[Cite as *Jackson v. Jackson*, 2014-Ohio-1145.]

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

Kelly L. Jackson	Court of Appeals No. F-12-013
Appellant	Trial Court No. 10DV000093
v.	
Kenneth R. Jackson, II	**DECISION AND JUDGMENT**
Appellee	Decided: March 21, 2014

* * * * *

Judith A. Myers, for appellant.

Tonya M. Robinson, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Kelly L. Jackson, appellant, appeals a judgment of the Fulton County Court of Common Pleas, journalized on July 6, 2012, in her action for divorce from Kenneth R. Jackson II, appellee. The case proceeded to final hearing on December 12, 2011 and January 23, 2012. On December 14, 2011, the trial court issued a final decree of divorce.

In the July 6, 2012 judgment, the court addressed remaining issues, including allocation of parental rights and responsibilities, child support, spousal support, division of debt, retirement plans, allocation and division of personal property, allocation of income tax exemptions for children of the marriage, and payment of attorney fees and costs.

{¶ 2} It is from the July 6, 2012 judgment that Kelly appeals. She asserts six assignments of error on appeal:

Assignments of Error

1. The trial court abused its discretion when it failed to allocate the parties' retirement accounts in accordance with R.C. 3105.171.

2. The trial court abused its discretion when it failed to make an equitable division of marital and separate property pursuant to R.C. 3105.171.

A. The trial court's assessed value to the F250 Truck is unsupported by the evidence.

B. The Ford Mustang awarded to plaintiff is a premarital asset, not subject to division, and the value assessed to it is not supported by the evidence.

3. The trial court erred when it failed to grant a distributive award to appellant pursuant to R.C. 3105.171(E)(1).

4. The trial court abused its discretion when it did not calculate child support in accordance with R.C. 3119.022.

A. The trial court erred in failing to incorporate appellee's average overtime for the years 2009, 2010, and 2011.

B. The trial court failed to incorporate appellant's child care expenses in the calculation of child support.

5. The trial court erred and abused its discretion in awarding the tax dependency exemption of both children to appellee.

6. The trial court erred in its allocation of debt owed to William Kimmelman.

Classification of Marital Property and Division of Marital Assets

{¶ 3} Assignments of error Nos. 1 and 2 concern classification of property as separate or marital and division of marital assets pursuant to R.C. 3105.171. Assignment of error No. 1 concerns treatment of retirement accounts. Assignment of error No. 2 concerns treatment of a 2002 Ford Mustang and an F250 Ford pickup truck.

{¶ 4} As we discuss under assignments of error Nos. 1 and 2, the trial court did not identify in its judgment the dates it employed in defining "during the marriage" in classifying personal property as either separate or marital or in its division of marital assets as required under R.C. 3105.171(G). On this record we are unable to determine whether the trial court used inconsistent dates for the period of "during the marriage," particularly with respect to the court's treatment of retirement assets as compared to its treatment of the Ford Mustang automobile. Under such circumstances, reversal and remand is necessary for the trial court to indicate the basis for its classification of

property as marital or separate and its division of marital property. *See Ohmer v. Renn-Ohmer*, 12th Dist. Butler No. CA2012-02-020, 2013-Ohio-330, ¶ 39.

Retirement Accounts

{¶ 5} Kelly Jackson and Ken Jackson were married on May 14, 2005, in Fulton County, Ohio. They were involved in a relationship with each other prior to their marriage and began cohabitating in 2001. After they began cohabitating in 2001and prior to their marriage in 2005, they purchased a house together in Swanton, Ohio, and also purchased a 2002 Ford Mustang.

{¶ 6} At the time of the marriage, the parties resided in Ohio and were both employed full time. Kelly worked as a correctional officer at the Toledo Correctional Institute since January 1, 1994. As a public employee, Kelly had a pension plan through the Ohio Public Employees Retirement System (OPERS).

{¶ 7} Ken has worked for Textron as an aircraft mechanic since May 5, 1997. He has two retirement accounts through his employment. In 2009, Textron closed and sold its Ohio facility. Ken accepted an offer to work at Textron's Arizona facility and in 2009 moved to Arizona to work there. Kelly remained in Ohio for the birth of their second child and to sell their home. Kelly continued to work in Ohio until the child was born. Kelly then moved to Arizona with the children at the end of November 2009.

