

[Cite as *DeMarco v. DeMarco*, 2010-Ohio-445.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Cynthia D. DeMarco,	:	
Plaintiff-Appellee,	:	No. 09AP-405
v.	:	(C.P.C. No. 07DR-05-1972)
Peter F. DeMarco,	:	(REGULAR CALENDAR)
Defendant-Appellant,	:	
Pet Specialties, Ltd. et al.,	:	
Defendants-Appellees.	:	

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D E C I S I O N

Rendered on February 11, 2010

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*Solove and McCormick, Ronald L. Solove, Kerry L. McCormick, and Elizabeth M. Fischer, for appellee.*

*Mary Jo Cusack, for appellant.*

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

BROWN, J.

{¶1} Peter F. DeMarco, defendant-appellant, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, in which the court granted him a divorce from Cynthia D. DeMarco, plaintiff-appellee.

{¶2} Peter and Cynthia were married July 2, 1983. One child was born as issue of the marriage, and that child is emancipated. During the time of the marriage, one or

both of the parties were involved with and/or held interests in four business ventures, the details of which will be discussed infra: Pet Specialties, Inc. ("PSI"); Pet Specialties, Ltd. ("PSL"); Transport Container Corporation ("TCC"); and Detyzco, Inc. On May 14, 2007, Cynthia filed a complaint for divorce, naming Peter, TCC, PSL, and PSI as defendants. Cynthia dismissed PSL as a party February 5, 2008.

{¶3} On July 13, 2007, the magistrate issued a temporary order, pursuant to Civ.R. 75(N), ordering Peter to pay \$2,500 per month in temporary spousal support; \$5,000 for Cynthia's attorney fees; the mortgage, taxes, and insurance on the marital home, and the balances on his personal credit cards and the parties' joint credit cards. On July 26, 2007, Peter filed a motion for oral hearing on the Civ.R. 75(N) order, which was originally set for August 22, 2007. The matter was continued many times for various reasons, and was not heard until the date of the final hearing on January 30, 2009. On August 9, 2007, Cynthia filed a motion for contempt due to Peter's failure to comply with the court's temporary orders. On July 1, 2008, the parties filed an agreed entry indicating that the date of termination of the marriage for property evaluation purposes would be December 31, 2007.

{¶4} The final hearing on the matter commenced January 30, 2009. On March 26, 2009, the trial court issued a decision and judgment entry decree of divorce ("decree"). In the decree, the court identified the parties' marital and separate property and debt, divided the marital property and debt, awarded spousal support to Cynthia, denied Peter's motion with regard to the temporary orders, and found Peter guilty of contempt for failure to comply with the temporary orders. Specifically, the trial court found Peter's shares in PSI and Detyzco to be marital property and equally divided them

between the parties; found Cynthia's individual shares in PSI to be separate property; and found Peter's interest in TCC to be marital property, but awarded him all of those shares.

Peter appeals the judgment of the trial court, asserting the following assignments of error:

[I.] THE COURT ERRED AND ABUSED ITS DISCRETION IN DIVIDING THE SHARES OF PSI AND DETYZCO BETWEEN THE PARTIES RATHER THAN MAKING A DISTRIBUTIVE AWARD PURSUANT TO 3105.171(A) AND (E)(1) AND (2) O.R.C.

[II.] THE COURT ERRED AND ABUSED ITS DISCRETION IN FAILING TO COMPLY WITH THE AGREED ENTRY FINDING THE DATE OF TERMINATION OF MARRIAGE FOR PURPOSES OF PROPERTY VALUATION WAS DECEMBER 31, 2007.

[III.] THE COURT ERRED AND ABUSED ITS DISCRETION IN FAILING TO MAKE AN EQUAL OR EQUITABLE DIVISION OF THE PROPERTIES.

[IV.] THE COURT ERRED AND ABUSED ITS DISCRETION IN SUSTAINING THE TEMPORARY ORDER AWARD OF SPOUSAL SUPPORT, EXPENSE MONEY, AND PAYMENT OF DEBTS SET FORTH IN THE MAGISTRATE'S DECISION DATED JULY 11, 2007, AND IN ORDERING ADDITIONAL SPOUSAL SUPPORT.

[V.] THE COURT ERRED AND ABUSED ITS DISCRETION IN FINDING MR. DEMARCO IN CONTEMPT FOR FAILING TO COMPLY WITH THE TEMPORARY ORDER.

