

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

John P. Fraim, III,	:	
Plaintiff-Appellee,	:	
v.	:	No. 13AP-31 (C.P.C. No. 09DR10-3902)
Elizabeth A. Fraim,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on August 27, 2013

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*Edward F. Whipps and Associates, Edward F. Whipps and Jessica M. Wood*, for appellee.

*Wolinetz Law Offices, LLC, and Barry H. Wolinetz*, for appellant.

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

McCORMAC, J.

{¶ 1} Since this case involves the second appeal to this court in a relatively short period of time that addresses issues relating to disposition of assets and liabilities, we will briefly trace the history, as our decision and remand in the first appeal is of major relevance in this appeal. In doing so, we will refer to Elizabeth A. Fraim as "wife" and John P. Fraim, III, as "husband." (It would be confusing to refer to them as appellant or appellee because these identities change.)

{¶ 2} The first appeal was by husband asserting five errors of the trial court in ascertaining the value of assets and in the distribution thereof to wife and husband. The

wife asserted a single cross-assignment of error pertaining to allocation of marital credit card debt, also relating to distribution of assets.

{¶ 3} In the first appeal, this court sustained husband's first assignment of error and wife's cross-assignment of error, vacated the judgment and remanded with instructions. Since the decision is short and to the point, we are attaching it as Appendix A.

{¶ 4} This appeal, the second appeal, is by the wife raising two assignments of error, both of which relate to the distribution of assets by the trial court to comply with this court's remand instructions.

{¶ 5} Those assignments of error are as follows:

**ASSIGNMENT OF ERROR ONE**

**THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DID NOT USE THE STIPULATED VALUE OF THE MARITAL UBS IRA RETIREMENT ACCOUNT #1568.**

**ASSIGNMENT OF ERROR TWO**

**THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT ALLOCATED APPELLEE'S UBS CREDIT LINE AS MARITAL PROPERTY AND NOT AS APPELLEE'S SEPARATE PROPERTY.**

{¶ 6} While in essence wife agrees that it was within the discretion of the trial court to make the altered determinations, she asserts that the correction, in light of the trial court's prior holdings and stipulations, was not sufficiently explained, making the changes unjust and contrary to law.

{¶ 7} In order to consider the two assignments of error, it is important that we turn to our decision in the first appeal in regard to the intent of the trial court in arriving at the distribution of assets. In paragraph six of our first decision, we held as follows:

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.

*Fraim v. Fraim*, 10th Dist. No. 11AP-1129, 2012-Ohio-3474, ¶ 6.

{¶ 8} Additionally, in paragraph seven, we held that, "as an appellate court, we are not in position to determine the intentions of the trial court with respect to specific assets" but, instead, are "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." Finally, in paragraph eleven, we vacated "the trial court's decree with respect to its division of property, spousal support and child support" and remanded the case to the trial court "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."

{¶ 9} Upon remand, the trial court corrected the mistakes in the charts that it used which had resulted in a failure to divide the marital assets equally between wife and husband. The trial court then changed two of the allocations resulting in an almost equal division.

{¶ 10} In the first appeal, we held that the husband got the short end of the stick so far as the equitable division of assets were concerned and we sustained his first assignment of error in this regard. We also sustained wife's cross-assignment of error which addressed the equal allocation of marital credit-card debt.

{¶ 11} The marital credit-card debt allocation was rectified by the trial court and is not a subject of appeal.

{¶ 12} The first assignment of error concerns the trial court's determination of the value of husband's UBS IRA account ending in No. 1568. The parties' joint stipulations set the value of that IRA at \$103,641, which was used by the trial court for purposes of division of assets. Upon remand, the trial court applied its equitable discretion and found the value of the account was \$53,502 and divided it equally between the parties based on that value. There was no specific reason given by the trial court for the alteration of that item, as opposed to possible changes of other items, to equalize the allocation of assets among the parties. It would be speculation to attach any illicit intent. The trial court was simply using its equitable power based on our remand instructions to select changes in

allocation of items to result in the equitable and equal distribution of assets. Our remand instructions in the first appeal left that determination to the discretion of the trial court to achieve the final result of equality. The stipulation of the parties in regard to the value of the asset at a particular time does not bind the trial court in discretionary determinations of re-allocations of assets of various natures to achieve its intent of equal distribution.

{¶ 13} The first assignment of error is overruled.

{¶ 14} The same reasoning applies to the trial court's allocation of husband's UBS credit line as marital property and not as husband's separate property. It was the additional item needed to equitably distribute the assets. Choosing among the various items advanced by each side as to how each would like the court to exercise its discretion to achieve equality is a matter within the discretion of the trial court to comply with our order contained in the remand. It is apparent from determinations we made in the first appeal that we had no intent to deprive the trial court of its discretion to choose the ones that it felt were equitable. We find no abuse of discretion.

{¶ 15} These changes and allocation of marital and non-marital assets and liabilities to achieve intended equality between the parties needed no extra explanation by the trial court. The reason the trial court made the changes was to comply with our mandate as is apparent from our succinct and understandable decision. We note that as a result of the changes of two items, the trial court made contingency determinations with respect to spousal support and child support, none of which have been appealed.

{¶ 16} The second assignment of error is overruled.

{¶ 17} Accordingly, the wife's two assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

*Judgment affirmed.*

KLATT, P.J., and SADLER, J., concur.

McCORMAC, J., retired, of the Tenth Appellate District,  
assigned to active duty under authority of Ohio Constitution,  
Article IV, Section 6(C).

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**APPENDIX A**

**IN THE COURT OF APPEALS OF OHIO**

**TENTH APPELLATE DISTRICT**

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

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**D E C I S I O N**

**Rendered on August 2, 2012**

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**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.**

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

**TYACK, J.**

**{¶ 18} 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.

{¶ 19} 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.

{¶ 20} 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.

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

{¶ 22} 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.

{¶ 23} 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.

{¶ 24} 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.

{¶ 25} 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.

{¶ 26} 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.

{¶ 27} 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.

{¶ 28} 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.

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