

[Cite as *Arnett v. Arnett*, 2004-Ohio-5274.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY OHIO

JAMES P. ARNETT:

Plaintiff-Appellant : C.A. CASE NO. 20332

vs. : T.C. CASE NO. 02DR1822

RHONDA ARNETT: (Civil Appeal from  
Common Pleas Court)

Defendant-Appellee :

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OPINION

Rendered on the 30<sup>th</sup> day of September, 2004.

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James R. Kirkland, 111 West First Street, Suite 518, Dayton, Ohio 45402, Atty. Reg. No. 0009731

Attorney for Plaintiff-Appellant

Patrick A. Flanagan, 318 W. Fourth Street, Dayton, Ohio 45402, Atty. Reg. No. 0017658

Attorney for Defendant-Appellee

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GRADY, J.

{¶ 1} This is an appeal from a final judgment and decree of divorce.

Plaintiff-Appellant, James P. Arnett, presents two assignments of error

{¶ 2} FIRST ASSIGNMENT OF ERROR

{¶ 3} “THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO ALLOCATE THE MARITAL DEBT EQUITABLY BECAUSE THERE WAS NO SOUND REASONING PROCESS USED BY THE COURT IN DIVIDING

**THE MARITAL DEBT.”**

**{¶ 4} SECOND ASSIGNMENT OF ERROR**

**{¶ 5} “THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO DEDUCT APPELLEE’S AWARDED SHARE OF THE MARITAL EQUITY IN THE HOME FROM THE MARITAL DEBT APPELLEE OWES ON THE MARITAL DEBT.”**

**{¶ 6} The jurisdiction of the courts of common pleas and their divisions is determined by statute. Article IV, Section 4(B), Ohio Constitution. Acting pursuant to its authority, the General Assembly has conferred full equitable jurisdiction on the domestic relations courts “appropriate to the determination of all domestic relations matters.” R.C. 3105.11.**

**{¶ 7} The General Assembly has also elected to guide the domestic relations court’s exercise of the discretion conferred on it with respect to the parties’ obligations, one to the other, in two further sections of the Revised Code. R.C. 3105.171 governs property division. R.C. 3105.18 governs spousal support. Remarkably, in view of the exquisite detail of those sections, they fail to deal with one very important matter: marital debt.**

**{¶ 8} We have held that “[d]ebts, like assets, are classified as property, and an order assigning them to one of the parties is a form of property division.” *Stackhouse v. Stackhouse* (July 25, 1997), Montgomery App. No. 16244, p.2. Therefore, as with assets, “equality” is the “starting point” for dividing any debts which are marital. *Easterling v. Easterling* (April 13, 2001), Montgomery App. No. 18523. However, and as with assets, the court may divide the marital debt in some**

other fashion if it finds that an equal division would be inequitable. R.C. 3105.171(C)(1).

{¶ 9} The standard for appellate review of a domestic relations court's division of assets and debts is the abuse of discretion standard. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Further, and again as with assets, in allocating debts between the parties "the trial court must indicate the basis for its award in sufficient detail to enable a reviewing court to determine that the award is fair, equitable, and in accordance with the law." *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 97.

{¶ 10} Having said that, we will consider the error that Plaintiff-Appellant assigns with respect to the division of debts, or obligations on indebtedness, that the trial court ordered. It appears that they fall into three broad categories.

{¶ 11} The marital residence was awarded to Plaintiff-Appellant by agreement of the parties. Plaintiff-Appellant complains that the court abused its discretion when it failed to award him a credit against an amount he was ordered to pay Defendant-Appellee for her equity in the marital residence. He doesn't argue that Defendant-Appellee isn't entitled to compensation for her equity, which appears to derive from an investment of her own separate property. Rather, Plaintiff-Appellant argues that he is entitled to a set-off for the mortgage and utility bill payments he made to support the residence during the months after their separation while Defendant-Appellee and her children from another union resided

there.

{¶ 12} The expenditures Plaintiff-Appellant made were not debts the court ordered him to pay. He made the payments to avoid foreclosure and encumbrances while Defendant-Appellee lived in the marital residence at his acquiescence. Plaintiff-Appellant no doubt wanted the matter resolved as promptly as possible, but the fact that it wasn't doesn't entitle him to a reimbursement or a set-off for the expenditures he made. They were made prior to the final hearing on his complaint for divorce, and were therefore marital obligations per R.C. 3105.171(A)(2) that he paid. We find no abuse of discretion in denying him the credit he asks for.

{¶ 13} The second broad category is debts, mainly credit card debts, on which the parties were jointly obligated but which Plaintiff-Appellant was ordered to pay. It is undisputed that these debts were incurred during the marriage. Therefore, they are marital obligations that should be divided equally, unless an equal division would be inequitable. R.C. 3105.171(C)(1). If the court divides the debts on some basis other than an equal division, it must indicate the basis for its award in sufficient detail to enable a reviewing court to determine that the award is equitable. *Kaechele*.

{¶ 14} An exactly equal division of debts and non-liquid assets may not be feasible. De minimus differences are permissible. Here, Plaintiff-Appellant was ordered to pay almost all the marital debt, which exceeds thirty thousand dollars.

{¶ 15} The court indicated no basis for requiring Plaintiff-Appellant to substantially pay more than one-half the marital debts. He argues that the requirement is inequitable. We are unable to determine the issue absent findings by

the trial court which indicate the basis of its orders. The provisions of the decree ordering Plaintiff-Appellant to pay more than a one-half share of the marital debt will be reversed and the case will be remanded for findings to support the requirements the court imposed.

{¶ 16} Finally, the court ordered Plaintiff-Appellant to pay certain debts Defendant-Appellee had incurred in her own name. Again, this was without explanation or findings. And, again, the orders will be reversed and the case remanded for findings to support the court's orders.

{¶ 17} We emphasize that, at least at this stage, we can find no lack of merit in the trial court's order requiring Plaintiff-Appellant to pay certain debts. That may be just and equitable, under the circumstances. Defendant-Appellee has three children to support, but she enjoys an income slightly greater than Plaintiff-Appellant's. Absent supportive findings we cannot determine the abuse of discretion claimed, and an effort on our part to do so would require an almost *de novo* review of the issues presented.

{¶ 18} The assignments of error are sustained, in part, and the matter is remanded for further proceedings consistent with this opinion.

**BROGAN, J. and YOUNG, J., concur.**

**Copies mailed to:**

**James R. Kirkland, Esq.  
Patrick A. Flanagan, Esq.  
Hon. Judy King**