**[Cite as *Bigelow v. Bigelow*, 2014-Ohio-994.]**

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

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| Laura B. Bigelow | Court of Appeals No. L-13-1018 |
| Appellant | Trial Court No. DR2011-0538 |
| v. | |
| Robert J. Bigelow | **DECISION AND JUDGMENT** |
| Appellee | Decided: March 7, 2014 |

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Clint M. McBee, for appellant.

Sheldon M. Slaybod and Fritz Byers, for appellee.

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**PIETRYKOWSKI, J.**

**{¶ 1}** Plaintiff-appellant, Laura B. Bigelow, appeals the February 6, 2013 judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, which granted her and appellee, Robert J. Bigelow, a divorce, divided the parties' marital

and separate property, and awarded child support. Because we find that the trial court did not abuse its discretion, we affirm.

**{¶ 2}** Appellant filed her complaint for divorce on May 24, 2011. Appellant requested that she be named residential parent and legal custodian of the two minor children, that she be granted child and spousal support, and that the court equitably divide the parties' real and personal property. On June 23, 2011, appellee filed his answer and counterclaim for divorce. Appellee also requested that he be designated the residential parent and legal custodian or, alternatively, that shared parenting be ordered and that child support be calculated according to the state guidelines. Appellee also requested an equitable division of the assets.

**{¶ 3}** A partial settlement was reached prior to the start of the trial. The parties agreed to a divorce on the grounds of incompatibility. Appellant was designated the residential parent and legal custodian of the minor child (one of the children reached the age of majority prior to trial) and the parties would have equal, alternating weekly parenting time.

**{¶ 4}** The trial commenced on December 6, 2012, with the remaining issues of the disposition of the marital home with a stipulated value of $175,000 and mortgage balance of $15,909.98, appellant's pension, the value of appellee's construction business, and child and spousal support.

**{¶ 5}** Appellant testified regarding her employment and inclusion in the state retirement system which she began paying into in 1990. Regarding the pension,

appellant stated her desire to maintain the full value in exchange for appellee keeping the full value of his business. She explained that she believed that appellee's business was valuable due to his 27 years of experience and large client base. Appellant acknowledged that the "fixed" assets included appellee's tools and work truck and his client list. Appellant testified that she believed that appellee worked for his father from when they began dating until approximately one month after she commenced the divorce action. She stated that after she filed for divorce, appellant became a self-employed contractor and worked fewer hours.

**{¶ 6}** Appellant did acknowledge that appellee received most of his tools as a gift from his father or that she purchased many of them as birthday or Christmas gifts. Appellant testified regarding the allocation of household expenses. She stated that appellee pays the mortgage and home and auto insurance.

**{¶ 7}** Appellant testified that she desired to remain in the marital home until their minor son graduates from high school (approximately four years). She requested that after that time, the home be sold and the parties split the proceeds. Regarding their first home, appellant acknowledged that it was purchased in 1991, two weeks prior to their marriage, for $38,000 with the funds being provided by appellee's parents. In 1994, the home was sold to appellee's brother for $70,000. This sum was used to purchase the home at issue.

**{¶ 8}** Appellant stated that she was requesting child and spousal support. Appellant stated that after paying for the children's health insurance and other expenses,

she has no funds to continue to raise the children. Appellant did acknowledge that appellee will have the children half of the time and will be paying their expenses. She also acknowledged that she earns more money than appellee and that, after the divorce is final, appellee will have to pay for his own health insurance.

**{¶ 9}** Appellee testified regarding his employment history stating that he worked as a self-employed independent contractor with his father and brother for a number of years. As of 2011, appellant began working on his own and developing his own client base. Appellee testified that as of the date of trial, his net income for 2012 was $25,209. Appellee testified that his initial tools were gifted by his father and that his business has no monetary value.

