

[Cite as *Beagle v. Beagle*, 2009-Ohio-6570.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Janice R. Beagle,	:	
	:	
Plaintiff-Appellee/ Cross-Appellant,	:	
	:	
v.	:	No. 09AP-353 (C.P.C. No. 06DR-04-1609)
	:	
Peter F.J. Beagle,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant/ Cross-Appellee.	:	

D E C I S I O N

Rendered on December 15, 2009

Thomas E. Friedman, for appellee/cross-appellant.

Tyack Blackmore & Liston Co., L.P.A., and *Thomas M. Tyack*, for appellant/cross-appellee.

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

FRENCH, P.J.

{¶1} Defendant-appellant, Peter F.J. Beagle, appeals the amended judgment entry/decreed of divorce issued by the Franklin County Court of Common Pleas, Division of Domestic Relations. Plaintiff-appellee, Janice R. Beagle, cross-appeals the same judgment.

{¶2} The trial court terminated Peter and Janice's 37-year marriage in a judgment entry/decree of divorce ("original divorce decree") filed on May 10, 2007. Peter appealed that judgment, asserting 14 assignments of error. This court sustained, at least in part, two assignments of error. We remanded the matter to the trial court to re-examine the property division and to modify the court's award of spousal support and attorney fees, if necessary. See *Beagle v. Beagle*, 10th Dist. No. 07AP-494, 2008-Ohio-764, ¶53, 54, 59.

{¶3} On remand, the trial court issued a pre-trial order, which indicated the scope of the remand and the evidence to be presented. Notably, the court limited the issues on remand to the following: (1) the value of Janice's State Teachers Retirement System ("STRS") account; (2) the value of Peter's survivorship interest in Janice's STRS account; (3) the value of Peter's Public Employee Retirement System ("PERS") account and the issue of whether it is a marital asset; (4) the value of each party's Social Security interest; (5) division of all marital property; and (6) the issue of whether either party should pay spousal support. The trial court ordered that all assets were to be valued as of February 1, 2007, the first day of the original trial and the termination date of the parties' marriage. Neither party objected to, or sought reconsideration of, the pre-trial order. A remand hearing was held on February 12, 2009, during which both Janice and Peter testified and each party submitted an expert report and deposition testimony regarding the values of the parties' retirement accounts.

{¶4} On March 9, 2009, the trial court issued an amended judgment entry/decree of divorce ("amended divorce decree") pursuant to this court's remand.

Peter appealed, and he asserts the following assignments of error:

I. THE TRIAL COURT ERRED IN FINDING THAT [PETER'S PERS] PENSION HAS A VALUE OF \$398,235.94 BASED ON [JANICE'S] EXPERT TESTIMONY GIVEN THE FINDING IS CONTRARY TO THE PROVISIONS OF O.R.C. §145.361, ET SEQ. AND THE APPROPRIATE MORTALITY TABLE WAS NOT USED.

II. THE TRIAL COURT ERRED IN ITS FINDING THAT [JANICE'S] STRS HAS A VALUE OF \$965,882.72 BASED ON [JANICE'S] EXPERT TESTIMONY GIVEN THE FACT THAT THAT VALUE WAS BASED ON A SURVIVORSHIP BENEFIT TO [PETER] EXISTING AND THE TRIAL COURT ORDERED THAT THE SURVIVORSHIP BENEFIT BE ELIMINATED.

III. THE TRIAL COURT ERRED IN REFUSING TO ALLOW [PETER] TO PRESENT EVIDENCE AS TO INCONSISTENCIES AS TO VALUES OF MARITAL PROPERTY INCORPORATED INTO THE ORIGINAL [DIVORCE DECREE] AND THEN INCORPORATING THE INCORRECT VALUES INTO THE AMENDED [DIVORCE DECREE].

IV. THE TRIAL COURT ERRED IN REFUSING TO ALLOW [PETER] TO PRESENT EVIDENCE OF [JANICE'S] REFUSAL TO COMPLY WITH PREVIOUS ORDERS AS TO MORTGAGE AND TAX PAYMENTS ON MARITAL REAL ESTATE AND THE AMOUNT [PETER] WAS DUE AS A RESULT OF BEING REQUIRED TO PAY THE MORTGAGE AND TAXES TO PRESERVE THE MARITAL ASSETS.

