

[Cite as *Nagel v. Nagel*, 2010-Ohio-3942.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF LORAIN    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

PATRICIA A. NAGEL

Appellee

v.

CHARLES A. NAGEL, et al.

Appellants

C.A. No.     09CA009704

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No.     06DU066915

DECISION AND JOURNAL ENTRY

Dated: August 23, 2010

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DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Shortly after his wife sued him for divorce, Charles Nagel decided to represent himself and did so throughout the trial court proceedings. He has appealed the divorce decree, still acting pro se, assigning eight errors for review. This Court affirms the judgment of the trial court because: (1) the trial court had jurisdiction to hear this domestic relations matter; (2) the trial court’s custody order was not the result of an abuse of discretion; (3) the trial court’s order regarding the division of marital property was not the result of an abuse of discretion; (4) this Court cannot review Mr. Nagel’s arguments regarding the award of temporary spousal support and the related contempt finding against him because he forfeited the first issue and the second is moot; (5) the trial court’s factual findings regarding marital debt are not against the manifest weight of the evidence; (6) the trial court properly calculated Mr. Nagel’s income for purposes of

determining spousal and child support; and (7) the trial court properly ordered Mr. Nagel to pay part of Ms. Nagel's attorney fees.

### BACKGROUND

{¶2} Patricia Nagel testified that she married Charles Nagel in 1997 after a few years of dating and living together. Ms. Nagel had two daughters when she met Mr. Nagel, and they later had two daughters together, one before and one after they were married. Before she met Mr. Nagel, Ms. Nagel had obtained a GED and had attended one year of college before dropping out to care for her ailing grandmother. Ms. Nagel testified that she had intended to enter the Navy, but she and Mr. Nagel agreed that she would stay home and care for the children instead.

{¶3} Ms. Nagel testified that her husband was controlling and told her nothing about their financial situation. They never had a joint checking account. Her only access to money came through an allowance he gave her for buying groceries, the children's clothing, school supplies, and other household necessities. Ms. Nagel testified that, near the end of the marriage, Mr. Nagel began to withhold the allowance sporadically and eventually stopped giving her any money at all. After she filed for divorce in 2006, Ms. Nagel became employed outside the home for the first time since she had become married. She worked for a time at various minimum wage positions.

{¶4} Ms. Nagel testified that Mr. Nagel was physically and verbally abusive to her and his stepchildren. She testified that it began with him belittling her and slapping her in the head, and escalated over time. She said that he "has abused [her] physically, hitting [her] with things, hitting [her] with his hands, kicking [her] at the dinner table, and all in front of [her] kids [and] [h]e has a domestic violence charge against him for putting [her] oldest daughter's . . . face through the wall." She testified that she and her daughters "were always scared because he was

always drunk, and we never knew if he was coming home, if he was coming home in a good mood or a bad mood.” Ms. Nagel’s mother testified to various instances of physical and verbal abuse, including a time when Mr. Nagel returned home drunk and chased his pregnant wife around the yard, repeatedly pushing her down to the ground, then beat up her cousin when he tried to intervene.

{¶5} Ms. Nagel testified that Mr. Nagel has repeatedly forced himself on her sexually. She said that she never called the police because he threatened to hurt her if she ever did. She also testified that Mr. Nagel had told her that, if she left him, he would kill her or he would take her children to South America and never let her see them again. Mr. Nagel chose not to testify and, therefore, this testimony was uncontroverted.

{¶6} Ms. Nagel testified that she had been the primary caretaker for the children and that she enjoyed a close, loving relationship with each of her girls. Ms. Nagel’s mother, sister, and friend all confirmed that testimony. By the time the trial began in January 2008, her older daughters were adults. The Nagels’ two younger daughters were twelve and six. For most of the marriage, up until the time Ms. Nagel filed for divorce, Mr. Nagel worked long hours, usually leaving the house by 6:00 a.m. and returning late in the evening. According to Ms. Nagel, Mr. Nagel started spending much more time with the children after she filed for divorce. Ms. Nagel said that, despite feeling that “he should have been doing [that] all along,” “[she] would never begrudge him [time with the kids] because . . . that’s their dad, and . . . they love him, just like they love me.”

