[Cite as *Ansevin v. Ansevin*, 2010-Ohio-1301.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

CARL F. ANSEVIN,	)	
	)	
PLAINTIFF-APPELLANT,	)	
	)	
VS.	)	CASE NO. 09-MA-24
	)	
KAREN L. ANSEVIN,	)	OPINION
	)	
DEFENDANT-APPELLEE.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas, Domestic Relations Division of Mahoning County, Ohio Case No. 07DR423
JUDGMENT:	Affirmed
APPEARANCES: For Plaintiff-Appellant	Attorney Charles E. Dunlap 3855 Starr's Centre Dr., Ste. A Canfield, Ohio 44406 Attorney Christopher P. Lacich 100 Federal Plaza East, Ste. 600 Youngstown, Ohio 44503
For Defendant-Appellee	Attorney Karen E. Lee 23 Bell Street Chagrin Falls, Ohio 44022

JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite

Dated: March 22, 2010

[Cite as *Ansevin v. Ansevin*, 2010-Ohio-1301.]
DONOFRIO, J.

{¶1} Plaintiff-appellant, Carl Ansevin, appeals from a Mahoning County Domestic Relations Division decision granting a divorce between him and defendant-appellee, Karen Ansevin.

{¶2} The parties were married on April 8, 1972. They had four children, who are now all emancipated. Appellant filed for a divorce from appellee on July 6, 2007.

{¶3} Appellant is a neurologist and owns his own practice, Ohio Neurological Institute (ONI). Timberbrook, Inc. is a family-owned S-Corporation. It owns the commercial real estate on which ONI is located. Prior to the divorce, appellee owned 52 percent of Timberbrook's stock. The remaining 48 percent was divided equally among the parties' four sons (12 percent each).

{¶4} The parties entered into joint stipulations, mostly as to asset values. Appellant claims that he did not enter these stipulations voluntarily, but instead was forced into doing so by the court. The matter then proceeded to a two-day trial focusing on the issue of spousal support.

{¶5} The trial court ordered appellant to pay appellee spousal support of $4,500 per month, or $54,000 annually. It made this order after analyzing in great detail the pertinent spousal support factors. In its judgment entry, the court incorporated the joint stipulations. It found all property to be marital property and divided all assets equally. The court determined that the parties were to equally divide appellee's 52-percent interest in Timberbrook. The court also ordered appellant to pay appellee a $10,000 lump sum payment toward her attorney fees and costs.

{¶6} Appellant filed a timely notice of appeal on February 5, 2009.

{¶7} Appellant raises seven assignments of error, the first of which states:

{¶8} "THE TRIAL COURT ERRED BY EXERCISING JURISDICTION OVER TIMBERBROOK, INC. A NON-PARTY, SEPARATE ENTITY, AND BY ORDERING A CASH DISTRIBUTION TO THE PARTIES FROM ITS FUNDS, JEOPARDIZING ITS S-CORP. STATUS AND/OR SUBJECTING THE SAME TO DOUBLE TAXATION."

{¶9} The trial court ordered that the parties equally divide appellee's 52-

percent interest in Timberbrook so that each party has a 26-percent interest. It further ordered as follows: The parties are to each share their interest in Timberbrook until the property is sold and all assets and liabilities have been paid. The court would keep jurisdiction of this property issue because it can not retain jurisdiction of the actual piece of property. Immediately after the final divorce decree was filed, the parties were to take 52 percent of the present cash, or approximately $208,000. After the estimated taxes had been paid or held in escrow, the cash proceeds were to be divided equally between the parties. Appellant was to then pay appellee $75,000 from his share to appellee for her equitable share of ONI.

{¶10} Appellant argues that because Timberbrook was not a party to this case, the trial court did not have jurisdiction to order any corporate actions to be undertaken by Timberbrook, including ordering that $208,000 of the corporation's $400,000 in cash be distributed between the parties.

{¶11} Appellant first points out that the trial court noted during trial that any Timberbrook cash would have to be distributed by the parties themselves. (Tr. 164). He contends that the court's order is contrary to its statement at trial.