VI. THE TRIAL COURT ABUSED ITS DISCRETION IN ITS PROPERTY DIVISION BY UTILIZING INVALID VALUATION AS TO ASSETS AND REFUSING TO CONSIDER EXPENDITURES BY [PETER] TO PRESERVE MARITAL ASSETS.

VII. THE TRIAL COURT ERRED IN REFUSING TO AWARD [PETER] SPOUSAL SUPPORT AND REQUIRING [PETER] TO CONTRIBUTE TO [JANICE'S] ATTORNEY FEES GIVEN [PETER'S] TOTAL DISABILITY AND THE ALLOCATION OF ASSETS.

{¶5} Janice cross-appealed, and she raises the following cross-assignments of error:

I. THE TRIAL COURT ERRED TO THE PREJUDICE OF [JANICE] BY FAILING TO CONFINE ITSELF TO THE REMAND ORDER AND REVALUING PREVIOUSLY VALUED PROPERTY.

II. THE TRIAL COURT ERRED BY EXCEEDING THE SCOPE OF ITS OWN PRE-TRIAL ORDER AND REVALUING PROPERTY PREVIOUSLY VALUED AT THE ORIGINAL TRIAL.

III. THE TRIAL COURT ERRED IN FINDING THAT [PETER'S] WHOLE LIFE INSURANCE POLICY WAS WORTH A NEGATIVE \$21,000.00.

{¶6} All of the parties' assignments and cross-assignments of error relate to the trial court's authority on remand. The doctrine of law of the case provides that the decision of a reviewing court remains the law of that case on the legal questions involved for all subsequent proceedings in the case, both at the trial and reviewing levels. *DeAscentis v. Margello*, 10th Dist. No. 08AP-522, 2008-Ohio-6821, ¶12, citing *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3. Moreover, when an appellate court remands a case for a limited purpose, the trial court must accept all issues previously adjudicated as finally settled. *Cugini & Capoccia Builders, Inc. v. Ciminello's, Inc.*, 10th Dist. No. 06AP-210, 2006-Ohio-5787, ¶32, citing *Blackwell v. Internatl. Union, U.A.W.* (1984), 21 Ohio App.3d 110, 112. See also *Flynn v. Flynn*, 10th Dist. No. 03AP-612, 2004-Ohio-

3881, ¶16 ("[a] remand for further *proceedings* should not be interpreted as a remand for further *hearings* where no further hearings would have been required from the point of error forward") (emphasis sic); *Orrville Prods., Inc. v. MPI, Inc.* (June 9, 1994), 8th Dist. No. 65184 ("[o]n remand, a trial court must obey the mandate of the court of appeals[,] * * * [t]he order of remand restores the trial court with jurisdiction to carry out the directive of the court of appeals").

{¶7} In her cross-appeal, Janice argues that the trial court erred by making findings concerning Peter's AXA life insurance policy. Specifically, the court found that a loan of \$21,000 existed against the policy and recognized the loan as marital debt. On the spreadsheet attached to the amended divorce decree, the court stated no value for the life insurance policy, but listed the loan against the policy as a \$21,000 liability. On the statement attached to the original divorce decree, however, the trial court stated the value of the policy as \$6,500 and listed no corresponding liability. We agree with Janice that the re-valuation of the AXA life insurance policy was beyond this court's mandate, and the trial court had no authority to change its original valuation. Therefore, we sustain Janice's first, second, and third cross-assignments of error to the extent that they challenge the trial court's re-valuation of the life insurance policy, and we remand this matter to the trial court to reinstate its original valuation for that policy and to make any adjustments to the property division and spousal support determinations necessitated by the reinstated value.

{¶8} We now turn to Peter's assignments of error, the first two of which deal with the trial court's valuation of the parties' PERS and STRS retirement accounts.

Having not allowed testimony with respect to the values of those accounts in the original trial, the trial court heard evidence of those values for the first time on remand, as set forth in the pre-trial order.