{¶7} Ms. Nagel filed for divorce in September 2006. In addition to her husband, she named his company, Nagel Masonry, as a party defendant. Mr. Nagel hired a lawyer briefly, but fired him before he had filed an answer to the complaint. Thereafter, Mr. Nagel represented

himself while his brother, Brian Nagel, intervened as a party defendant in his individual capacity and purported to represent their family business as well. The trial began in January 2008, and continued for seven non-consecutive days, ending in January 2009. During that entire time, the Nagels continued to live together in the family home with their two minor children. This situation spawned numerous motions and hearings over the course of the litigation. In October 2009, the trial court issued a thirty-six-page order granting Ms. Nagel a divorce. Charles Nagel has timely appealed from that order. Neither Brian Nagel nor Nagel Masonry has appealed.

### JURISDICTION

{¶8} Mr. Nagel's first two assignments of error are that the trial court incorrectly dissolved his marriage contract without jurisdiction. Mr. Nagel's first assignment of error is that the court was deprived of "jurisdiction over the subject matter" because "[M]agistrate Butler commenced the case without authority nor jurisdiction." His second assignment of error is that the trial court lacked jurisdiction to "order [him] to be condemned to hell for eternity by violating [his] oath [of marriage]."

{¶9} In support of his first two assignments of error, Mr. Nagel has argued that Magistrate Terrence Butler was not legally in office because his oath of office was not on file, which, according to him, is required by Section 3.30 of the Ohio Revised Code. Therefore, as Mr. Nagel sees it, he lawfully refused to submit to the jurisdiction of the trial court because the magistrate who handled some of the early proceedings was not properly in office. He has also argued that the State does not have the power to interfere in his personal marriage contract with his wife because, according to his religious beliefs, a divorce would condemn him to hell.

{¶10} Mr. Nagel presented each of these arguments to the trial court in a written motion, and, on June 11, 2007, the magistrate held an oral hearing on his motion to dismiss for lack of

jurisdiction. The magistrate issued a decision recommending denial of the motion based on Mr. Nagel's failure to present any case law in support of his arguments. In his written decision, the magistrate noted that Ms. Nagel had properly filed and served a complaint for divorce under the Ohio Revised Code. The trial court adopted that decision and denied the motion on June 28, 2007.

{¶11} This Court has held that, "as a subordinate officer of the court, there is no requirement that [a] magistrate's oath be on file." *Baker v. Paluch*, 9th Dist. No. 22078, 2004-Ohio-6744, at ¶10 (citing R.C. 1907.14; *Knauer v. Keener*, 143 Ohio App. 3d 789, 793 (2001)). The fact that Magistrate Butler did not have an oath on file did not deprive the trial court of jurisdiction. Under Section 3105.01.1 of the Ohio Revised Code, "[t]he court of common pleas including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters." Ohio law requires that a plaintiff in a divorce action must have been a resident of the State of Ohio for at least six months prior to filing the complaint. If that requirement is met, "the court may proceed to hear and determine the action . . . as it has subject matter jurisdiction over the marriage." *Ramsey v. Ramsey*, 2d Dist. No. 12922, 1992 WL 127679 at \*2 (June 3, 1992).

{¶12} At the hearing on Mr. Nagel's motion to dismiss, Ms. Nagel's lawyer asked Mr. Nagel whether he had any reason to believe that his wife had not been a resident of Ohio for at least six months prior to filing her complaint against him. Mr. Nagel replied that he believed Ms. Nagel met that requirement. There was no evidence to the contrary. Therefore, the Lorain County Common Pleas Court, Domestic Relations Division, had subject matter jurisdiction over the marriage and the authority to hear and adjudicate the matter. See *Ramsey v. Ramsey*, 2d Dist. No. 12922, 1992 WL 127679 at \*2 (June 3, 1992).

{¶13} If Mr. Nagel had wished to marry in a purely religious context, he could have done so without enjoying the benefits the government extends to legally married couples. In fact, the record reflects that Mr. Nagel chose to live with Ms. Nagel for years and even had one child with her before they married. The Nagels later submitted to the authority of the government over their union by applying to the State of Ohio for a civil marriage license. Mr. Nagel cannot now be heard to complain that, having enjoyed the governmental benefits of marriage for a decade, he had no idea that the government was involved in what he believed to be a purely religious union. Mr. Nagel's first and second assignments of error are overruled.

#### CUSTODY

{¶14} Mr. Nagel's third assignment of error is that the trial court incorrectly granted primary possession of their two children to Ms. Nagel and incorrectly designated her residential parent and legal custodian without requiring proof that she completed the parenting seminar required by Local Domestic Relations Rule 8. Due to the fact that it is trusted to the discretion of the trial court, a custody determination will not be disturbed on appeal absent an abuse of discretion implying that "the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St. 3d 217, 219 (1983); *Miller v. Miller*, 37 Ohio St. 3d 71, 74 (1988). "While a trial court's discretion in a custody modification proceeding is broad, it is not absolute, and must be guided by the language set forth in R.C. 3109.04." *Miller*, 37 Ohio St. 3d at 74. Under the statute, "[i]n determining the best interest of a child, . . . the court shall consider all relevant factors, including, but not limited to [the ten factors enumerated in Section 3109.04(F)(1) of the Ohio Revised Code]." R.C. 3109.04(F)(1).

{¶15} In the lengthy judgment entry in this case, the trial court included over five pages of discussion regarding the factors found in Section 3109.04(F)(1)(a-j) of the Ohio Revised

Code. The court carefully analyzed the evidence regarding each of the ten factors, and specified whether each factor affected its custody decision. The only specific issue Mr. Nagel has contested affects Section 3109.04(F)(1)(a), regarding the wishes of the children's parents in regard to custody. Mr. Nagel has argued that the trial court incorrectly found that he had not formally requested custody of the children. The trial court based this finding on the fact that Mr. Nagel had "never filed an [a]nswer [to the complaint] or any other formal request for custody, and he elected not to testify at trial." Mr. Nagel does not contest that, despite filing multiple voluminous motions over the course of three years of litigation, he never formally moved for custody of his children. He has argued, however, that he asked for custody during his closing argument at trial.

{¶16} Regardless of whether a party chooses to represent himself at trial, a closing argument is not evidence and is not the proper time to make an initial request for custody in a divorce proceeding. Even if the trial court should have considered what Mr. Nagel said about his children during his closing argument to be a formal request for custody, its failure to do so would be harmless error and must be disregarded. See Civ. R. 61. Mr. Nagel did not put on a case. He never offered any evidence regarding the best interest of his two children. He did cross-examine his wife and her witnesses regarding some best interest factors, but did not manage to elicit much beneficial testimony.

{¶17} Despite the fact that it found Mr. Nagel had never asked for custody of his children, the trial court thoroughly analyzed the question of custody. It considered his failure to request custody as evidence bearing on only one of the best interest factors. See 3109.04(F)(1)(a). The trial court's detailed analysis of each of the ten statutory best interest factors indicates that its custody decision was carefully considered. It explained that its decision

was based on evidence pertaining to multiple subsections of Section 3109.04(F)(1). In addition to the parents' wishes, the court also considered relevant evidence regarding: the children's wishes, the children's interaction and interrelationship with their parents, siblings, and other people who may significantly affect their best interest; and which parent is more likely to honor and facilitate visitation. R.C. 3109.04(F)(1)(b), (c), (f). The trial court did not abuse its discretion by granting primary possession of the children to Ms. Nagel or by naming her their residential parent and legal custodian.

{¶18} Mr. Nagel has also argued that the trial court incorrectly granted primary possession of the children to Ms. Nagel without proof that she had completed the parenting class required by Local Rule 8 of the Lorain County Domestic Relations Division. Local Rule 8 requires that all parties to an initial divorce action involving minor children attend an educational seminar sponsored by the court. Lorain County Dom. Rel. Ct. R. 8(A). Although the trial court may waive the requirement, the rule provides that “[n]o person shall be designated residential parent and legal custodian of any minor child without attending the Parenting Seminar, except under extraordinary circumstances.” Lorain County Dom. Rel. Ct. R. 8(D)(2); Lorain County Dom. Rel. Ct. R. 8(D)(5).

{¶19} The Rule requires that each parent attend the class, but it does not require that each parent file a certificate of completion. Thus, the fact that Ms. Nagel did not file a certificate of completion does not mean that she failed to comply with Local Rule 8. The Rule provides that if a party fails to attend the class within 45 days of filing an action, she will be notified of her non-attendance, and if she fails to attend the class within 90 days, her nonattendance will be reported to the court. Lorain County Dom. Rel. Ct. R. 8(D). The Rule further provides that



“[n]o action shall proceed to final hearing until there has been compliance with this rule . . . .”  
Lorain County Dom. Rel. Ct. R. 8(D)(1).

{¶20} The record does not indicate that the trial court was ever notified to delay the final hearing due to Ms. Nagel’s noncompliance with the local rule. That is some evidence that Ms. Nagel had timely completed the class. On the last day of trial, Mr. Nagel pointed out to the court that, although he had filed a certification of completion of the seminar, he did not see any evidence in the record that Ms. Nagel had completed it. The court asked Ms. Nagel about it on the record. Ms. Nagel told the court that she had attended the class and described the experience in some detail. This exchange provided evidence that Ms. Nagel had attended the class. The discussion ended with the trial court obtaining from another department within the court the precise date that Ms. Nagel attended the class. The court then stated on the record that “[Ms. Nagel] completed the seminar” “[on] November 4th, 2006.” In response, Mr. Nagel said, “[okay],” and did not object further. The evidence supports the trial court’s finding that Ms. Nagel complied with Local Rule 8 of the Lorain County Court of Common Pleas, Domestic Relations Division. Mr. Nagel’s third assignment of error is overruled.

#### PROPERTY DIVISION

{¶21} Mr. Nagel’s sixth assignment of error is that the trial court incorrectly ordered him to pay Ms. Nagel \$38,994.57 for her share of two parcels of real estate jointly owned by Mr. Nagel and his brother. According to Mr. Nagel, Ms. Nagel is not entitled to any compensation because she committed adultery, lived with another man, and did not prove “that marital money went into either of those [parcels].”

{¶22} The Ohio Revised Code defines “[m]arital property” as “[a]ll interest that either or both of the spouses currently has in any real or personal property . . . that was acquired by

either or both of the spouses during the marriage.” R.C. 3105.17.1(A)(3)(a)(ii). An interest in real or personal property is “[s]eparate property” if it was acquired by one spouse before the marriage began or by inheritance during the course of marriage. R.C. 3105.17.1(A)(6)(a)(i-ii). Ohio law regarding property division does not consider whether “marital money” was used to purchase real estate. The question is when one or both spouses acquired an interest in the property.

{¶23} Although Mr. Nagel and his brother jointly own many parcels of real estate, the trial court found that, during the course of the marriage, Mr. Nagel had acquired an interest in only two of them. The trial court found that Mr. Nagel and his brother had purchased the rest of the property before the marriage and, therefore, determined Mr. Nagel’s interest in them was his “[s]eparate property” under Section 3105.17.1(A)(6)(a)(ii). Thus, the trial court determined that only Mr. Nagel’s one-half interest in the two parcels of property acquired during the marriage was marital property and divided that interest evenly between the two spouses.

{¶24} Mr. Nagel has further argued that Ms. Nagel is not entitled to any compensation because she “has given up all dowers rights by committing adultery and by signing dowers rights off on the mortgage agreement [on one of the two parcels deemed martial property.]” As the trial court explained to Mr. Nagel during the trial, he has confused the probate concept of dower rights with the domestic relations concept of an equitable division of marital property. Section 2103.05 of the Ohio Revised Code, cited by Mr. Nagel, deals with the loss of dower rights due to adulterous cohabitation. Dower rights, however, have no bearing on this case. Dower rights, to the limited extent that the concept still exists in Ohio, is not relevant unless and until one spouse dies during the course of the marriage. *State v. Thrower*, 81 Ohio App. 3d 15, 19 (1991). As

Mr. Nagel, whose name appears on both deeds, is still living, Section 2103.05 has no relevance to this case. Mr. Nagel's sixth assignment of error is overruled.

#### SPOUSAL SUPPORT

{¶25} Mr. Nagel's seventh assignment of error is that the trial court improperly ordered him to pay temporary spousal support and improperly held him in contempt for failure to comply with that order. The magistrate ordered Mr. Nagel to pay temporary spousal support of \$100 per week beginning November 13, 2006. Mr. Nagel seems to have argued that the order was improper because the trial court never adopted the magistrate's order, the magistrate did not file his oath, and the Court delayed compliance by refusing to accept his initial offer of payment.

{¶26} The first part of this assignment of error is that the magistrate's order was invalid because the trial court never adopted it. Magistrates are specifically authorized to grant requests for temporary spousal support without judicial approval. Civ. R. 75(N)(1); Civ. R. 53(D)(2)(a)(i). Unlike a decision of a magistrate, an order from a magistrate, entered under Civil Rule 53(D)(2)(a), does not require adoption by the trial court. Compare Civ. R. 53(D)(4)(a). Mr. Nagel had the opportunity to move to set aside the magistrate's order within ten days of its filing. See Civ. R. 53(D)(2)(b). In fact, the order for temporary spousal support contained language advising Mr. Nagel that he could "appeal to the court from any order of a magistrate . . . by filing a motion to set the order aside . . . ." The advisory continued with a warning that such a motion must be filed "no later than ten days after the magistrate's order is entered." There is no evidence that Mr. Nagel filed such a motion in this case. Having failed to timely move the trial court to set aside the magistrate's order, Mr. Nagel has forfeited this argument for purposes of appeal. *Whaley v. Whaley*, 2d Dist. Nos. 20911, 20945, 2006-Ohio-770, at ¶36.

{¶27} The trial court found Mr. Nagel in contempt for ceasing to pay temporary spousal support after early November 2008. The trial court ordered him to serve 10 days in jail, but gave him one month to purge his sentence by paying \$1500 to cover the missed payments to Ms. Nagel, plus processing fees, and Ms. Nagel’s attorney fees incurred in filing the motion. After he failed to timely purge his sentence, the trial court issued a warrant to commit Mr. Nagel to jail, but released him the same day after he submitted \$1500 to the clerk of courts.

{¶28} The trial court imposed a civil contempt sanction. See *Forrer v. Buckeye Speedway Inc.*, 9th Dist. No. 07CA0027, 2008-Ohio-4770, at ¶16-17. “[A]n appeal from a civil contempt finding and sentence becomes moot when a party purges [him]self of the contempt or serves the sentence imposed by the court.” *DiDomenico v. DiDomenico*, 9th Dist. Nos. 07CA0127-M, 07CA0132-M, 2008-Ohio-4941, at ¶8. As Mr. Nagel has purged the contempt citation, the issue is moot and this Court may not review it. See *id.* at ¶7. Mr. Nagel’s seventh assignment of error is overruled because he has forfeited the argument that the magistrate’s order was invalid and his argument regarding the contempt finding is moot.

#### MARITAL DEBT

{¶29} Mr. Nagel’s fifth assignment of error is that the trial court incorrectly found that Mr. Nagel and his wife do not owe a debt to his brother, Brian Nagel. Mr. Nagel has essentially argued that the trial court’s finding is against the manifest weight of the evidence. Therefore, this Court must apply the civil-manifest-weight-of-the-evidence standard of review. See *State v. Wilson*, 113 Ohio St. 3d 382, 2007-Ohio-2202, at ¶24 (“Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.”) (quoting *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St. 2d 279, syllabus (1978)). But see *Huntington Nat’l*

*Bank v. Chappell*, 183 Ohio App. 3d 1, 2007-Ohio-4344, at ¶17-75 (Dickinson, J., concurring in judgment only).

{¶30} “The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness.” *Dunn v. Dunn*, 2d Dist. No. 05-CA-104, 2006-Ohio-4649, at ¶27 (quoting *State v. Lawson*, 2d Dist. No 16288, 1997 WL 476684 at \*4 (Aug. 22, 1997)). In this case, Ms. Nagel and her brother-in-law, Brian Nagel, testified regarding whether the Nagels owed a marital debt to Nagel Masonry and/or Brian Nagel. Brian Nagel testified that he and his brother jointly owned various rental properties and collected the rents in a certain joint bank account. Brian Nagel estimated that, over the course of the marriage, his brother, Charles Nagel, had taken a loan of over \$70,000 from that joint account to cover marital bills such as payments on credit card debt, the purchase of Ms. Nagel’s Durango, and braces for the children. Brian Nagel testified that he did not keep track of the withdrawals at the time, but trusted his brother to pay them back at some point. Charles Nagel did not testify about the alleged loan. Brian Nagel admitted that he did not have any documents evidencing any loan to Charles and/or Patricia Nagel.

{¶31} Ms. Nagel’s mother testified that, years before the divorce, she had a conversation with Charles Nagel about what he was planning to do with the proceeds from the sale of a duplex he owned in Medina. According to her, Mr. Nagel said he was going to pay off the children’s braces and buy his wife a vehicle. The man who has prepared the Nagel brothers’ tax returns for more than 20 years testified that he knew nothing of any loan from one brother to the other from the joint venture account. He said that would have been a private matter between the brothers because the books reflect equal draws by each brother. Ms. Nagel testified that she never

borrowed money to pay for any household expenses. She also testified that, to her knowledge, her husband had not borrowed any money either.

{¶32} After presiding over a seven-day trial, the trial court referred to Brian Nagel's testimony regarding the loan amount as "confusing" and found "no credible evidence that the parties owe Brian Nagel money or that any such debt, if in fact it exists, is marital." The trial court ordered Charles Nagel to "assume and pay for . . . any debt owed to Brian Nagel, if any." Thus, the trial court, sitting as the trier of fact, determined that Ms. Nagel's testimony was credible and that Brian Nagel's testimony was not as reliable. This Court will defer to the trial court's judgment on the issue of credibility. See *Dunn v. Dunn*, 2d Dist. No. 05-CA-104, 2006-Ohio-4649, at ¶27 (quoting *State v. Lawson*, 2d Dist. No 16288, 1997 WL 476684 at \*4 (Aug. 22, 1997)). The trial court's factual determination that there was no competent, credible evidence regarding a marital loan from Brian Nagel or the real estate joint venture, is not against the manifest weight of the evidence. Mr. Nagel's fifth assignment of error is overruled.

#### CALCULATION OF INCOME

{¶33} Mr. Nagel's eighth assignment of error is that the trial court incorrectly calculated his income. It seems that Mr. Nagel has intended to contest both his child and spousal support obligations on this basis. Mr. Nagel has argued that the trial court should not have relied on an average of his income from 2003 to 2006 because it was artificially skewed upward in 2005 by the sale of certain property. He has further argued that the trial court's calculation is wrong because he earned less in 2007 and 2008 due to the declining economy.

{¶34} "Whether to calculate gross income by averaging income over a reasonable period of years is . . . within the discretion of the trial court and will not be reversed absent an abuse of that discretion." *Syslo v. Syslo*, 6th Dist. Nos. L-06-1016, L-06-1122, 2006-Ohio-6053, at ¶20;

see also R.C. 3119.05(H) (“When the court . . . calculates gross income, [it] . . . may average income over a reasonable period of years.”). Various witnesses testified that Mr. Nagel received income from three different businesses that he and his brother jointly own. Ms. Nagel entered into evidence tax returns for 2003 through 2006 reflecting Mr. Nagel’s various sources of income and called their tax preparer to testify about those documents. Based on the evidence, the trial court determined that “given the fluctuations in [Mr. Nagel’s] income from year to year, it is equitable to average [his] income for support calculation purposes.” The trial court did not abuse its discretion by averaging Mr. Nagel’s income. The trial court recognized the annual fluctuation and reasonably accounted for it by averaging his income from the past four years.

{¶35} Mr. Nagel has also argued that, due to the economy, his income further declined in 2007 and 2008, so the trial court should have relied on more recent information. Mr. Nagel, however, did not offer any evidence of his income from 2007 and 2008. In fact, he did not surrender any financial documents in discovery until after he was found in contempt and sentenced to jail. In January 2007, he finally produced some financial documents, more than a year after he had received the request but, even then, his responses were far from complete.

{¶36} Ms. Nagel called Mr. Nagel’s tax preparer to testify on January 29, 2008. On January 22, 2009, the trial court asked Mr. Nagel to present his case. By that time, he could have presented his 2007 tax returns as well as the information that would have gone into the creation of 2008 returns. The trial court offered Mr. Nagel the opportunity to call witnesses on his behalf. Mr. Nagel chose not to offer any witnesses to present updated financial information for the court’s consideration.

{¶37} In his reply brief, Mr. Nagel has argued that his brother, Brian Nagel, “tried to introduce [Charles Nagel’s] tax returns for 2007 and 2008 and the Judge told [him] that

[A]ttorney Mary Papcke did not want those two years.” He has further argued that “the [trial] court did not allow my brother to enter those returns as evidence.” Mr. Nagel seems to be referring to a discussion regarding enforcing the outstanding discovery requests, not an attempt to enter anything into evidence during the trial. A review of the trial transcript reveals that, after the plaintiff rested her case, and the defendants were given the opportunity to introduce evidence during their cases, they failed to offer Mr. Nagel’s 2007 or 2008 tax returns. Neither of them took the stand or called their tax preparer to testify about declining revenue.

{¶38} Litigants may choose to represent themselves in court, but they will be held to the same standard as represented parties. *Smith v. Downs*, 9th Dist. No. 25021, 2010-Ohio-2571, at ¶7 (quoting *Sherlock v. Myers*, 9th Dist. No. 22071, 2004-Ohio-5178, at ¶3)). Although this Court has held that pro se litigants “should be granted reasonable leeway” in the construction of their pleadings and motions in order to ensure that courts address issues on their merits if possible, “a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound.” *Id.* (quoting *Sherlock*, 2004-Ohio-5178, at ¶3). A pro se litigant “is not given greater rights than represented parties, and must bear the consequences of his mistakes.” *Id.* (quoting *Sherlock*, 2004-Ohio-5178, at ¶3). In this case, Mr. Nagel must bear the consequences of his mistakes, including failing to present the trial court with evidence of declining income. The trial court did not abuse its discretion in calculating Mr. Nagel’s income for the purposes of child and spousal support. Mr. Nagel’s eighth assignment of error is overruled.



## ATTORNEY FEES

{¶39} Mr. Nagel’s fourth assignment of error is that the trial court incorrectly ordered him to pay \$13,000 toward Ms. Nagel’s attorney fees incurred as a result of this action. He has argued that he should not be ordered to pay the fees because he did not hire Attorney Papcke and her “word is [not a] credible source of information and can[not] . . . be used . . . [to prove] the alleged amount claimed as shown on the record and in the transcript.” Mr. Nagel has further blamed Ms. Papcke and the trial court for lengthening the trial and artificially increasing the fees.

{¶40} Under Section 3105.73(A) of the Ohio Revised Code, “[i]n an action for divorce, . . . a court may award all or part of reasonable attorney’s fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties’ marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate.” The trial court has “broad discretion [to] determine[e] attorney fees” under Section 3105.73. *Miller v. Miller*, 9th Dist. No. 07CA0061, 2008-Ohio-4297, at ¶71 (quoting *Peters v. Peters*, 9th Dist. No. 06CA008869, 2006-Ohio-5815, at ¶17).

{¶41} Ms. Papcke testified that she charged \$200 per hour. The trial court found that rate to be reasonable. She submitted itemized bills totaling over \$24,000, but indicated that Ms. Nagel had only been able to pay \$2840 of that amount. In determining that it would be equitable for Mr. Nagel to pay \$13,000 of Ms. Nagel’s legal fees, the trial court considered the parties’ marital assets and the relative income of the parties, the extreme length of the litigation, and the parties’ conduct throughout.

{¶42} The trial court considered Mr. Nagel’s refusal to cooperate with discovery requests and the motions Ms. Papcke had to file to obtain his compliance with the Ohio Rules of

Civil Procedure. It noted that Mr. Nagel repeatedly moved to dismiss the divorce action based on jurisdiction even after the trial court had conducted an oral hearing and issued a written journal entry denying his initial motion. The transcript reflects that the trial court spent an incredible amount of time explaining the legal system and the rules to the Nagel brothers and hearing and re-hearing the same motions repeatedly during the trial. In fact, the eight-volume trial transcript contains hundreds of pages evidencing the trial court's extreme patience with the Nagel brothers in their effort to represent themselves.

{¶43} On the fourth morning of trial, August 21, 2008, the trial court explained that the brothers were causing delay by filing the same motions repeatedly under different captions or with slightly different arguments or citations. That behavior, the court explained, was driving up attorney fees and expenses “that everybody is going to have to answer for.” On other occasions, the trial court explained to Mr. Nagel, on the record, that he would be facing attorney fees if he continued to delay the litigation. The trial in this matter spanned seven days and more than 1200 pages of transcript. In addition to the trial, the record contains sixteen additional transcripts of oral hearings held in this matter, evidencing efforts to gain Mr. Nagel's compliance with the discovery rules, rulings on Mr. Nagel's many motions to dismiss the case because he refused to “consent” to divorce, and his motions to remove his wife from the marital residence. This Court cannot conclude that the trial court abused its discretion in ordering Mr. Nagel to pay part of Ms. Nagel's attorney fees.

{¶44} Ms. Papcke testified regarding the extent of her involvement in this protracted litigation. The trial court permitted Mr. Nagel to cross-examine her. Despite Mr. Nagel's cross-examination, the trial court found Ms. Papcke's testimony reliable and her hourly rate

reasonable. The evidence in the record supports the trial court's finding that Ms. Papcke's bills were reasonable. Mr. Nagel's fourth assignment of error is overruled.

#### CONCLUSION

{¶45} Mr. Nagel's assignments of error are overruled. The judgment of the Lorain County Common Pleas Court, Domestic Relations Division is affirmed.

Judgment affirmed.

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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 Lorain, 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 appellant.

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CLAIR E. DICKINSON  
FOR THE COURT

CARR, J.  
BELFANCE, J.  
CONCUR

APPEARANCES:

CHARLES A. NAGEL, pro se appellant.

MARY E. PAPCKE and JOHN M. BOSTWICK, JR., attorneys at law, for appellee.