{¶12} Furthermore, appellant argues that the trial court failed to consider the tax ramifications of its order. He cites to the Internal Revenue Service Regulations and contends that an S-Corporation may only have one class of stock. Appellant contends that if the parties follow the court's order and distribute 52 percent of Timberbrook's cash to two of its shareholders (appellant and appellee) without distributing the other 48 percent of the cash to the remaining shareholders (the parties' children), the IRS will treat the action as creating two separate classes of stock. Appellant states that this will result in Timberbrook losing its S-Corporation status, which will in turn subject Timberbrook to double taxation.

{¶13} A trial court's decision regarding whether property is marital or separate is reviewed under an abuse of discretion standard. *Maloney v. Maloney,* 160 Ohio App.3d 209, 2005-Ohio-1368, at ¶8, citing *Neville v. Neville,* 99 Ohio St.3d 275, 2003-Ohio-3624. Additionally, we review matters surrounding spousal support

decisions for an abuse of discretion. *Corradi v. Corradi,* 7th Dist. No. 01-CA-22, 2002-Ohio-3011, at ¶51. Abuse of discretion connotes more than an error in judgment; it implies that the trial court's judgment is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶14} It is undisputed that neither party joined Timberbrook as a party to this case. But at no time did the court order Timberbrook to do anything. Instead of ordering Timberbrook to take any action, the court ordered the parties to take certain actions involving the equal distribution of their assets.

{¶15} "Marital property" includes real property, or any interest in real property, that is currently owned by either or both spouses and that was acquired during the marriage. R.C. 3105.171(A)(3)(a)(i) and (ii). Appellee's 52 percent interest in Timberbrook was marital property. The trial court shall divide the marital property equally unless an equal division would be inequitable, or in other limited situations. R.C. 3105.171(C)(1). Because her interest in Timberbrook was a marital asset, appellee's interest was subject to equal division with appellant. That is what the court did.

{¶16} And the court recognized that it could only order the *parties* to divide Timberbrook's cash. During trial, the parties had a discussion regarding the tax implications. (Tr. 162-64). The court then noted that if Timberbrook's cash was to be distributed, it would have to be done by the parties. (Tr. 164).

{¶17} Furthermore, in their stipulations, the parties agreed that ONI was worth $150,000, and that appellant would retain that asset. They then agreed that appellee would receive assets with an equal value to offset the value of ONI. The court followed this stipulation when it ordered appellant to pay appellee $75,000 of his share of the Timberbrook cash for her equitable share of ONI.

{¶18} Additionally, as appellee points out, the parties appear to have resolved the Timberbrook issue in their agreed February 4, 2009 Amendment of Final Judgment. In this amendment, the parties specifically agreed:

{¶19} "The parties['] accountants will determine how to distribute the

[Timberbrook] funds as required pursuant to [the] court[']s order so that the corporation will not lose 'S' corp status."

{¶20} Hence, the trial court did not abuse its discretion in ordering the parties to equally divide appellee's interest in Timberbrook and to then divide the cash corresponding to that interest. Accordingly, appellant's first assignment of error is without merit.

{¶21} Appellant's second assignment of error states:

{¶22} "THE TRIAL COURT ERRED IN AWARDING SPOUSAL SUPPORT TO DEFENDANT-APPELLEE, IN LIGHT OF PLAINTIFF-APPELLANT'S MEDICAL CONDITION(S) AS EVIDENCED ON RECORD AND HIS DESIRE TO RETIRE AT THE TIME OF DIVORCE, ALL AS APPLIED TO THE STATUTORY FACTORS OF O.R.C. 3105.18."

{¶23} Here appellant alleges that the trial court abused its discretion in awarding appellee $4,500 per month in spousal support. He contends that the award should have been no more than $1,000 per month.