{¶ 8} Kelly left Arizona with the children on May 26, 2010, and returned to Ohio. She filed this action for divorce in the Fulton County Court of Common Pleas on June 11, 2010.

{¶ 9} Under assignment of error No. 1, appellant contends that the trial court erred by failing to allocate retirement accounts in accordance with the requirements of R.C. 3105.171. Central to her argument is the court's treatment of withdrawals made by appellee from his 401(k) retirement account.

{¶ 10} Both parties withdrew money from their retirement accounts after divorce proceedings were filed. Kelly withdrew all funds, $86,204.28, from her OPERS pension plan on February 11, 2011. She used $55,588.75 of the withdrawal to fund an annuity account with MetLife.

{¶ 11} Ken withdrew funds from his 401(k) retirement account. He made three withdrawals.

Date	**Amount**
June 29, 2010	$20,000.00
October 27, 2010	$3,054.00
December 16, 2010	$6,813.09

{¶ 12} The parties agree that use of $10,000 from the first withdrawal by Ken was for their mutual benefit. Due to the depressed real estate market, Ken paid the sum to secure closing of the sale of their Swanton, Ohio home in a short sale. The transaction eliminated any debt owed by the parties on their mortgage loan to purchase the residence.

{¶ 13} An expert witness, William Kimmelman, testified at trial as to the premarital versus marital interests in the parties' retirement plans and accounts and the present day values of the marital portions of them. In calculating the non-marital share of

Ken's 401(k) savings plan, Mr. Kimmelman had to add back the withdrawals that had been made since 2008 to determine the non-marital share. He testified that the marital share of Ken's pension plan was $11,632.82 and the marital share of the 401(k) plan was $12,165 for a total marital share of Ken's retirement plans of $23,797.82.

{¶ 14} Mr. Kimmelman testified he was limited in his evaluation of the marital share of Kelly's retirement benefits because he lacked detailed account information from OPERS on the retirement account. He testified that the marital portion of Kelly's OPERS pension was $28,334.15. Based upon an assumption that there should be an equal division of the marital property in the retirement plans, Mr. Kimmelman testified his calculations resulted in Kelly owing Ken roughly $2,200.

{¶ 15} The court concluded:

> In light of the facts that Defendant does have a significant premarital portion to his Pension, that he will be obligated to repay significant penalties for his early withdrawals, and in light of Plaintiff's complete withdrawal of her share, as well as the Defendant's share of her plan, and the complexities of the calculations, and the disparity in the earnings of the Parties, it appears that a "wash" should be declared, and the neither party should be allowed to have any interest in the other Party's pension or retirement plans.

2002 Ford Mustang

{¶ 1} Under assignment of error No. 2, Kelly contends that the trial court erred in failing to make an equitable division of marital property under R.C. 3105.171. First, Kelly argues that she acquired a 2002 Ford Mustang prior to the marriage and that the trial court erred in treating the Mustang as marital property and subject to division under R.C. 3105.171.

{¶ 2} Both Ken and Kelly testified that the Mustang was purchased in 2002, prior to their marriage, and that the vehicle was titled in Kelly's name. Kelly argues under assignment of error No. 2 that the Mustang was and always has been her separate property and the trial court erred in treating the automobile as marital property.

{¶ 3} Ken argues that treatment of the Mustang as Kelly's separate property would be inequitable. The car was purchased during the period immediately before the marriage when the two cohabitated. Ken testified that the reason the vehicle was titled in Kelly's name was because he had a bad credit record and placing the vehicle in Kelly's name permitted them to secure better loan terms. Ken also testified that he made all the monthly loan payments on the Mustang and also paid maintenance expenses and made substantial upgrades to the automobile.

{¶ 4} Ken is a mechanic. He testified that he upgraded the rear gears, exhaust system, and transmission. He also upgraded the vehicle with high performance wheels. They drove the Mustang only occasionally.

Marital Property

{¶ 5} Trial courts are given broad discretion in determining property division, subject to review on appeal under an abuse of discretion standard. *Koegel v. Koegel*, 69 Ohio St.2d 355, 357, 432 N.E.2d 206 (1982). The trial court's classification of property as marital or separate is reviewed on appeal under the manifest weight of the evidence standard. *Calvert v. Calvert*, 6th Dist. Ottawa No. OT-12-024, 2013-Ohio-4421, ¶ 32; *Steward v. Steward*, 6th Dist. Wood No. WD-01-058, 2002-Ohio-3700, ¶ 31.

