[Cite as *Baker v. Baker*, 2010-Ohio-4398.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

PAULA D. BAKER	C.A. No. 10CA009764
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
MACKIE P. BAKER	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellee	CASE No. 07DR068203

DECISION AND JOURNAL ENTRY

Dated: September 20, 2010

CARR, Judge.

{¶1} Appellant, Paula Baker, appeals the judgment of the Lorain County Court of Common Pleas, Domestic Relations Division. This Court affirms.

I.

{¶2} Paula Baker ("Wife") filed a complaint for divorce from Mackie Baker ("Husband") on August 23, 2007. Husband filed an answer and counterclaim for divorce. On June 16, 2008, the trial court issued a judgment, stating that the parties established a common law marriage on December 31, 1982.

{¶3} The parties were unable to reach a settlement as to all issues, although they submitted a written stipulation to the court regarding the value and disposition of certain property. The matter proceeded to a contested hearing on November 10, 2008, on all remaining issues. On May 29, 2009, the domestic relations court issued a judgment entry of divorce. Wife appealed, and this Court dismissed the appeal for lack of jurisdiction.

{¶4} On January 6, 2010, the domestic relations court issued a final judgment entry of divorce. The trial court ordered, in relevant part, that (1) Wife pay Husband spousal support in the amount of $700.00 per month, and (2) after sale of the marital home, Husband receive an initial disbursement of the proceeds in an amount equal to 35% of the total payments Husband made for real estate taxes, home insurance, and mortgage payments since Wife left on February 21, 2007. Wife appealed, raising two assignments of error for review.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY AWARDING APPELLEE SPOUSAL SUPPORT."

{¶5} Wife argues that the domestic relations court erred by awarding spousal support to Husband because it failed to consider all factors enunciated in R.C. 3105.18(C). This Court disagrees.

{¶6} This Court reviews a trial court's award of spousal support for an abuse of discretion. *Peters v. Peters*, 9th Dist. Nos. 03CA008306, 03CA008307, 2004-Ohio-2517, at ¶10. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. Id. Moreover, "[t]he burden is on the party challenging the award to show that the award is unreasonable, arbitrary, or unconscionable in order for this Court to overturn the award." *Gregory v. Gregory* (July 6, 2000), 9th Dist. No. 98CA0046.

{¶7} While a trial court has wide latitude in awarding spousal support, it must do so in consideration of the fourteen factors enunciated in R.C. 3105.18(C)(1). Those factors include:

> "(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[;]
>
> "(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)(1).

{¶8} While the trial court must consider all fourteen factors, this Court has repeatedly held:

> "Unlike the statute concerning property division, R.C. 3105.18 does not require a lower court to make specific findings of fact regarding spousal support awards. R.C. 3105.18(C)(1) does set forth fourteen factors the court must consider, however, in determining if spousal support is appropriate and reasonable. If the court does not specifically address each factor in it's [sic] order, a reviewing court will presume each factor was considered, absent evidence to the contrary. *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 356." *Wheeler v. Wheeler* (Dec. 12, 2001), 9th Dist. No. 3188-M, citing *Schrader v. Schrader* (Jan. 21, 1998), 9th Dist. No. 2664-M. See, also, *Gregory*, supra.

"As long as the record reflects that the trial court considered the factors in 3105.18(C)(1), the award for spousal support will be upheld." *Peters* at ¶11, quoting *Fisher v. Fisher*, 3rd Dist. No. 7-01-12, 2002-Ohio-1297.

{¶9} In this case, the domestic relations court stated in its judgment that it "has specifically considered Ohio Revised Code Section 3105.18(C)(1)(a-n) with emphasis on section[s] (a)(b)(c)(e) and (g)." The trial court then ordered an award of spousal support to Husband "[b]ased on the consideration of those factors[.]"

{¶10} The trial court recited the work-related incomes of the parties from the past few years. See R.C. 3105.18(C)(1)(a), (b), and (g). The court further recited that, based on the distribution of the marital portion of Husband's pension pursuant to R.C. 3105.171, Wife's current annual income would be $50,400.00, while Husband's would be reduced to $33,154.20. See R.C. 3105.18(C)(1)(a) and (d). The trial court noted the parties' birthdates, education, and health. See R.C. 3105.18(C)(1)(c) and (h). The court noted that "for purposes of this divorce the duration of this marriage shall be from December 31, 1982 to the date of trial November 10, 2008[.]" See R.C. 3105.18(C)(1)(e). The parties stipulated to the value of marital property and its distribution. The court recited the values of those assets, as well as encumbrances thereon. See R.C. 3105.18(C)(1)(i). No evidence was presented as to any tax consequences for the parties in regard to an award of spousal support. However, while the trial court did not make a specific

finding of fact in regard to tax consequences, there is no evidence that the court failed to consider it. See R.C. 3105.18(C)(1)(l). Wife concedes that R.C. 3105.18(C)(1)(f), (j), (k), and (m) are not applicable to the parties' situation.

{¶11} While the trial court did not make express findings of fact as to each of the R.C. 3105.18(C)(1) factors, it was not required to do so. See *Gregory*, supra. There is ample evidence, however, to indicate that the domestic relations court properly considered the factors as required. Moreover, if Wife believed that specific findings of fact were necessary, she could have requested pursuant to Civ.R. 52 that the trial court issue them.

{¶12} The domestic relations court considered the factors enumerated in R.C. 3105.18(C)(1) in determining the propriety and reasonableness of an award of spousal support. Therefore, this Court concludes that the trial court did not abuse its discretion in awarding spousal support to Husband. Wife's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

"THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY ORDERING APPELLANT TO CONTRIBUTE TO THE PAYMENT OF THE MORTGAGE AND OTHER EXPENSES OF THE MARITAL RESIDENCE."