{¶24} In determining whether a spousal support award is appropriate and reasonable and in fashioning that award, the trial court shall consider:

{¶25} "(a) The income of the parties, from all sources, * * *;

{¶26} "(b) The relative earning abilities of the parties;

{¶27} "(c) The ages and the physical, mental, and emotional conditions of the parties;

{¶28} "(d) The retirement benefits of the parties;

{¶29} "(e) The duration of the marriage;

{¶30} "(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;

{¶31} "(g) The standard of living of the parties established during the marriage;

{¶32} "(h) The relative extent of education of the parties;

{¶33} “(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

{¶34} “(j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;

{¶35} “(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;

{¶36} “(l) The tax consequences, for each party, of an award of spousal support;

{¶37} “(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

{¶38} “(n) Any other factor that the court expressly finds to be relevant and equitable.” R.C. 3105.18(C)(1)

{¶39} In this case, the trial court closely analyzed the applicable factors. It made the following findings as to the statutory factors.

{¶40} Appellant has been a doctor since 1974 and a neurologist since 1980. His average earnings from his business for the past three years have ranged from $129,601 to $196,898. The parties also had additional income ranging from $23,865 to $60,676. From his income, appellant deducted retirement contributions and health insurance premiums. Appellee has had no meaningful employment since the parties moved to Youngstown many years ago. The parties have a family corporation, Timberbrook. Appellant pays rent from his medical practice to Timberbrook. The parties also have non-retirement, income-producing accounts.

{¶41} The parties’ earning abilities are quite disparate. Appellee’s earning ability as a nurse is limited because of her age, health, and lack of experience. Appellant’s earning ability has been consistent, but he contends that his future earning ability will be limited due to his age, health, and plans to retire. Appellant’s

academic and recent medical achievements are inconsistent with his testimony that he wants to retire. Appellant recently became board certified in sleep medicine and neuromuscular neurology.

{¶42} Appellant is 59 and appellee is 58. Both parties have some physical, mental, and emotional health issues. However, these issues will not prevent them from keeping or seeking viable employment.

{¶43} The parties will divide approximately $830,545 in retirement benefits. Appellant will continue to contribute to his retirement fund, while appellee will not be able to contribute the same amount.

{¶44} This is a marriage of long duration, 36 years.

{¶45} The parties enjoyed a comfortable, but frugal, life style that allowed them to have nice cars, homes, and other amenities. They saved considerably for retirement, supported four children, and paid for their children's college and graduate expenses.

{¶46} Appellee has an associate degree in nursing. Appellant has a medical degree. Appellant is board certified in neurology, sleep medicine, and neuromuscular neurology.

{¶47} All assets are marital and are to be divided equally.

{¶48} Appellee worked for two years while appellant was a medical resident. After that, appellee spent her time raising the parties' children and managing the family's needs and finances. This allowed appellant to devote his time to his medical practice, which permitted the family to have a comfortable life style.

{¶49} Appellee will pay taxes on her spousal support. Appellant will deduct his spousal support payments. This is a tax advantage for appellant and a liability for appellee.

{¶50} Appellee has not been in the workforce for over 30 years. She has lost substantial income production capacity and the ability to contribute to her social security and retirement accounts.

{¶51} Appellee's health insurance will cost over $1,000 per month. She

needs time to find viable employment. Each party has non-retirement and retirement assets he/she may use to pay part of their expenses. Additionally, the court considered appellant's concerns about working fewer hours.

{¶52} As is clear from the trial court's lengthy findings, the court carefully considered each factor and how it applied in this case. The court took the time to analyze each factor in light of the evidence and made detailed findings.

{¶53} Appellant contends that the court either failed to consider or did not give enough weight to two areas: (1) his desire to reduce his workload and/or retire due to his various medical and psychological conditions and (2) imputed income to appellee of $35,000.

{¶54} As to appellant's evidence that he should retire or reduce his workload, three witnesses testified.

{¶55} Appellant's psychiatrist, Dr. Judith Hirshman, testified that appellant suffers from attention deficit hyperactivity disorder (ADHD) and anxiety and is on medications to treat his conditions. (Tr. 29, 35-36). She opined that the hectic pace at which appellant has been working is a detriment to his mental and physical health and that appellant should reduce his hours or consider retirement. (Tr. 40-41).

{¶56} Appellant's physician, Dr. Charles Wilkins, also testified. Dr. Wilkins stated that appellant suffers from high blood pressure, hypertension, high cholesterol, osteoarthritis, and degenerative disc disease. (Tr. 65, 71). He stated that the only one of these conditions that would affect appellant's ability to practice medicine on a full-time basis was the osteoarthritis. (Tr. 65). He also stated that appellant might require surgery if his problems with his spine do not improve. (Tr. 72). Dr. Wilkins then testified that with appellant's conditions, he would advise that appellant reduce his work schedule by half. (Tr. 76-77).

{¶57} On this issue, appellant testified that his long hours at work have taken a physical toll on him and he is currently in the process of slowing down his practice. (Tr. 137-48).

{¶58} Contrary to appellant's assertion, the trial court specifically considered

these items in analyzing the spousal support factors. As referenced above, the trial court made specific note of appellant's health, age, and concerns about working less hours. Additionally, in its findings of fact, the court referred to appellant's long hours, the testimonies of Drs. Hirshman and Wilkins, and appellant's various medical/psychological issues. Thus, the court thoroughly considered these issues.

{¶59} As to appellee's imputed income, the court noted in its findings of fact that the parties stipulated appellee could earn $35,000 if she worked. Thus, the court did consider appellee's imputed income. Additionally, appellant asserts that the court made no finding that appellee could not work. To the contrary, the court specifically found that appellee's health problems would not prevent her from working.

{¶60} A trial court has wide latitude in awarding spousal support. *Vanderpool v. Vanderpool* (1997), 118 Ohio App.3d 876, 878. In this case, the trial court carefully considered each of the relevant statutory factors. Many factors seem to weigh in support of the court's $4,500/month award. For instance, appellant has worked for almost 30 years as a neurologist. While appellee, on the other hand, was a homemaker and stay-at-home mother to the parties' four children. Additionally, appellant has a much more significant earning ability than appellee. Appellee's imputed income is only $35,000 per year, while appellant earns well in excess of $100,000 per year, sometimes closer to $200,000. Furthermore, the parties had a 36-year marriage, quite a long duration, and enjoyed a very comfortable life style.

{¶61} In addition, the court also reserved jurisdiction to modify the spousal support award in the future. So appellant does not necessarily have to pay this amount for the rest of his life as he alleges.

{¶62} Based on the above, the trial court did not abuse its discretion in ordering a spousal support payment of $4,500 per month. Accordingly, appellant's second assignment of error is without merit.

{¶63} Appellant's third assignment of error states:

{¶64} "THE TRIAL COURT ERRED BY REFUSING TO ORDER THE MARITAL HOME, POST-DIVORCE, TO BE RE-TITLED IN BOTH PARTIES' NAMES

AS JOINT TENANTS IN COMMON WHILE IT IS LISTED FOR SALE, AND NOT CONSIDERING FUTURE TAX IMPLICATIONS CONCERNING THE SAME."

{¶65} This assignment of error was rendered moot by the sale of the marital home as stated in this court's October 28, 2009 judgment entry.

{¶66} Appellant's fourth assignment of error states:

{¶67} "THE TRIAL COURT ERRED BY AWARDING DEFENDANT ATTORNEY'S FEES."

{¶68} The trial court ordered appellant to pay $10,000 of appellee's attorney fees.

{¶69} Local Domestic Relations Rule 17.03 provides in pertinent part:

{¶70} "**Attorney Fees:** An award of attorney fees is discretionary with the Court and shall be awarded in accordance with the following protocol and considerations:

{¶71} "* * *

{¶72} "(B) At the time of the final hearing on the motion or pleading that gives rise to the request for attorney fees, the attorney seeking such fees shall present:

{¶73} "(1) Testimony and an itemized statement describing the services rendered, the time for such services, and the requested hourly rate for in-court time and out-of-court time.

{¶74} "(2) Testimony as to whether the case was complicated by any or all of the following: new or unique issues of law; difficulty in ascertaining or valuing the parties' assets; problems with completing discovery; any other factor necessitating extra time being spent on the case; testimony regarding the attorney's years in practice and experience in domestic relations cases; evidence of the parties' respective income and expenses, if not otherwise disclosed during the hearing.

{¶75} "(C) Expert testimony other than the attorney requesting fees is required to prove both the necessity and reasonableness of attorney fees.

{¶76} "(D) *Failure to comply with the provisions of this rule may result in the*

denial of a request for attorney fees." (Emphasis added.)

{¶77} Appellant argues that the record here is silent as to the requirements for an award of attorney fees as appellee presented no testimony pursuant to the Local Rule. Therefore, he contends the court should not have ordered him to pay $10,000 of appellee's attorney fees.

{¶78} Firstly, we should note that this court already determined that this issue is not moot, as appellee now alleges. In our October 28, 2009 judgment entry, we referenced and agreed with appellant's response to appellee's motion to dismiss wherein appellant stated that the judgment was satisfied without his knowledge or permission and he has continuously disputed the reasonableness of the trial court's attorney fees award.

{¶79} Whether to award attorney fees to a party is within the trial court's sound discretion. *Rand v. Rand* (1985), 18 Ohio St.3d 356, 359. Thus, we will review the trial court's decision here for abuse of discretion.

{¶80} Pursuant to R.C. 3105.73(A), a court may award all or part of reasonable attorney's fees in a divorce action to either party if the court finds the award to be 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." R.C. 3105.73(A). In making this determination, the trial court may consider the parties' relative ability to pay their own or the opposing party's attorney's fees; however, the court is not obligated to do so. *Hiscox v. Hiscox*, 7th Dist. No. 07-CO-7, 2008-Ohio-5209, at ¶78.

{¶81} In this case, the court found that prior to trial, appellant's attorney fees were approximately $21,000. Appellee's attorney fees prior to trial were $28,374. The court noted that both parties will still also owe their attorneys for trial and post-trial work.

{¶82} The court ordered appellant to pay appellee a $10,000 lump sum toward her attorney fees and costs. The court stated that it considered the R.C.

3105.73(A) factors. The court then found:

{¶83} "While each party has assets from which to pay his/her attorney fees and costs, Wife is not presently employed and has no income. Husband's refusal to negotiate a fair spousal support award, required Wife to pay unnecessary and needless attorney fees. Husband testified he should pay no support, or in no event more than $1,000 a month."

{¶84} The court went on to give its reasons for this conclusion. It stated that appellee should not have to use assets to pay for her monthly expenses. It noted that when the parties separated, appellant voluntarily paid appellee $4,000 per month. The $4,000 was reduced to $2,000 when appellee moved back into the marital home and they used marital funds to pay for the home's expenses. It noted that appellant deducted appellee's health insurance as a business expense and they filed a joint tax return. The court pointed out that during the marriage and during the divorce proceedings appellant voluntarily paid appellee sufficient funds to meet her expenses that were far greater than $1,000 a month. Finally, the court found that appellee, even if she finds a job paying $35,000, will still have difficulty meeting her expenses while appellant has sufficient income to meet his needs and will continue to have substantially greater income than appellee.

{¶85} At no time did the court mention the Local Rule.

{¶86} Toward the end of the trial, appellee's counsel asked the court if she should give evidence of her fees. (Tr. 437). The court allowed her to do so and also asked appellant's counsel to do the same. (Tr. 437).

{¶87} Appellee's counsel stated that appellee's balance owing to her before trial was $28,374.50. (Tr. 443). Appellee's counsel stated that her hourly rate was $235 and that she had been in practice for 26 years. (Tr. 444). Appellee's counsel also submitted a bill for her services that she had given to appellee. (Tr. 446; Def. Ex. 18).

{¶88} Appellee's counsel did not present testimony describing services rendered nor did she provide expert testimony to prove the necessity and

reasonableness of her fees as are required by Local Rule 17.03.

{¶89} But as appellee points out, Local Rule 17.03's requirements, by its own language, are not mandatory for an award of attorney fees. The Rule clearly states that failure to comply *may* result in the denial of a request for attorney fees. It does not say that failure to comply is a complete bar to a request for fees.

{¶90} "The trial court is able to evaluate, in a large measure, the work performed by an attorney in a domestic relations case by merely looking at the record before the court." *Ward v. Ward* (June 18, 1985), 10th Dist. No. 85AP-61. See also *Groza-Vance v. Vance*, 162 Ohio App.3d 510, 2005-Ohio-3815, at ¶44. And while evidence regarding the nature of the services rendered and the reasonableness of the fee may be scanty, the trial court is permitted to use its own knowledge with respect to those elements. Id.

{¶91} Here the trial court was well aware of the time and money spent on this case. The court had been involved for a year and a half, during which there were numerous settlement conferences, pretrials, and hearings. And the court listened to appellee's counsel's evidence regarding her fees and was able to examine her bill as well as consider her hourly rate in light of her years of experience.

{¶92} While the better practice here clearly would have been to fully comply with Local Rule 17.03, appellee's failure to do so did not bar the trial court from awarding attorney fees. This matter was within the court's sound discretion. The court had sufficient evidence before it, taken together with its own observations and experience, on which to conclude that an award of attorney fees was reasonable in this case.

{¶93} Accordingly, appellant's fourth assignment of error is without merit.

{¶94} Appellant's fifth assignment of error states:

{¶95} "THE COURT LACKED SUFFICIENT EVIDENCE TO MAKE A DETERMINATION ON THE MISSING MONIES IN G.A. RIPPLE [sic.] ACCOUNTS."

{¶96} The facts surrounding this issue and appellant's exact argument are not entirely clear here.

{¶97} In the parties' stipulations they address the G.A. Repple accounts. Specifically, they set out the three account numbers and the amount in each account. As to two of the accounts, they also agreed that they are in appellee's name and that there was no stipulation as to its allocation. As to the third account, the parties stipulated that it was for their youngest son's college expenses and was to be used for that purpose.

{¶98} In its judgment entry, the court found that both parties controlled certain accounts that the other did not know about and invested marital funds in good faith. The court does not specifically reference the Repple accounts here; however, appellant indicates that these are the accounts to which the court's judgment entry is referring. The court found that nothing demonstrated marital misconduct or wrongdoing. The court pointed out that poor investing, which must have been the case here, was not a basis for a finding of financial misconduct.

{¶99} Appellant first argues that the trial court limited his right of cross examination on this issue and this resulted in the court having insufficient evidence to decide the issue. Appellant also argues that the trial court erred in using the figures from an August pretrial hearing where appellee stated that there was $233,000 in the G.A. Repple accounts. Appellant contends that he did not agree to this figure and instead testified that there was $600,000 in cash and was not aware that appellee had spent any of it.

{¶100} Firstly, as appellee notes, the parties stipulated as to the values of all of the Repple accounts. Thus, the values of the accounts are not subject to dispute.

{¶101} Secondly, there was testimony by appellant that these accounts lost money. (Tr. 179). The court then told the parties that it did not want to hear testimony on this subject because they had already agreed that they had tried to keep track of the money in good faith. (Tr. 179-80). Appellant did not object to this statement by the court or voice his opinion that this stipulation was not so. (Tr. 179-80).

{¶102} Accordingly, appellant's fifth assignment of error is without merit.

{¶103} Appellant's sixth assignment of error states:

{¶104} "THE TRIAL COURT ERRED IN ADOPTING THE JOINT STIPULATIONS APPENDED TO ITS JUDGMENT, THE STIPULATIONS WERE IMPERMISSIBLY VAGUE; ALL STIPULATIONS WERE CONTESTED BY PLAINTIFF-APPELLANT AND WERE NOT CONCLUSIVELY RESOLVED BY THE COURT, THUS THEY ARE INVALID."

{¶105} Appellant asserts here that he never agreed to the stipulations as to the values of the parties' assets and, in fact, specifically contested their validity. He states that at the trial the parties gave testimony regarding their assets and the assets' values. However, he contends that they never reached an agreed value on each of the assets. He claims that the court merely touched on the value of each asset without a conclusive resolution as to the values.