{¶ 6} The court begins its analysis under R.C. 3105.171 with a determination of what property is marital property and what property is separate property:

> When dividing marital property, a court must "determine what constitutes marital property and what constitutes separate property. In either case, upon making such a determination, the court shall divide the marital and separate property equitably between the spouses." R.C. 3105.171(B). Pursuant to R.C. 3105.171(G), a trial court must indicate the basis for its division of the marital property in sufficient detail to enable a reviewing court to determine whether the award is fair, equitable, and in accordance with the law. *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 97, 518 N.E.2d 1197. *Moore v. Moore*, 175 Ohio App.3d 1, 2008-Ohio-255, 884 N.E.2d 1113, ¶ 49 (6th Dist.).

{¶ 7} R.C. 3105.171(A)(3)(a) defines marital property as real or personal property "acquired by either or both of the spouses during the marriage." R.C. 3105.171(A)(3)(a)(i)

and (ii). The term "during the marriage" usually means "the period of time from the date of the marriage through the date of the final hearing." R.C. 3105.171(A)(2)(a).

{¶ 8} Under R.C. 3105.171(A)(2)(b), a court has authority to set different dates to define "during the marriage" for purposes of determining marital property, other than the dates from the date of the marriage through date of final hearing set under R.C. 3105.171(A)(2)(a). *See Chapman v. Chapman*, 6th Dist. Lucas No. L-10-1293, 2012-Ohio-126, ¶ 17. Where the court determines that use of the default dates under 3105.171(A)(2)(a) would be inequitable, the trial court may select and specify alternative dates to define during the marriage:

> (b) If the court determines that the use of either or both of the dates specified in division (A)(2)(a) of this section would be inequitable, the court may select dates that it considers equitable in determining marital property. If the court selects dates that it considers equitable in determining marital property, "during the marriage" means the period of time between those dates selected and specified by the court. R.C. 3105.171(A)(2)(b).

{¶ 9} R.C. 3105.171(G) requires a court to identify the dates it employs to define the meaning of "during the marriage" in its judgment and to provide written findings of fact to support the court's judgment ordering a division or disbursement of property or distributive award:

> (G) In any order for the division or disbursement of property or a distributive award made pursuant to this section, the court shall make

written findings of fact that support the determination that the marital property has been equitably divided and shall specify the dates it used in determining the meaning of "during the marriage."

Treatment of "During the Marriage" in Judgment

{¶ 10} The trial court did not specify in its July 6, 2012 judgment the dates it used to determine the meaning of "during the marriage" for purposes of identifying and dividing marital property. In our review, it appears that the trial court may have applied the default dates (from the date of the marriage to the date of final hearing) for defining "during the marriage" when it considered property interests in retirement accounts. Appellee's expert testified as to necessary calculations to determine premarital interests in the retirement accounts.

{¶ 11} The calculations were necessary to determine the marital interests in the accounts had no withdrawals been taken. The premarital values were deducted (as separate property) from recalculated overall account values to determine marital property interests in the accounts. The trial court referred to the calculations and to premarital values in its judgment with respect to marital interests in retirement assets. The trial court treated the 2002 Mustang as marital property, even though the property was acquired prior to the marriage.

{¶ 12} Ken argues that such treatment is appropriate because use of the default dates under R.C. 310.171(A)(2)(a) was inequitable, and under R.C. 3105.171(A)(2)(b), the court had authority to set different dates. The court however, made no determination

under R.C. 3105.171(A)(2)(b) that use of the default period was inequitable and did not select and specify an alternative premarital date to begin the period of during the marriage.

{¶ 13} Appellee's argument would require use of dates to define "during the marriage" for purposes of determining marital assets in this case that are inconsistent with the dates that appear to have been used by the court with respect to retirement assets.