**{¶ 10}** Regarding the home purchased in 1991, appellee testified that he purchased it without funds from appellant. On the date of purchase, the home was not habitable; appellee, his father and brother made improvements to the home before the parties moved in. Appellee stated that appellant did not financially contribute to the renovation. Appellee similarly testified that they sold the property for $70,000 and used the proceeds to purchase their current home. Appellee testified that he desires to buy out appellant's interest in the home and that he does not want her to remain in the home for four years.

**{¶ 11}** Appellee was questioned regarding his payments into Social Security which did not begin until 1995. Appellee reviewed his benefits summary which was admitted into evidence and noted that at age 67, his benefits would be $956 per month. Appellee stated that he is not enrolled in any other retirement programs.

**{¶ 12}** On December 11, 2012, the court issued its decision. On January 28, 2013, after correspondence between the parties' counsel, appellee filed a motion requesting that the final judgment entry of divorce be filed without the signatures of appellant and her attorney. The final entry of divorce was entered on February 6, 2013. The court incorporated the partial settlement finding that it was fair and equitable. As to the disputed issues, the court first found that appellant failed to present any evidence in support of a spousal support award under R.C. 3105.18, and summarily denied the request.

**{¶ 13}** Regarding child support, the court noted the stipulation that appellant would be named the residential and custodial parent of their minor son and that both children (18 and 14 on the date of the entry) would spend alternating weeks with each parent. The court also noted that appellant's income is significantly higher than appellee's. The court then awarded appellee monthly child support of $365.48. The calculation was based on a 50 percent downward deviation from the child support guidelines in light of the equal parenting times.

**{¶ 14}** The court then addressed the relative interests in the marital home. The court awarded appellee a separate property interest of $38,000, based on his purchase of the first home. The court noted that the evidence failed to establish that the $42,000 profit from the sale of the home was a result of appellee's separate efforts. The court then acknowledged the parties' stipulation of the $175,000 value of the current home and $15,909 mortgage balance. The court then determined the parties' respective monetary

interests in the home and ordered that, within 60 days either party could buy out the other's interest. If no buy-out was effectuated, the house was to be sold and the proceeds divided.

**{¶ 15}** The court next determined that appellee was entitled to 50 percent of appellant's pension. The court then ordered that the parties prepare and file a division of property order as to the value and respective allocation of appellant's pension. The court further found that because appellant failed to provide any evidence of the value of appellee's business, it would be deemed to have no monetary value and appellee was awarded it in total. This appeal followed.

**{¶ 16}** Appellant raises four assignments of error for our review:

1. The trial court erred as a matter of law by granting child support to the defendant after designating plaintiff the residential and custodial parent of their son.

2. The trial court erred as a matter of law by granting defendant/ appellee a separate property interest of $38,000 in the martial home.

3. The trial court erred as a matter of law by denying appellant's request to award her spousal support.

4. The trial court erred as a matter of law by dividing appellant's government pension without previously determining its true value and whether or not a 50/50 division would be equitable.

**{¶ 17}** Appellant's first assignment of error challenges the trial court's award of child support to appellee. Specifically, appellant contends because there is no shared parenting plan, appellant, as the sole residential parent and legal custodian, should not be ordered to pay child support because the court did not make the necessary "best interest" finding. Appellee counters that the lack of a shared parenting agreement is immaterial and that because appellant makes nearly double appellee's salary and they have equal parenting time, the award was proper.

**{¶ 18}** We note that absent an abuse of discretion, a child support award will not be disturbed on appeal. *Dunbar v. Dunbar*, 68 Ohio St.3d 369, 371, 627 N.E.2d 532 (1994). An abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

**{¶ 19}** The arguments regarding this assignment of error center on a decision from this court wherein we affirmed an award of child support to the noncustodial parent. *Prusia v. Prusia*, 6th Dist. Lucas No. L-02-1165, 2003-Ohio-2000. In *Prusia*, the trial court named the father the residential parent and legal custodian yet ordered him to pay child support. *Id.* at ¶ 25. We found that the court erred only as to the method of calculating the support; the court used the shared parenting form where there was no shared parenting agreement. *Id.* We specifically ruled that "it is proper for a trial court to order a custodial parent to pay child support to the noncustodial parent where the parents have equal time with the child." *Id.* at ¶ 32.