{¶13} Wife argues that the domestic relations court abused its discretion by ordering her to contribute to the payment of the mortgage and other expense associated with the marital residence after she left the home. This Court disagrees.

{¶14} R.C. 3105.171(B) requires the trial court to determine what constitutes marital and separate property and to divide the marital and separate property equitably between the spouses. There is no dispute that the parties owned a piece of real estate at 36205 Capel Road, Grafton, Ohio, which property constituted marital property. R.C. 3105.171(C) states, in relevant part, that "the division of marital property shall be equal. If an equal division of marital property

would be inequitable, the court shall not divide the marital property equally but instead shall divide it between the spouses in a manner the court determines equitable."

{¶15} "A trial court has broad discretion in making divisions of property in domestic cases." *Middendorf v. Middendorf* (1998), 82 Ohio St.3d 397, 401. Accordingly, the domestic relations court's decision regarding the division of marital property will not be reversed absent an abuse of discretion. Id. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore*, 5 Ohio St.3d at 219. An abuse of discretion demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons*, 66 Ohio St.3d at 621. When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. Id.

{¶16} At the hearing, Husband testified that Wife left the marital home on February 21, 2007. He testified that, since that time, he has paid the entire amount due on the mortgage, property taxes, and homeowner's insurance in the amount of $816.00 per month without any contribution from Wife. Husband further testified that he allowed his brother and nephew to live with him for a large portion of the time since Wife left without receiving any payment from either relative. Wife admitted at the hearing that she has not given Husband any money towards the mortgage, property taxes, or home insurance since she left the marital home in February 2007.

{¶17} As part of the division of marital property, the domestic relations court ordered that the marital home be sold, with Husband continuing to make all mortgage, tax, and insurance payments in the interim. The trial court then ordered:

> "Once the sale has been accomplished and after payment of all costs of sale, the parties shall do the following:

> "(1) The parties shall compute the total payments made by [Husband] since [Wife] has vacated the premises on February 21, 2007. The court is aware that these payments have included real estate taxes, home insurance and the actual house payment. From the total of all payments made by the [Husband] since [Wife] left the premises, he shall be entitled to 35% of the gross amount of all payments made to reimburse him for maintaining the marital asset and for making these payments. This 35% of all payments made by the [Husband] on the Capel Road property shall be the first disbursement made after costs of sale.
>
> "(2) The remaining amount shall be divided equally between the parties."

{¶18} This Court concludes that the domestic relations court did not abuse its discretion by effectively requiring Wife to pay a portion of the mortgage, taxes, and insurance costs after she left the home, when it ordered that Husband may recoup a portion of the money he paid to preserve the parties' real property, a marital asset. By continuing to pay the mortgage in Wife's absence, Husband alone increased the equity in the home. By continuing to pay insurance, Husband preserved the marital asset by protecting the value of the asset in the event of loss. By continuing to pay the mortgage and property taxes, Husband protected the marital asset from the risk of encumbrance or foreclosure. Because Husband preserved the marital home, the asset remained as one which could be divided equally between the parties. Wife's interest in the asset was preserved and increased only because of Husband's payments. Under these circumstances, this Court concludes that the domestic relations court did not abuse its discretion by ordering Wife to contribute to the payment of the mortgage, property taxes, and insurance which all served to preserve and increase her interest in a divisible marital asset. Wife's second assignment of error is overruled.

III.

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

Judgment affirmed.

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.

DONNA J. CARR
FOR THE COURT

MOORE, J.
CONCURS

BELFANCE, P. J.
CONCURS, SAYING:

{¶20} I concur. Although it appears from the record that Husband is underemployed, Wife has not developed this argument on appeal. Husband testified that since retiring, he had not sought employment and did not intend to seek any other employment. Although Husband had a number of health issues, he was able to continue working over the years and had not been to a

doctor for over one year prior to the date of trial. Husband also acknowledged that while he was employed, he could have bid for other positions (presumably due to health concerns), but he did not explore that option. There was no testimony that if Husband got a job, he would lose his current pension benefits. Nor was there any evidence that Husband could not work due to his health issues. The evidence demonstrated that, notwithstanding certain chronic health issues, Husband continued to work for many years in a job requiring substantial manual labor. At trial, Wife argued that Husband's retirement was voluntary because he was not forced to retire and thus he was voluntarily unemployed. The trial court disagreed, and determined that his retirement was reasonable under the circumstances. Wife does not contest this finding as being against the manifest weight of the evidence. In addition, Wife did not present evidence that would demonstrate what Husband might be able to earn and she did not ask the trial court to at least impute Husband with minimum wage income on the basis of underemployment. Finally, she has not raised the failure to impute income on the basis of underemployment as a specific assignment of error in her merit brief.

{¶21} I also agree that Wife did not demonstrate error concerning the award of spousal support given the contours of her assignment of error. Wife suggests that the trial court failed to consider all of the spousal support factors contained in R.C. 3105.18(C)(1) and simply equalized the parties' incomes. The trial court expressly stated that it did consider the spousal support factors but it did not provide details in its entry as to each factor. I agree with the main opinion that the trial court did not commit reversible error in failing to provide detailed findings concerning each factor, as the absence of such detail could have been remedied by a request for findings of fact and conclusions of law. See Civ.R. 52. Accordingly, I concur.

APPEARANCES:

JAMES A. DEERY and DANIEL J. GIBBONS, Attorneys at Law, for Appellant.

JENNIFER L. LAWTHER, Attorney at Law, for Appellee.