{¶ 14} On this record, we cannot determine the basis of the trial court's decision to treat the Mustang as marital property. In its July 6, 2012 judgment, the trial court adopted "in toto" the allocations and valuations of personal property detailed in Ken's post-hearing brief. In the allocations, the Mustang was treated as marital property. However, the trial court did not make any findings concerning the Mustang and specifically did not state a determination under R.C. 3105.171(A)(2)(b) that it would be inequitable to use the default dates specified under R.C. 3105.171(A)(2)(a) to determine whether the Mustang is marital property. The court also did not select and specify other dates in its judgment for use in determining whether the Mustang is marital property.

{¶ 15} Pursuant to R.C. 3105.171(G), we reverse and remand the trial court's judgment with respect to classification of property as marital or separate and with respect to division of marital property, including treatment of retirement accounts, the Ford Mustang automobile, and other personal property. We remand to permit the trial court to clarify and, if necessary, correct its judgment. In revisiting these issues on remand, the trial court shall specify in its judgment the dates it employs to define the meaning of

"during the marriage" for purposes of R.C. 3105.171. If it is the trial court's intent to employ dates other than those specified under R.C. 3105.171(A)(2)(a) to constitute "during the marriage," the court shall clarify whether it determined that utilizing the R.C. 3105.171(A)(2)(a) dates would be inequitable and also specify under R.C. 3105.171(A)(2)(b) any alternative dates it employs.

F250 Ford Pickup

{¶ 16} The remaining issue under assignment of error No. 2 is the trial court's valuation of the F250 Ford pickup truck. Appellant contends that the valuation placed on the pickup is not supported by competent, credible evidence. Both parties testified to differing values for the pickup and supported their contentions by different Kelly Blue Book estimated values.

{¶ 17} The standard of review of a trial court's valuation of marital property is the manifest weight of the evidence standard. *Schuller v. Schuller*, 6th Dist. Fulton No. F-96-012, 1997 WL 51223, * 2 (Feb. 7, 1997). Although disputed, the trial court's valuation of the pickup is supported by competent, credible evidence in the record. We find that appellant's objections to the court's valuation of the pickup are without merit.

{¶ 18} We find assignment of error Nos. 1 and 2 well-taken in part.

{¶ 19} Under assignment of error No. 3, appellant argues that the trial court erred by failing to make an R.C. 3105.171(E)(1) distributive award to her to facilitate, effectuate or supplement a division of marital property. In view of the necessity of remand, however, this issue is now premature. It must await the trial court's ruling on

remand with respect to determining separate and marital property and its order of division of marital property.

{¶ 20} We overrule assignment of error No. 3 as moot.

Child Support

{¶ 21} Assignment of error No. 4 concerns calculation of child support. In the July 6, 2012 judgment, the trial court approved and adopted appellee's proposed calculations to determine the amount of child support to be paid by appellee. The court attached a copy of appellee's child support computation worksheet to its judgment. Under assignment of error No. 4, appellant argues that the trial court abused its discretion in adopting appellee's calculations because the calculations do not comply with the requirements of R.C. 3119.05(D).

{¶ 22} R.C. 3119.02 governs calculation of child support obligations. *Thomas v. Thomas*, 6th Dist. Lucas No. L-03-1267, 2004-Ohio-1034, ¶ 13. The statute provides that the amount of child support obligations are to be calculated "in accordance with the basic child support schedule, the applicable worksheet, and the other provisions of sections 3119.02 to 3119.24 of the Revised Code." The parties do not claim that this case presents any basis to deviate from the amount of child support set through use of the basic child support schedule and applicable worksheet.

{¶ 23} The determination of gross income for purposes of child support obligations under R.C. 3119.02 is a factual determination and is subject to review on

appeal to see whether it is supported by competent, credible evidence in the record. *Thomas* at ¶ 13; *Jajola v. Jajola,* 8th Dist. Cuyahoga No. 83141, 2004-Ohio-370, ¶ 8.

{¶ 24} With respect to treatment of overtime income in calculations to determine gross income of parents in computing obligations for child support, R.C. 3119.05 provides:

> 3119.05 Requirements when court computes child support
>
> When a court computes the amount of child support required to be paid under a court child support order or a child support enforcement agency computes the amount of child support to be paid pursuant to an administrative child support order, all of the following apply:
>
> * * *
>
> (D) When the court or agency calculates the gross income of a parent, it shall include the lesser of the following as income from overtime and bonuses:
>
> (1) The yearly average of all overtime, commissions, and bonuses received during the three years immediately prior to the time when the person's child support obligation is being computed;
>
> (2) The total overtime, commissions, and bonuses received during the year immediately prior to the time when the person's child support obligation is being computed.