{¶9} By his first assignment of error, Peter asserts that the trial court erred by finding that his PERS account has a present value of \$398,235.94, based on the deposition testimony of Janice's expert, Heather L. Stoll, of QDRO Consultants/Pension Evaluators ("QDRO Consultants"). Stoll testified as to reports valuing the parties' retirement accounts prepared by another QDRO Consultants employee under Stoll's direction and supervision. Peter argues that the trial court's acceptance of the value assigned to his PERS account by Stoll and QDRO Consultants is contrary to the evidence and contrary to law.

{¶10} The evidence going to the value of Peter's PERS account included the deposition testimony of Stoll and of Peter's expert, Herbert D. Greff, along with their respective reports. Greff assigned Peter's PERS account a present value of \$183,367, while Stoll assigned Peter's PERS account a present value, as of February 1, 2007, of \$398,235.94. Both experts testified as to the basis for their valuations and about alleged errors or deficiencies in the other's calculations. The trial court concluded that greater weight should be attributed to the value assigned by Stoll based, in part, on perceived deficiencies in Greff's analysis, including Greff's admitted failure to evaluate the parties' retirement accounts as of February 1, 2007, as directed in the pre-trial order.

{¶11} A trial court has broad discretion to determine the value of marital property, and its determination will not be disturbed on appeal absent an abuse of that

discretion. See *Hess v. Riedel-Hess*, 153 Ohio App.3d 337, 2003-Ohio-3912, ¶26; *Boyles v. Boyles*, 11th Dist. No. 2000-P-0072, 2001-Ohio-4303. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶12} "[A] trial court does not abuse its discretion in determining the value of a marital asset when it employs the values provided by the parties." *Boyles*, citing *Helms v. Helms* (Apr. 1, 1998), 9th Dist. No. 97CA0008. Moreover, when expert testimony is admitted as to property values, the court may believe all, part or none of the expert's testimony. *Boyles*, citing *Baker v. Baker* (Apr. 7, 1997), 12th Dist. No. CA96-10-216.

{¶13} Peter contends that there are "two major errors" in Stoll's valuation of his PERS account. First, Peter argues that Stoll erred by including the years in which Peter receives a disability allowance, up to age 65, in his service credit for purposes of calculating his age and service retirement benefit, which will begin at age 65. Peter contends that the use of those years as part of his total service credit is contrary to statutory provisions governing PERS, although he does not cite any statute excluding time on disability from service credit. The only statutory section cited by Peter, R.C. 145.361, details the calculation of a disability allowance and when a disability allowance terminates. Subsection (C)(3) of that section states that a disability allowance that commences before a recipient attains age 60 will end, if not terminated sooner for specific reasons, upon the last day of the month in which the recipient attains age 65. Neither R.C. 145.361 nor the PERS letter attached to Stoll's deposition, a letter Peter

cites, provides any guidance as to whether the time during which a disability allowance is received may be counted as part of the recipient's service credit for purposes of a subsequent age and service retirement. In accordance with R.C. 145.361, the PERS letter simply states that Peter's disability allowance may continue through May 31, 2014, the month in which he will turn 65, at which time he will be eligible to convert to an age and service retirement.

{¶14} R.C. 145.331 provides that a disability recipient who is subject to the termination of his disability allowance, pursuant to R.C. 145.361(C)(3), may apply for an age and service retirement. R.C. 145.331(B) states that the annual allowance payable as age and service retirement may include "[a]n allowance calculated by multiplying the applicant's total service credit, *including service credit for the last continuous period during which the applicant received a disability benefit under section 145.361 of the Revised Code*, by two and two-tenths per cent of the applicant's final average salary, except that the allowance shall not exceed forty-five per cent of the applicant's final average salary." (Emphasis added.) Additionally, the PERS Disability Benefits Resources for Retirement brochure admitted into evidence states that, under the revised plan applicable to Peter, the amount of the age and service retirement benefit available after termination of a disability allowance is the greater of "a) 2.2 percent of your [Final Average Salary] multiplied by your years of service (*contributing and disability*), not to exceed 45 percent of [Final Average Salary]; or b) the regular or law enforcement benefit calculation, using only your years of contributing service." (Emphasis added.) Thus, contrary to Peter's assertion, it is not clear from the statutory