{¶106} A stipulation is "a voluntary agreement entered into between opposing parties concerning the disposition of some relevant point to avoid the necessity for proof on an issue." *Rice v. Rice* (Nov. 8, 2001), 8th Dist. No. 78682. Whether to grant relief from a stipulation is within the trial court's discretion. *Crow v. Nationwide Mut. Ins. Co.*, 159 Ohio St.3d 417, 2004-Ohio-7117, at ¶20.

{¶107} In August 2008, the parties had a pretrial hearing at which they testified and from which the basis of their stipulations were formed. The parties filed these joint stipulations with the court on December 5, 2008. The stipulations are signed by both parties' attorneys. The stipulations cover many issues including the division of household goods, the sale of the marital residence, who was to retain which bank accounts, the non-retirement investment accounts owned by the parties, the retirement accounts owned by the parties, ONI, and the organization of Timberbrook.

{¶108} These stipulations were discussed many times during the trial without any objection by appellant. (Tr. 172, 179, 229-30, 304, 312, 471). Furthermore, the hearing from which the stipulations were drawn occurred in August 2008. The stipulations were not filed with the court until December 2008. Thus, appellant had

three months during which he could have objected to the stipulations or ordered his counsel not to sign them. Appellant did not express any objections or problems with the stipulations until after the court issued the final decree of divorce and the parties were involved in a post-trial hearing in February 2009.

{¶109} Since the stipulations were signed by both parties' counsel and appellant failed to raise any objection to them prior to the end of trial, the stipulations were valid and the trial court properly relied on them.

{¶110} Accordingly, appellant's sixth assignment of error is without merit.

{¶111} Appellant's seventh assignment of error states:

{¶112} "THE TRIAL COURT ERRED WHEN IT ENTERED THE DIVORCE SETTLEMENT AGREEMENT BECAUSE PLAINTIFF-APPELLANT DID NOT WILLINGLY AND VOLUNTARILY ENTER INTO SAID AGREEMENT; THREATS OF ADDITIONAL FEES AND EXPENSES COUPLED WITH THE DESIRE NOT TO BE HELD IN CONTEMPT RENDERED THE ENTIRE DIVORCE SETTLEMENT AGREEMENT NULL AND VOID."

{¶113} In his final assignment of error appellant argues that the trial court forced and coerced him into signing the post-trial settlement agreement and, therefore, the settlement agreement is unenforceable. He claims that the only reason he agreed to the settlement agreement was because the trial court threatened him with contempt.

{¶114} A settlement agreement is a contract. In order to have a contract, and thus a valid settlement agreement, there must be a meeting of the minds. *Noroski v. Fallet* (1982), 2 Ohio St.3d 77, 79. "In the absence of fraud, duress, overreaching or undue influence, or of a factual dispute over the existence of terms in the agreement, the court may adopt the settlement as its judgment." *Walther v. Walther* (1995), 102 Ohio App.3d 378, 383.

{¶115} The trial court held a post-judgment hearing at which the court corrected two minor issues raised on appellant's Civ.R. 60(A) motion and at which the parties attempted to amend the court's divorce judgment entry by agreement.

This "Amendment of Final Judgment" addressed several issues including the car title, the liquidation of several joint accounts, some issues with the marital house, the Timberbrook distribution, and some personal property. The agreement was read into the record and was signed by both parties and their attorneys. It was also signed by the court and adopted as a judgment entry.

{¶116} At the hearing appellee's counsel read the agreement into the record. The court stated that it wanted to be sure that both parties were in agreement with its terms. (Post-trial Tr. 49). Several times while counsel read the agreement, appellant interrupted to state that he did not agree with a term. (Post-trial Tr. 62, 75, 78). Then toward the end of the hearing the following took place:

{¶117} "THE COURT [speaking to appellant]: You can do that post decree on, on contempt. You can, whatever you want. If you come back on contempt, you end up with paying attorney fees. Now if you come back on contempt because Mrs. Ansevin has anything, she pays attorney fees. Just let me tell you, every motion you come back from this point on will probably be because you haven't complied with my order." (Post-trial Tr. 90).