{¶ 25} In the calculations adopted by the trial court, appellee identified his base salary as $71,281.60 and added an average overtime income of $15,244.59 to calculate a total gross income of $86,526.19. Defendant's exhibit M and the Child Support Computation Worksheet, Exhibit A3 (adopted by the court) disclose how the $15,244.59 average overtime figure was calculated. Appellee did not include overtime income for 2011 in the calculations. He averaged overtime pay received in 2008 ($4,175.49), 2009 ($17,184.80), and 2010 ($24,373.48).

{¶ 26} Appellant argues that appellee's testimony at the final hearing disclosed income and overtime pay for 2011 and that the trial court violated R.C. 3119.05(D)(1) by not including 2011 in the yearly average income from overtime calculations used in determining gross income of a parent for child support obligations. We agree.

{¶ 27} The statute requires averaging of overtime income for the "three years immediately prior to the time when the person's child support obligation is being computed." R.C. 3119.05(D)(1). Appellee testified at the final hearing on December 12, 2011. He testified that his base income from employment remained the same in 2011 as in prior years, $71,281.60. He testified that 2011 was a good year for overtime and that he worked roughly 525 hours overtime in 2011. Appellee testified that with his increased income from overtime his employment income for 2011 totaled between $98,000 and $98,500.

{¶ 28} The evidence in the record is sufficient to determine appellee's 2011 income from overtime and to permit 2011 data to be included in the yearly averaging of

overtime income under R.C. 3119.05(D)(1). As the calculations adopted by the trial court failed to average overtime income from calendar years 2009, 2010, and 2011, the calculated gross income from employment adopted by the court is not supported by competent, credible evidence in the record.

{¶ 29} Appellant also argues that the trial court erred in failing to consider the cost of work related childcare, two and one-half days per week, in calculating child support. The cost of work related childcare is included in the R.C. 3119.022 child support computation worksheet.

{¶ 30} The parties dispute whether appellant will incur any projected work related annual child care expenses. The record discloses that appellee lives with her parents and her mother has provided work related childcare without cost.

{¶ 31} A trial court in a domestic relations cases "must have discretion to do what is equitable upon the facts and circumstances of each case," including on issues of child support. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). A trial court's decision with respect to child support is reviewed on appeal under an abuse of discretion standard. *Id.; Miller v. Miller*, 6th Dist. Sandusky No. S-12-035, 2013-Ohio-5071, ¶ 37. The trial court, as the trier of fact, is in the best position to weigh the evidence and determine the credibility of the witnesses at trial. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

{¶ 32} Under these facts, we find no abuse of discretion by the trial court in failing to include in its computation for child support the projected future childcare expenses claimed by appellant.

{¶ 33} We find assignment of error No. 4 well-taken in part.

{¶ 34} We reverse the trial court judgment with respect to the amount of appellee's child support obligation and remand this matter to the trial court with instructions to recalculate appellee's gross income for purposes of his child support obligation by using appellee's base pay of $71,281.60 and adding a yearly average of all overtime income received in 2009, 2010, and 2011 as provided under R.C. 3119.05(D)(1) in making a child support award.

{¶ 35} Under assignment of error No. 5, appellant argues that the trial court abused its discretion in awarding the children's income tax dependency exemptions to appellee. Appellant contends that the court did not comply with the requirements of R.C. 3119.82 in making the award. The trial court did not refer to R.C. 3119.82 in its judgment and made no determination in its judgment that the award of the exemptions to appellee is in the best interests of the children

{¶ 36} We review a trial court's determination under R.C. 3119.82 of allocation of income tax exemptions for children of the marriage under an abuse of discretion standard. *Montgomery v. Montgomery*, 6th Dist. Huron No. H-06-035, 2007-Ohio-2539, ¶ 16; *Eickelberger v. Eickelberger*, 93 Ohio App.3d 221, 225-226, 638 N.E.2d 130 (12th Dist.1994).

