

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Debra A. DeMars

Court of Appeals No. S-14-031

Appellee

Trial Court No. 11 DR 581

v.

Edward L. DeMars

DECISION AND JUDGMENT

Appellant

Decided: March 31, 2015

* * * * *

Jon M. Ickes, for appellee.

James W. Fruth, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a June 24, 2014 divorce decree judgment of the Sandusky County Court of Common Pleas, Domestic Relations Division. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Edward DeMars, sets forth the following three assignments of error:

No. 1: THE COURT ABUSED ITS DISCRETION BY WAITING APPROXIMATELY ONE YEAR AFTER TRIAL TO ISSUE A RULING, DURING WHICH TEMPORARY ORDERS REQUIRED APPELLANT TO MAKE ALL MORTGAGE PAYMENTS ON THE MARITAL HOME, AND THEN FAILING TO GIVE APPELLANT AN OFFSET OR CREDIT FOR MORTGAGE PAYMENTS MADE DURING THE PENDENCY OF THE DECISION IN ITS FINAL ORDER, THEREBY GIVING APPELLEE A WINDFALL WHEN THE COURT REQUIRED THE HOME TO BE SOLD AND PROCEEDS EQUALLY SPLIT.

No. 2: THE TRIAL COURT COMMITTED PLAIN ERROR IN FAILING TO DIVIDE MARITAL ASSETS AND LIABILITIES PURSUANT TO R.C. §3105.171 (C), INCLUDING THE PARTIES' PENSIONS, IRA ACCOUNTS, MUTUAL FUND, INTELLECTUAL PROPERTY, HOUSEHOLD GOODS AND FURNISHINGS, AND DEBTS OWED BY APPELLEE TO THE PARTIES' CHILDREN.

No. 3: THE TRIAL COURT ABUSED ITS DISCRETION IN IGNORING DOCUMENTARY EVIDENCE OFFERED BY APPELLANT AND CHOOSING [TO] ACCEPT ALL OF APPELLEE'S VALUATIONS FOR ASSETS AND LIABILITIES.

{¶ 3} The following undisputed facts are relevant to this appeal. On October 21, 1989, the parties were married. Two children were born of the marriage. Both children had reached the age of majority at the time of the divorce.

{¶ 4} On May 31, 2011, appellee filed a complaint for divorce against appellant. On June 6, 2011, appellee filed for a civil protection order against appellant. On June 16, 2011, appellant filed an answer to the divorce complaint. On July 22, 2011, a hearing was conducted and all requisite temporary orders were issued.

{¶ 5} Three days of trial hearings took place on July 18, August 24, and October 9, 2012. On November 9, 2012, written closing arguments were submitted by the parties. On November 4, 2013, the magistrate's decision was issued. On December 3, 2013, appellant filed objections to the decision. On May 2, 2014, the objections were denied.

{¶ 6} On June 24, 2014, the trial court issued the final decree of divorce, the subject of this appeal. The subject matter of the appeal is centered upon asset allocations and valuations. As most relevant to the instant case, the judgment allocated \$65,264 in assets to appellant and allocated \$53,149 in assets to appellee. On July 17, 2014, timely notice of appeal was filed.

{¶ 7} In the first assignment of error, appellant claims that the trial court abused its discretion in failing to award appellant a specific credit or offset in the final divorce decree due to appellant making the mortgage payments on the marital home during the pendency of the matter. In support, appellant maintains that the disputed trial court action constituted an unlawful "windfall" for appellee. We do not concur.

{¶ 8} As a preliminary matter, we note that despite appellant’s allegations of an improper and unlawful windfall to appellee in connection to appellant taking care of the mortgage payments on the marital home during the pendency of the matter, the record reflects that appellant resided in the home for which he was making the payments and appellee did not reside in the home during the time period.

{¶ 9} It is well-established that an appellate court may not reverse a trial court’s property allocation decision absent a showing of an abuse of discretion. *Cherry v. Cherry*, 66 Ohio St.2d 348, 421 N.E.2d 1293 (1981). Accordingly, it must be shown that the disputed trial court property allocation judgment was arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶ 10} In support of the first assignment of error, we note that appellant presents a series of legal conclusions but fails to furnish objective or compelling legal evidence in support of these conclusions. For example, appellant states, “It is manifestly unfair, unconscionable, and unreasonable that the trial court ordered that sale and *equal* division of the net proceeds of the marital property.” (Emphasis added). Appellant further unilaterally claims, “It was unconscionable and an abuse of discretion for the court to turn a blind eye to these developments.” Lastly, appellant speculates, “If not for appellant’s payments on same they would’ve been lost to foreclosure years ago.”

{¶ 11} R.C. 3105.171 establishes in detail the parameters of a proper equitable division of marital property in divorce cases. We have reviewed and considered the record of evidence. We find that appellant has failed to demonstrate how the disputed

trial court decision was arbitrary, unreasonable or unconscionable in the context of the controlling guidelines set forth in R.C. 3105.171.

{¶ 12} Notably, contrary to appellant's claims of unlawful treatment in connection to the property distribution, the record reflects that the trial court found that appellant had engaged in unlawful financial conduct during the pendency of the divorce. On November 4, 2013, the trial court held, "The magistrate finds as a matter of fact and concludes as a matter of law that the [appellant] has engaged in financial misconduct under R.C. 3105.171(E)(4) by cashing in his Mainstay IRA and sale of personal property * * * all in violation of the Court's temporary restraining order."

{¶ 13} While it is clear that appellant perceives unfairness by the trial court in not receiving a specific credit in the final decree of divorce for making the mortgage payments on the marital home in which he lived during that time, he has not presented any evidence demonstrating that the failure to do so in any way constituted a breach of R.C. 3105.171 so as to be construed as an abuse of discretion. Further, the record reflects that appellant lived in the home that the mortgage payments were being made on and that the proceeds were split equally at the time of sale. Based upon the forgoing, we find that appellant has not shown these circumstances to be arbitrary, unreasonable or unconscionable. Accordingly, we find appellant's first assignment of error not well-taken.

{¶ 14} In the second assignment of error, appellant similarly contends that the trial court erred in its R.C. 3105.171 division of marital assets and liabilities. Appellant again

proffers legal conclusions of events based principally upon subjective assessments that are not rooted in controlling statutes or case law.

{¶ 15} For example, appellant unilaterally states, “It is unfair and unreasonable that the Magistrate has ordered that each party will be keeping their own Whirlpool Corporation retirement pensions without equalizing the values of each.” No objective legal evidence is furnished in support of the veracity of this contention.

{¶ 16} We note that contrary to appellant’s assertion of an inequitable and unlawful division of the marital assets, the record conversely reflects that appellant was awarded \$65,264 in assets, while appellee was awarded \$53,149 in assets, approximately 20 percent less than appellant, by the disputed judgment. We find appellant’s second assignment of error not well-taken.

{¶ 17} In appellant’s final assignment of error, he contends that the trial court abused its discretion in connection to asset and liability valuations. For example, appellee claimed that appellant took \$849 from a marital credit card, while appellant counters that he only took \$749 from the credit card. Appellant claims that the trial court improperly addressed this disputed \$100 discrepancy. We again note that appellant fails to furnish objective or compelling evidence in support of the assertion.

{¶ 18} Significantly, the record reflects that the trial court found appellee’s evidence submitted in support of financial issues more persuasive than appellant’s arguments and claims connected to financial matters. The fact that the trier of fact determined appellee’s evidence to be more convincing does not, as appellant seems to

suggest, in and of itself constitute evidence of impropriety by the trial court in that determination.

{¶ 19} More importantly, contrary to appellant’s suggestion that the trial court unlawfully disregarded evidence offered by appellant in connection to asset valuations, the record reflects that following a three-day trial in this case, the trial court found, “The magistrate finds as a matter of fact and concludes as a matter of law that the values of personal property presented by the [appellee] are fair, equitable, and supported by the evidence. [Appellant] offered no evidence as to the value of any item.” Based upon the forgoing, we find appellant’s third assignment of error not well-taken.

{¶ 20} Wherefore, the judgment of the Sandusky County Court of Common Pleas, Domestic Relations Division, is hereby affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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