**{¶ 20}** In the present case, the parties stipulated that appellant would be named the residential parent and legal custodian. They further agreed that the children would spend equal time with each parent. The trial court, pursuant to the Ohio Child Support Guidelines (not the shared parenting form as in *Prusia*), calculated that based upon the income of the parties the monthly support obligation was $716.72. The court then deviated downward by 50 percent in order to represent the time spent with each parent. The court concluded that the amount be ordered "by virtue of the parties' equal time sharing arrangement, the parties' incomes and the needs and expenses of the parties and their children."

**{¶ 21}** Upon review, we find that the trial court did not abuse its discretion when it ordered that appellant pay child support to appellee. Appellant's first assignment of error is not well-taken.

**{¶ 22}** In appellant's second assignment of error, she disputes the trial court's award of $38,000 as appellee's separate property interest in the parties' first home. Appellate review of a trial court's classification of property as marital or separate is based upon a determination of whether the classification is against the manifest weight of the evidence. *Steward v. Steward,* 6th Dist. Wood No. WD-01-058, 2002-Ohio-3700, ¶ 31; *James v. James*, 101 Ohio App.3d 668, 684, 656 N.E.2d 399 (2d Dist.1995). Where a classification is supported by some competent credible evidence in the record, it will not be reversed as against the manifest weight of the evidence. *See C.E. Morris Co. v. Foley Const. Co.,* 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

**{¶ 23}** As set forth above at trial, appellee testified that he purchased the home prior to the parties' marriage and used $38,000 that, at least in part, his father gifted him. Appellant agreed that she did not contribute any funds. The documents presented show that appellee purchased the property alone. Based on the foregoing we find that there was competent evidence that the $38,000 was appellee's separate property. Appellant's second assignment of error is not well-taken.

**{¶ 24}** In her third assignment of error, appellant contends that the trial court abused its discretion by denying her request for spousal support. Specifically, appellant argues that the court erroneously refused to even consider whether an award was warranted under the factors enumerated in R.C. 3105.18.

**{¶ 25}** Trial courts have broad discretion in making spousal support awards. *Schultz v. Schultz*, 110 Ohio App.3d 715, 723-724, 675 N.E.2d 55 (10th Dist.1996). We cannot say that the failure to consider each factor under R.C. 3105.18 was an abuse of the court's discretion based on the disparity in the parties' incomes, the fact that appellant has medical insurance, and the fact that the parties have equal parenting time. Accordingly, appellant's third assignment of error is not well-taken.

**{¶ 26}** In appellant's fourth and final assignment of error she argues that the trial court erred in awarding an equal division of her pension without first determining the value. A trial court's property award is within its discretion. *Cherry v. Cherry*, 66 Ohio St.2d 348, 355, 421 N.E.2d 1293 (1981).

**{¶ 27}** In divorce proceedings, the trial court must divide marital property equitably between the spouses. R.C. 3105.171(B). This includes retirement benefits that were acquired during the marriage. R.C. 3105.171(A)(3)(a)(ii). In dividing pension benefits, an equal division is presumed to be an equitable division. *Layne v. Layne*, 83 Ohio App.3d 559, 564, 615 N.E.2d 332 (2d Dist.1992).

**{¶ 28}** Regarding her pension, during trial appellant stated: "I am requesting that my pension be left alone and left undivided being that Joe's business is also a marital asset, and I have proposed Joe retaining his business, and I retain my pension, and we'd go our separate ways." The court ultimately determined that the business had no value. Other than appellant's desire to keep her pension benefits while allowing appellee to retain his business, she failed to rebut the presumption that an equal division of the pension was equitable. Appellant's fourth assignment of error is not well-taken.

**{¶ 29}** On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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