{¶ 37} This case involves an award of income tax exemptions for the children of the marriage to the nonresidential parent. R.C. 3119.82 limits allocation of tax exemptions to nonresidential parents to where the court finds that it is in the best interest of the children:

> If the parties do not agree, the court, in its order, may permit the parent who is not the residential parent and legal custodian to claim the children as dependents for federal income tax purposes only if the court determines that this furthers the best interest of the children * * *.

{¶ 38} In our decision in *Montgomery v. Montgomery*, this court held that when awarding the federal income tax exemption to the nonresidential parent "a trial court would err if it failed to determine that awarding the exemption to the nonresidential parent was in the child's best interests. *Id.* at ¶ 24. Ohio courts of appeals have recognized that such a failure, in an award to a nonresidential parent, requires appellate courts to reverse the award and to remand the case for an R.C. 3119.82 determination of whether the award is in the best interests of the child. *In re A.E.G.-D.*, 12th Dist. Clermont No. CA2011-04-031, 2012-Ohio-547, ¶ 9-10; *Branden v. Branden*, 8th Dist. Cuyahoga No. 91453, 2009-866, ¶ 37; *Lopez v. Lopez*, 10th Dist. Franklin No. 04AP-508, 2005-Ohio-1155, ¶ 52-53, 60.

{¶ 39} We find assignment of error No. 5 well-taken. We reverse the trial court judgment to the extent it awarded the children's federal income tax exemptions to appellee and remand the matter to the trial court to permit the court to consider factors

under R.C. 3119.82 and to make a determination of the best interests of the children in making the award.

{¶ 40} The trial court's judgment ordered appellant to "reimburse Defendant one-half of Mr. Kimmelman's fee, the same being $200,000.00." Mr. Kimmelman testified as an expert witness with respect to property interests and division of retirement accounts. The parties agree that Mr. Kimmelman's fee was $400 and that the court intended appellant to pay $200, one-half. The parties agree that the $200,000 amount is a typographical error. The parties jointly request this court to direct the trial court to correct the error.

{¶ 41} Accordingly, we find assignment of error No. 6 well-taken. We reverse the trial court's judgment with respect to the sum appellant is to pay as her share of Mr. Kimmelman's fee. We remand with instructions for the trial court to amend its judgment to provide that appellant shall reimburse appellee for one-half of Attorney Kimmelman's fee, the same being $200, on or before sixty days.

{¶ 42} For reasons set forth in this decision and judgment, we affirm the trial court judgment in part and reverse it in part:

{¶ 43} 1. As discussed under assignments of error Nos. 1 and 2, we reverse and remand the trial court's judgment with respect to classification of property as marital or separate and with respect to division of marital property, including treatment of retirement accounts, the Ford Mustang automobile, and other personal property. We remand to permit the trial court to clarify and, if necessary, correct its judgment. In

revisiting these issues on remand, the trial court shall specify in its judgment the dates it employs to define the meaning of "during the marriage" for purposes of R.C. 3105.171. If it is the trial court's intent to employ dates other than those specified under R.C. 3105.171(A)(2)(a) to constitute "during the marriage," the court shall clarify whether it determined that utilizing the R.C. 3105.171(A)(2)(a) dates would be inequitable and also specify under R.C. 3105.171(A)(2)(b) any alternative dates it employs.

{¶ 44} 2. As discussed under assignment of error No. 4, we reverse the trial court judgment with respect to the amount of appellee's child support obligation and remand this matter to the trial court with instructions to recalculate appellee's gross income for purposes of his child support obligation by using appellee's base pay of $71,281.60 and adding a yearly average of all overtime income received in 2009, 2010, and 2011 as provided under R.C. 3119.05(D)(1) in making a child support award.

{¶ 45} 3. As discussed under assignment of error No. 5, we reverse the trial court judgment to the extent it awarded the children's federal income tax exemptions to appellee and remand the matter to the trial court to permit the court to consider factors under R.C. 3119.82 and to make a determination of the best interests of the children in making the award.

{¶ 46} 4. As discussed under assignment of error No. 6, we reverse the trial court's judgment with respect to the sum appellant is to pay as her share of Mr. Kimmelman's fee. We remand with instructions for the trial court to amend its judgment

to provide that appellant shall reimburse appellee for one-half of Attorney Kimmelman's fee, the same being $200, on or before sixty days.

{¶ 47} In all other respects, the trial court judgment is affirmed. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed, in part,
and affirmed, in part.

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

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE