overturn them." *Wilson* at ¶40. As outlined above, however, the undisputed facts in the record do not support the trial court's findings that Husband was the source of Wife's medical problems, that Wife continues to suffer from debilitating

medical problems, that she needs two future surgeries, and that she will be completely without income in the future in the absence of spousal support.

{¶14} Because the trial court’s findings are not supported by some competent, credible evidence, it erred when it ordered Husband to pay \$775.00 per month in spousal support for five years. We are confined to the evidence presented in the record and, as such, must conclude that the record does not support a spousal support award of this length and duration. Husband’s second assignment of error is sustained.

Assignment of Error Number One

“THE TRIAL COURT ABUSED ITS DISCRETION IN ADOPTING THE
MAGISTRATE’S DECISION WITHOUT MAKING SPECIFIC FINDINGS OF
FACT TO SUPPORT THE AWARD OF SPOUSAL SUPPORT.”

{¶15} In his first assignment of error, Husband argues that the trial court erred by adopting the magistrate’s decision without making specific findings of fact and considering the factors set forth in R.C. 3105.18. Based on our disposition of Husband’s second assignment of error, this assignment of error is moot and will not be addressed. App.R. 12(A)(1)(c).

III

{¶16} Husband’s second assignment of error is sustained, and his first assignment of error is moot. The judgment of the Summit County Court of Common Pleas, Domestic Relations Division, is reversed and remanded for further proceedings consistent with the foregoing opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

BETH WHITMORE
FOR THE COURT

MOORE, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

RONALD T. GATTS, Attorney at Law, for Appellant.

DIANNE CHATMAN, pro se, Appellee.