scheme alone that the period of time he receives a disability allowance cannot be considered in his service credit for purposes of calculating his age and service retirement benefit. Moreover, there is no evidence that Peter's regular benefit calculation, using only his years of contributing service, would be greater than the alternative calculation using both his contributing and disability years of service, subject to a 45 percent cap. Upon review, we cannot conclude that the trial court abused its discretion in crediting Stoll's testimony simply because the QDRO Consultants valuation considered Peter's years of disability allowance in making its calculations.

{¶15} The other error that Peter alleges with respect to Stoll's valuation is the use of a mortality table applicable to a person on disability not receiving Social Security disability benefits. Peter contends that Stoll should have utilized a mortality table for a person on disability receiving Social Security benefits, a table that would have undisputedly lowered Peter's life expectancy and, consequently, lowered the present value of his PERS account. Although Peter presently receives Social Security disability benefits, and received those benefits as of the date of the remand hearing, the record indicates that he was not receiving Social Security disability benefits on February 1, 2007, the valuation date ordered by the trial court. Stoll expressly justified the choice of mortality table underlying the QDRO Consultants valuation because, at the relevant time, Peter was not receiving Social Security benefits. Accordingly, we discern no abuse of discretion in the court's acceptance of Stoll's valuation based on her choice of mortality table. For these reasons, we conclude that the trial court's valuation of Peter's

PERS account, consistent with Stoll's testimony, does not rise to an abuse of discretion, and we overrule Peter's first assignment of error.

{¶16} By his second assignment of error, Peter similarly contends that the trial court erred by finding that Janice's STRS account had a present value, as of February 1, 2007, of \$965,882.72, based on Stoll's testimony. As with Peter's PERS account, we review the trial court's valuation of Janice's STRS account under an abuse of discretion standard.

{¶17} The only evidence of the value of Janice's STRS account as of February 1, 2007 was Stoll's testimony and the underlying QDRO Consultants report, valuing the account, as of that date, at \$965,882.72. While Greff testified that the present value of Janice's STRS account was \$881,870, he admitted that he valued the parties' retirement accounts using the 30-year bond rate as of August 2008, not the rate in effect as of February 1, 2007. According to Greff, "the 30-year bond rate was considerably different in February of 2007." Greff Depo. 31. Although he testified that the use of the correct rate would have had only a "[m]inuscule" effect on the value, he also testified that, "[i]f I was called to the courtroom in February of '07, * * * the participants here would have been younger and, consequently, their life expectancy would have been different and the whole calculation would have changed." Greff Depo. 34, 31-32. The only other evidence as to the value of Janice's STRS account was a July 2006 report by QDRO Consultants that valued the account at \$1,065,838.91. Stoll testified that the approximately \$100,000 difference between the July 2006 report and the subsequent report resulted from changing interest rates, Janice's election of a joint-

and-survivorship payout upon her retirement, and Janice's receipt of retirement benefits in the interim.

{¶18} As with Peter's PERS account, the trial court was faced with competing expert testimony and was entitled to exercise its broad discretion in weighing the credibility of the witnesses to assign a value to Janice's STRS account. Not surprisingly, Peter does not argue that the trial court should have accepted his expert's valuation of Janice's STRS account because that value is lower and would have been less beneficial to Peter in the division of marital assets had the trial court awarded the STRS account to Janice. Rather, Peter suggests that the court should have inflated Stoll's \$965,882.72 value because at least some of the \$100,000 reduction from the earlier QDRO Consultants report was the result of Janice's selection of a joint-and-survivorship payout. Peter contends that the trial court should have utilized a value for Janice's STRS account without a survivorship interest because the court ordered the joint-and-survivorship provision removed. First, the trial court's amended divorce decree, although it awards Janice "her STRS pension free and clear of any claim by [Peter]," does not explicitly order Janice to terminate the joint-and-survivorship element of her pension. Moreover, the court ordered that the parties' retirement accounts be valued as of February 1, 2007, at which time the joint-and-survivorship interest was in effect, and the QDRO Consultants report valued Janice's STRS account accordingly, in compliance with the pre-trial order. Upon review, we discern no abuse of discretion in the trial court's adoption of QDRO Consultants' valuation of Janice's STRS account as of February 1, 2007. Accordingly, we overrule Peter's second assignment of error.