{¶118} Appellant, counsel, and the court then discussed a possible misunderstanding by appellant. Appellant's counsel then explained to appellant that he still had the right to appeal the court's judgment. (Post-trial Tr. 91-92). The following then transpired between appellant's counsel and appellant:

{¶119} "MR. LACICH [appellant's counsel]: * * * So all we're trying to do is in the long run save you money. For someone that wants to think about their future and save money, we're just trying to save you - This agreement today is an attempt to at least do that, get some cash in your pocket, pay off your debts, figure out what you're going to do with Timberbrook. You know, it's really the best of both worlds for everybody because we're getting some finality. * * *

{¶120} "But, as the judge has warned you, that's more fees, more expenses. They're getting frustrated because they feel that you're not willing to implement the court's order when you have a choice to, so the next step will be they'll file contempts

against you and the judge will then order you to start paying their lawyer fees. You'll be missing –

{¶121} "DR. ANSEVIN: So basically, you're making an offer I can't refuse.

{¶122} "MR. LACICH: No, we're not. No, we're not.

{¶123} "DR. ANSEVIN: All right. Yeah, yeah, you did.

{¶124} "MR. LACICH: Do you agree with it?

{¶125} "DR. ANSEVIN: I don't agree, but it's an offer I can't refuse so –

{¶126} "MR. LACICH: Well, that's, that's right. It's a good offer. (Post-trial Tr. 92-93).

{¶127} The next part of the transcript is inaudible. Then the following was said:

{¶128} "DR. ANSEVIN: I think I've been coerced (Inaudible).

{¶129} "MR. LACICH: No, you haven't.

{¶130} * *

{¶131} "DR. ANSEVIN: - threatened with contempt, you know.

{¶132} "MR. LACICH: I'll note for the record that Plaintiff, Carl F. Ansevin, has signed the agreed judgment entry amendment of final judgment order, is that correct, doctor? I was just explaining to you –

{¶133} "DR. ANSEVIN: Under threat of contempt." (Post-trial Tr. 93-94).

{¶134} While appellant expressed his disagreement with the amendment several times and even stated on the record that he believed he was being coerced and threatened with contempt, in the end *he signed the amendment*.

{¶135} The Ohio Supreme Court has held that "[t]o avoid a contract on the basis of duress, a party must prove coercion *by the other party to the contract.* It is not enough to show that one assented merely because of difficult circumstances that are not the fault of the other party." (Emphasis added) *Blodgett v. Blodgett* (1990), 49 Ohio St.3d 243, at the syllabus. See also *Maury v. Maury*, 7th Dist. No. 06-CA-837, 2008-Ohio-3326, at ¶13. The Ohio Supreme Court went on to quote the United States Court of Claims:

{¶136} "The United States Court of Claims summarized what a party must prove to establish duress: '["]An examination of the cases * * * makes it clear that three elements are common to all situations where duress has been found to exist. These are: (1) that one side involuntarily accepted the terms of another; (2) that circumstances permitted no other alternative; and (3) *that said circumstances were the result of coercive acts of the opposite party. * * * The assertion of duress must be proven to have been the result of the defendant's conduct and not by the plaintiff's necessities.* * * * ["]' (Emphasis added.) *Urban Plumbing & Heating Co. v. United States* (U.S.Ct. of Claims 1969), 408 F.2d 382, 389-390, 187 Ct.Cl. 15, quoting *Fruhauf Southwest Garment Co. v. United States* (U.S.Ct. of Claims 1953), 111 F.Supp. 945, 951, 126 Ct.Cl. 51." *Blodgett*, at 246.

{¶137} Here appellant was not coerced by appellee into signing the agreement. Some pressure to sign may have come from the court and his own counsel, but in the end it was appellant's decision whether to sign the amendment. Appellant decided to sign the amendment thus evidencing his assent to its terms.

{¶138} Accordingly, appellant's seventh assignment of error is without merit.

{¶139} For the reasons stated above, the trial court's judgment is hereby affirmed.

Vukovich, P.J., concurs.

Waite, J., concurs.