

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

John P. Fraim, III,	:	
	:	
Plaintiff-Appellant/ [Cross-Appellee],	:	
	:	
v.	:	No. 11AP-1129 (C.P.C. No. 09DR-10-3902)
	:	
Elizabeth A. Fraim,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee/ [Cross-Appellant].	:	

D E C I S I O N

Rendered on August 2, 2012

Edward F. Whipps and Associates, and Edward F. Whipps,
for appellant/cross-appellee.

Wolinetz Law Offices, LLC, and Barry H. Wolinetz, for
appellee/cross-appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations

TYACK, J.

{¶ 1} John P. Fraim, III ("John") and Elizabeth A. Fraim ("Elizabeth") are both appealing from the terms of their decree of divorce. John assigns five errors for our consideration:

1. The Trial Court erred to the prejudice of Mr. Fraim and abused its discretion by dividing the parties' assets in an unreasonable and inequitable fashion due to typographical errors that made the division appear to be not only equitable, but almost exactly equal.

2. The Trial Court erred to the prejudice of Mr. Fraim, abused its discretion, and rendered a decision which is against the manifest weight of the evidence in determining Mr. Fraim's income.

3. The Trial Court erred to the prejudice of Mr. Fraim, abused its discretion, and rendered a decision which was against the manifest weight of the evidence in determining Ms. Fraim's income.

4. The Trial Court erred to the prejudice of Mr. Fraim and abused its discretion in holding that Mr. Fraim should pay spousal support in an amount equal to 66% of his actual income and providing Ms. Fraim with over 75% of the parties' joint income.

5. The Trial Court erred as a matter of law, abused its discretion, and rendered a decision which is against the manifest weight of the evidence in determining the parties' incomes under RC§3119.01 and using improper figures for the purpose of calculating Mr. Fraim's child support obligation.

{¶ 2} Elizabeth assigns a single cross-assignment of error:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DID NOT EQUALLY ALLOCATE THE MARITAL CREDIT CARD DEBT AS STIPULATED BY THE PARTIES.

{¶ 3} The Fraims were married on November 24, 1991. They have two children, one of whom was emancipated as of the date of their divorce, and a second who was 18 but still in high school.

{¶ 4} The parties separated during the summer of 2006 but no divorce action was filed until October 2009.

{¶ 5} The trial of their divorce case did not begin until June 2011. After a two-month break, the trial resumed. Based upon the evidence presented, especially an extended set of stipulations, a decree of divorce was prepared and filed. The decree was journalized November 23, 2011.

{¶ 6} The decree of divorce contained a chart of the assets and liabilities of the parties. Based upon that chart, the trial court attempted to divide the marital assets

equally. Unfortunately the chart of assets and liabilities contains a number of errors, a fact acknowledged by both parties to the divorce and asserted in a number of assignments of error. Because of these errors, the trial court did not succeed in doing what it was trying to do, namely divide the marital assets equitably and almost equally.

{¶ 7} We, as an appellate court, are not in position to determine the intentions of the trial court with respect to specific assets. We, therefore, have no alternative to vacating the property settlement portions of the divorce decree and remanding the case to the trial court to re-allocate portions of the marital property awards, possibly portions of the non-marital property awards, and the marital debt. We, therefore, sustain John's first assignment of error and Elizabeth's single cross-assignment of error.

{¶ 8} A revised division of marital and non-marital property could, and in all likelihood would, affect change to the court's view of the income of either or both of the parties. A change in the trial court's assessment of the respective income of the parties could change the trial court's view of what constitutes appropriate spousal support and what constitutes appropriate child support for the brief time the younger child was still in high school and the basis for a child support order.

{¶ 9} We note that the statutory framework for awarding spousal support and child support requires that property issues be considered by the trial court as a part of the determination of appropriate support orders. For this reason also, the spousal support and child support orders in the decree of divorce are vacated and the case is remanded for a new determination of appropriate spousal support and child support.

{¶ 10} We do not know what the trial court's view of the income of the respective parties after the revisions of the property awards, including the awards of individual income-producing accounts will be. We, therefore, view our ruling on John's first assignment of error and Elizabeth's single assignment of error as rendering the remaining assignments of error moot.

{¶ 11} On review, we sustain John's first assignment of error and Elizabeth's cross-assignment of error. Those rulings render the remaining assignments of error moot. We vacate the trial court's decree with respect to its division of property, spousal support and child support. We remand the case to the Franklin County Court of Common Pleas, Division of Domestic Relations to enter new orders with respect to property division and,

based upon those orders, to enter new orders with respect to spousal support and child support.

*Judgment vacated and remanded
with instructions.*

KLATT and CONNOR, JJ., concur.