{¶19} Peter's third assignment of error states that the trial court erred when it refused to allow him to present evidence of inconsistencies between testimony as to the value of marital assets during the original trial, on the one hand, and the values assigned to those assets in the original divorce decree and subsequently incorporated into the amended divorce decree, on the other hand. When Peter attempted to testify on remand that the trial court's values in the original divorce decree were inconsistent with the trial testimony as to those values, Janice objected, arguing that Peter should have raised that argument on appeal and that Peter's argument was not within the scope of the remand. The court sustained the objection, and, as a result, Peter proffered an exhibit that, for various assets, listed the value testified to at trial, along with citations to the trial transcript, for comparison with the trial court's ultimate findings in the original divorce decree.

{¶20} The decision to admit or exclude evidence is subject to review under an abuse of discretion standard, and, absent a clear showing that the court abused its discretion in a manner that materially prejudices a party, we will not disturb the trial court's ruling. *Boggs v. The Scotts Co.*, 10th Dist. No. 04AP-425, 2005-Ohio-1264, ¶35, citing *Sidenstricker v. Miller Pavement Maintenance, Inc.*, 158 Ohio App.3d 356, 2004-Ohio-4653, ¶23, and *Krischbaum v. Dillon* (1991), 58 Ohio St.3d 58, 66.

{¶21} Peter argues that the trial court erred by excluding his evidence of inconsistencies because that issue was presented to this court in the prior appeal and was within the scope of our remand to the trial court. We disagree. In his first appeal, Peter argued that the trial court erred by failing to assign values to certain marital

assets, including Janice's STRS account, the parties' real property in Ohio and Florida, the parties' household goods and furnishings, and the parties' timeshare properties in Florida. Nowhere in his first appeal, however, did Peter argue that the trial court erred by assigning values to marital assets that were inconsistent with the testimony presented at trial. Accordingly, while our mandate on remand ordered the court to redistribute the marital property after valuing the remaining marital assets, it contained no suggestion that the trial court was free to take additional evidence with respect to the values of assets stated in the original divorce decree.

{¶22} Upon review, we discern no abuse of discretion in the trial court's decision to exclude evidence of inconsistencies that were not raised in Peter's initial appeal. Indeed, as with the life insurance policy at issue in Janice's cross-appeal, the trial court lacked authority to change its original valuations. The doctrine of the law of the case is not limited to the explicit determinations of a reviewing court, but also extends to determinations by a trial court that could have been appealed but were abandoned by a failure to do so. *Clymer v. Clymer* (Sept. 26, 1995), 10th Dist. No. 95APF02-239. For example, in *Moore v. Columbus* (1994), 98 Ohio App.3d 701, this court held that, where the trial court made a factual finding that the appellant failed to appeal in an initial appeal, the finding became the law of the case, and the appellant was not entitled to raise it in a subsequent appeal. Here, because Peter did not raise the issue of inconsistencies in his initial appeal, he was not entitled to litigate that issue on remand. For these reasons, we overrule Peter's third assignment of error.

{¶23} Because they involve nearly identical issues, we address Peter's fourth and fifth assignments of error together. By his fourth assignment of error, Peter argues that the trial court erred by excluding evidence of Janice's failure to comply with the original divorce decree with respect to her obligations for mortgage and tax payments on the marital real estate and by excluding evidence of Peter's resultant payments to preserve those assets. By his fifth assignment of error, Peter argues that the trial court abused its discretion in dividing the marital property based on its utilization of invalid values and its refusal to consider evidence of Peter's post-decree payments to preserve the marital assets.

{¶24} On remand, Peter attempted to present evidence of payments he made for mortgages, taxes, and insurance on the marital real estate from 2007 through 2009, in excess of his share under the original divorce decree. The trial court sustained Janice's objections to that evidence, later noting, "I think all the allegations that each of you are making on who didn't pay what since the [original] divorce decree are matters for contempt of court not for purposes of what the remand from the Court of Appeals instructed me to do." (Tr. 67-68.)

{¶25} The mandate from this court did not require the trial court to take additional evidence regarding events and actions subsequent to the original divorce decree. Rather, this court remanded, primarily, for the court to determine an equitable division of marital property after valuing those marital assets that were not assigned a value in the original divorce decree. We noted that a trial court must generally determine the value of marital assets in order to equitably divide the property. Our

primary concern was that, although the trial court ordered a nearly equal division of the property listed on the spreadsheet attached to the original divorce decree, it also awarded Janice her STRS account, which the court did not value, even though a withdrawn stipulation suggested that the STRS account was worth approximately \$1 million. We further stated that the trial court's property division did not appear equitable in light of the award of the significant STRS account to Janice. Therefore, we remanded for the trial court "to divide the marital property in accordance with applicable law, which would include assigning a value to the STRS account in that division."

{¶26} As with the original divorce decree, the property division on remand was to be based on the parties' status as of the termination of the marriage, February 1, 2007. In light of our mandate, the trial court stated that the effective date of the amended divorce decree, like the original divorce decree, was February 1, 2007. The trial court was not required to take additional evidence regarding the parties' compliance or non-compliance with the original divorce decree to satisfy this court's mandate, and we discern no abuse of discretion in the trial court's exclusion of such evidence, especially in light of the suggestion that the parties could present that evidence in connection with a post-decree motion for contempt. For this reason, and because we have already rejected Peter's contentions that the trial court utilized invalid valuations for marital assets, we overrule Peter's fourth and fifth assignments of error.

{¶27} In his final assignment of error, Peter contends that the trial court erred by refusing to award him spousal support and by requiring him to contribute to Janice's attorney fees. His argument under that assignment of error, however, concerns only the

trial court's denial of spousal support, and we, therefore, confine our discussion to the trial court's support determination.

{¶28} In the original divorce decree, after expressly considering the applicable factors set forth in R.C. 3105.18(C)(1), the trial court ordered Janice to pay Peter \$400 per month in spousal support until Peter's 62nd birthday, the death of either party, Peter's remarriage or the sale proceeds from the Whitehall, Ohio property paid off the line of credit on the Florida property. On remand, after assigning values to the remaining marital assets, including the parties' STRS and PERS accounts, and re-dividing the marital property, the trial court found that an award of spousal support was not reasonable or appropriate, in light of the nearly equal property division.

{¶29} Peter argues that the trial court erred in denying spousal support in the amended divorce decree because the court's conclusion that the property division was nearly equal was erroneous. Peter's argument under this assignment of error, however, cites no legal authority and identifies nothing in the record to support his contention that the trial court's finding was erroneous. Presumably, Peter bases this assignment of error, and his underlying contention, on the arguments raised in the preceding assignments of error. Having overruled Peter's first five assignments of error, rejected the arguments asserted therein, and reviewed the trial court's findings with respect to the statutory factors governing spousal support, we cannot conclude, on the record before us, that the trial court erred in denying spousal support. Nevertheless, we acknowledge that any recalculation of the property division necessitated by our remand

on Janice's cross-appeal may potentially affect the court's determination regarding spousal support. Therefore, Peter's sixth assignment of error is moot.

{¶30} In conclusion, we overrule Peter's first, second, third, fourth, and fifth assignments of error, conclude Peter's sixth assignment of error is moot, and sustain Janice's three cross-assignments of error to the extent stated in this decision. We therefore affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations. Further, we remand this matter with instructions for the trial court to reinstate its original value of \$6,500 for Peter's AXA life insurance policy and to undertake adjustments to its property division and determination of spousal support, if any, necessitated by that change.

*Judgment affirmed in part, reversed in part,
and cause remanded with instructions.*

BRYANT and KLATT, JJ., concur.