{¶5} Peter argues in his first assignment of error that the trial court erred when it divided the shares of PSI and Detyzco between the parties rather than making a distributive award pursuant to R.C. 3105.171(A)(1) and (E)(1) and (2). The major issue faced by the trial court was how to divide the marital interests in PSI, Detyzco, and TCC. With regard to TCC, which manufactures animal biomedical products, the trial court found Peter's 85.47 percent interest in TCC was a marital asset valued at \$36,800 and subject

to division; however, the trial court awarded him his full interest in that entity free and clear of any claims of Cynthia, and Peter does not object to this determination.

{¶6} With regard to PSI, the trial court found the parties owned combined shares of approximately 51 percent of the total outstanding shares. The court also found that approximately 80 shares were the separate property of Cynthia, while approximately 363 shares were in Peter's name and were deemed marital property. Other large shareholders were Dr. William Tyznick, who owned approximately 28 percent of the shares, and Robert Maynard, who owned approximately 12 percent of the shares. Both Peter and Cynthia were involved in the company since 1977, originally developing a frozen dog treat, the rights to which were sold to Nestle in 1987. Peter has been primarily responsible for the continued development of additional products and stock solicitation thereafter, and Cynthia has been involved in a minor capacity. It was undisputed at trial that the idea for the frozen dog treat was Cynthia's, and Peter gifted her 80 shares in PSI in recognition of the fact. Heinz Ickert, who performed business valuations on PSI and Detyzco, valued PSI at \$962.20 per share. Thus, as of December 31, 2007, the value of the marital shares was \$349,279. The court equally divided the marital shares in PSI between the parties and found the 80 shares gifted to Cynthia to be separate property.

{¶7} With regard to Detyzco, which held the original frozen dog treat patent, the trial court found Peter held a 50 percent interest in the corporation, which was a marital asset, while Dr. Tyznick owned the other 50 percent. The trial court found that, as of December 31, 2007, Peter's interest in Detyzco was \$21,500. The court equally divided the marital shares in Detyzco between the parties, with Peter and Cynthia each holding a 25 percent interest in the corporation.

{¶8} Peter argues herein that, with regard to Detyzco, by awarding half of Peter's shares to Cynthia, Tyznick will now have a controlling interest in the company. Peter asserts that Tyznick has not been active in the company for years, and whoever "aligns" himself or herself with Tyznick will control the company. Peter contends this will "clearly" be Cynthia. Peter points out that Tyznick has been retired for 17 years from the Ohio State University, could not remember many of the business details surrounding his interest in Detyzco, and said he could work with Cynthia. Peter opines he is the only person capable of running the business, and the court's decree guarantees years of ongoing litigation.

{¶9} With regard to PSI, Peter's interest in the company after the decree is 26.78 percent, Cynthia's 36.38 percent, Tyznick's 28 percent, and Maynard's 12 percent. Peter argues that Maynard testified regarding Peter's deficiencies as a business manager and said he would like to find a replacement for him, suggesting Cynthia had the credentials to run PSI. Peter points out that Maynard said he thinks he could work with Cynthia, although he also said he could work with either party, as long as Peter and Cynthia could get along. Peter also asserts that Maynard was unable to recall during his testimony many business details surrounding PSI. Peter again opines he is the only person capable of running the business, and the court's decree will prompt years of ongoing litigation.

{¶10} Peter asserts case law consistently supports the concept that, where a small business is concerned, a distributive award should be made rather than dividing the shares in order to disentangle the parties' economic partnership because the circumstances are not usually conducive to joint decision making by the parties. Peter

argues this also protects the interests of other shareholders not involved in the divorce litigation. Peter points to authority suggesting that a buy out remedy or various methods of offset are more appropriate than merely dividing the interest in the closely held company. Peter suggests the court should have made a "distributive" award.

{¶11} The trial court has broad discretion in dividing marital assets and liabilities in a divorce action. *Cherry v. Cherry* (1981), 66 Ohio St.2d 348. Accordingly, an appellate court is limited to a determination of whether, under the totality of the circumstances, the trial court abused its discretion in dividing the property. *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 131. The term "abuse of discretion" implies more than just 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} We find Peter's arguments unpersuasive. The trial court examined this precise issue in the decree and explained its rationale, as follows:

The Plaintiff requests that the marital shares of PSI, Detyzco and TCC be equally divided between the parties.

Defendant, Peter DeMarco, requests that the value, as determined by his expert, be accepted by this Court and he be given an opportunity to buy-out Plaintiff's interest before the shares are physically divided. Defendant argues that Plaintiff has not been significantly involved in the negotiating of any contracts, and development of the production of any of these business entities in any significant manner. Moreover, Defendant suggests that the Plaintiff's lack of relationships with current purchasers, manufacturers etc. make a distributive award inappropriate and irretrievably damaging to the corporations. Moreover, Defendant argues maintaining these parties as business associates would be detrimental to the corporations. Finally, Peter DeMarco argues that he is much better suited and experienced to run a manufacturing company and to sell interests in the companies. Further, he indicates that outside of this divorce litigation he can be

counted on to pay Plaintiff her fair share of the value of these businesses. The evidence when taken as a whole does not, however, support Defendants' claims.

\* \* \*

Wherever possible, the Court should attempt to disentangle divorce litigants post decree. This is especially true when business interests are concerned. That said, the facts of this case, taken as a whole, lead the Court to the conclusion that equity will not allow him to "buy" his wife's share of PSI at his price. This is most certainly true when, as here, sufficient assets do not exist with which to set off either party's respective marital interest. Moreover, this Court does not believe that Peter DeMarco would ever in fact comply with a court order requiring him to pay Plaintiff the value of her share of the assets. Instead, equality and equity can only be served in this case by *equally* dividing the marital shares of PSI and Detysco [sic] as these are companies that the Plaintiff has been involved and with whom the Plaintiff will be able to remain involved after division of the marital shares. \* \* \*

The credible testimony presented by Robert Maynard and Dr. Tyznick is the combined experiences of mismanagement by the Defendant, his repeated pattern of lack of follow through in promises to pay or repay funds and lack of trustworthiness.

All concerned give the impression that these are viable, valuable business interests. This is certainly re-iterated by the fact that both Plaintiff and Defendant express his and her strong desire to remain an owner of these business interests. In stating such, this Court is keenly aware that this is not a contested shareholder action, but merely a divorce action in which this Court is charged with determining an equitable division of *these two parties'* interest in these entities.

Defendant, Peter DeMarco's, claims that he will be able to raise the money to buy Plaintiff out of the marital shares of PSI is not credible. By his own testimony, the Defendant indicates the viability of her continued business involvement in his offer to divide and distribute shares to Plaintiff in the event he is unable to pay.

(Emphasis sic.)

{¶13} This court does not dispute Peter's cited authorities and agrees that disentangling the business interests of divorcing parties is the preferred resolution. Indeed, the Supreme Court of Ohio has held that a "trial court \* \* \* should attempt to disentangle the parties' economic partnership so as to create a conclusion and finality to their marriage." *Hoyt v. Hoyt* (1990), 53 Ohio St.3d 177, paragraph two of the syllabus. However, *Hoyt* does not absolutely forbid economic entanglement. The court noted that " 'flat rules have no place in determining a property division,' " *id.* at 180, quoting *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 356, and recommended that trial courts disassociate the parties' economic partnership "when circumstances permit." *Id.* at 182. The court acknowledged that economic disentanglement "may be the most difficult result to implement on a practical basis." *Id.*

{¶14} Under the present circumstances, we cannot find the trial court abused its discretion in finding that fully disentangling the parties' business interests in PSI and Detyzco was not a viable alternative. The trial court fully explained its reasoning and rationale behind its decision to split the companies' shares equally. The most apparent reason to reject Peter's proposed "buy out" is, as explained by the trial court, sufficient assets do not exist in the marital estate to set off his wife's marital interest in the businesses, and there is no evidence that Peter has sufficient separate property to carryout his proposal. The trial court also voiced concern that Peter would fail to comply with a court order to pay Cynthia her share of the marital estate and did not believe that Peter could raise the funds to buy out Cynthia's marital share of the businesses. Although Peter testified he could sell enough shares in the businesses to raise sufficient funds, there is nothing in the record to otherwise support this assertion. Also, Peter paid



only \$300 toward the magistrate's temporary order to pay \$5,000 for Cynthia's attorney fees and \$2,500 per month in spousal support, claiming he did not have enough funds. Furthermore, either Peter or the companies still owe significant sums to several individuals, thereby rendering it even less likely that Peter or the companies can generate income to pay Cynthia. We find the evidence in the record before us supports the trial court's findings, in these respects.

{¶15} Furthermore, Peter claims throughout his first assignment of error that the other associates with business interests in PSI and Detyzco will "align" themselves with Cynthia, thereby giving Cynthia and the others control of the businesses. There is no definitive evidence to support Peter's concerns. Both Maynard and Tyznick testified that they thought Peter's guidance of PSI was lacking and indicated their desire to find another CEO. However, neither was particularly active or interested in the companies. Therefore, whether they would eventually attempt to replace Peter is speculative and not an overriding concern of the domestic court. As the court pointed out, the present action is a domestic relations action, not a shareholder action. The parties entered into personal and business relationships that were intertwined without contingency plans in place to guide their respective rights should the marital relationship fail. The court was required to divide the marital assets equitably, if not equally, and the court gave its reasons for its decision.

{¶16} In addition, as explained above, Peter proposed that he pay Cynthia the value of her half share of the businesses via a distributive award under R.C. 3105.171, with one half to be paid within six months and the remaining half to be paid within 12 months. If he were unable to do so, under Peter's proposal, he would then transfer half of

the shares in the company to Cynthia. R.C. 3105.171 defines a distributive award as "any payment or payments, in real or personal property, that are payable in a lump sum or over time, in fixed amounts, that are made from separate property or income, and that are not made from marital property and do not constitute payments of spousal support, as defined in section 3105.18 of the Revised Code." R.C. 3105.171(A)(1). The trial court may make a distributive award "to facilitate, effectuate, or supplement a division of marital property." R.C. 3105.171(E)(1). The decision whether to make a distributive award rests within the sound discretion of the trial court. *Bisker v. Bisker*, 69 Ohio St.3d 608, 609, 1994-Ohio-307.

{¶17} However, the problem in the present case, as already explained, is that there exists insufficient separate property or income from which to make a distributive award. For the trial court to order a distributive award despite the absence of apparent sufficient assets to cover such would place the parties in a different situation. Further, the possibility that Peter might be able to sell shares of the companies to raise sufficient cash to meet such an award within six months is highly speculative. Maynard testified that he has had difficulty raising investment capital in the companies because there is no solid management in place. As the trial court indicated, the alternative in Peter's proposal was that he transfer half of the shares in the companies to Cynthia, which is precisely what the trial court did. Given the speculative nature of a distributive award, the trial court was clearly within its discretion not to order such an award and, instead, order the immediate division of shares in the companies. For these reasons, Peter's first assignment of error is overruled.

{¶18} Peter argues in his second assignment of error that the trial court erred and abused its discretion when it failed to comply with the agreed entry finding the date of termination of marriage for purposes of property valuation was December 31, 2007. Peter's brief argument in support of this assignment of error is that, by dividing the property, the court changed the value of the companies from the agreed date of value, as that valuation was predicated upon Peter operating the businesses, and not Cynthia. However, we find no merit in the argument, and Peter presents no authority to support this legal theory. Initially, there was no indication that the valuation of the businesses was dependent upon who was managing the companies at any particular time. There is no evidence in the record that Cynthia was "operating" the businesses as of the date of the decree, and there is no evidence that Cynthia was going to be operating the businesses in the future. As far as the record reveals, Peter was managing the businesses at all pertinent times, both as of the date of valuation and as of the date of the trial court's decision. For the trial court to attempt to predict the future business decisions of the shareholders of the companies would be an exercise in conjecture and is certainly not a statutory requirement when dividing the marital property of the parties. The trial court used the values of the companies as of the date agreed to by the parties in completing the marital "balance sheet," and we see no error in the court's methodology, in this respect. Therefore, Peter's second assignment of error is overruled.

{¶19} Peter argues in his third assignment of error that the trial court erred when it failed to make an equal or equitable division of the properties. Specifically, Peter argues that the trial court ordered that all of the marital debts, including those loans that went into the companies, were to be paid by him, while controlling interest in the companies was

given to Cynthia. He argues that, since debts were historically paid from the proceeds of the businesses, he cannot pay them because he has no access to the business funds. Thus, Peter contends the equal division of his shares of stock in the companies is not equal for him due to the takeover of the companies promised by Cynthia, Tyznick, and Maynard.

{¶20} However, again, Cynthia has not been given a "controlling" interest in the companies. She does not own more than 50 percent of the stock in any company. Furthermore, as explained above, the record does not reveal that Cynthia, Tyznick, and Maynard have "promised" to takeover the companies. To be sure, Tyznick and Maynard voiced their displeasure of Peter's management of the companies in their testimony, but we cannot say that they, along with Cynthia, have promised to oust Peter. Regardless, as the trial court explained, the issue before the court is the equitable division of marital assets, not the governance of these companies. Furthermore, the trial court cannot base its division of marital assets on things that may never occur. With regard to Peter's argument that the trial court ordered him to pay debts that had historically been paid by the company, he fails to direct us to any evidence from the trial that indicates which, if any, debts were historically paid by the companies. Neither his nor Cynthia's testimony reveals such.

{¶21} The trial court explained its division of the debts in the decree. As indicated above, the main problem confronting the trial court with regard to the division of assets and liabilities was that there were very few liquid marital assets, thereby making a division of debts difficult. Peter requested the marital home, and, given a 50/50 split in the marital interest in the businesses, the only way to achieve equality and equity under these

circumstances was to order Peter to pay nearly all of the marital debts. Furthermore, as to the \$93,691.52 owed to Robert Gaul, Peter's friend and accountant, Cynthia was unaware of the vast majority of these loans, and Peter's claim that some of these loans were transferred into the companies' accounts was without documentary support. Given the state of the record, and the circumstances in this case, we cannot find the trial court abused its discretion. Therefore, Peter's third assignment of error is overruled.

{¶22} We will address Peter's fourth and fifth assignments of error together, as they are related. Peter argues in his fourth assignment of error that the trial court erred when it sustained the temporary order of spousal support, expense, money, and payment of debts set forth in the magistrate's July 11, 2007 decision, and in ordering additional spousal support in its final order. Peter argues in his fifth assignment of error that the trial court erred when it found him in contempt for failing to comply with the temporary order. Specifically, Peter argues that, despite income tax returns showing income of \$55,546 for 2004, a loss of \$1,164 for 2005, and a loss of \$33,034 for 2006, the magistrate ordered him to pay \$36,900 per year on the mortgage, \$8,670.31 per year in taxes, maintenance on the home, credit card debts, \$20,000 in joint debts, and \$30,000 per year in spousal support, for a total payment of \$104,043.72 per year. Peter asserts there is no evidence that he ever made the amount of money necessary to pay the order.

{¶23} With regard to the magistrate's temporary orders, the trial court found that because Peter failed to present any evidence as to his 2007 and 2008 income, and he had been able to maintain his other bills, Peter failed to demonstrate that the original temporary orders were inappropriate. With regard to Cynthia's motion for contempt related to Peter's failure to comply with the temporary orders, the trial court determined

that Peter was in contempt for failure to pay the temporary spousal support of \$2,500 per month and the award of \$5,000 in attorney fees to be paid to Cynthia. The trial court concluded that Peter had failed to prove by a preponderance of the evidence that he had a defense or inability to pay. Again, the court reiterated that Peter had not filed 2007 or 2008 income tax returns demonstrating his income. The court also noted that Peter made the unilateral decision to borrow money and retain the services of an expert before paying Cynthia the fees awarded to her. The court found Peter in contempt and sentenced him to five days in jail. Giving Peter credit for \$300 paid, the court determined the temporary spousal support owed to Cynthia was \$53,652, which it subsequently accounted for on the marital balance sheet. The trial court suspended the sentence contingent upon Peter's compliance with the property division order in the decree and payment of the \$5,000 attorney fees award.

{¶24} R.C. 3105.18(B) permits a court to award either party reasonable temporary spousal support during the pendency of any divorce proceeding. Temporary spousal support need not be based on the factors in R.C. 3105.18(C), but only needs to be an amount that is "reasonable." R.C. 3105.18(B); *Zeefe v. Zeefe* (1998), 125 Ohio App.3d 600. Reasonable support is the amount which an obligor has the ability to pay and which is sufficient to meet the obligee's present needs. *Norton v. Norton* (1924), 111 Ohio St. 262. There is no set formula under R.C. 3105.18 to guide courts to arrive at an appropriate amount of temporary spousal support. *Gourash v. Gourash* (Sept. 2, 1999), 8th Dist. No. 71882. Courts are given discretion in deciding what reasonable support is because that determination is dependent on the unique facts and circumstances of each case. *Id.*, citing *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128. The purpose of

awarding temporary spousal support is to preserve the status quo during the divorce proceeding. *Kahn v. Kahn* (1987), 42 Ohio App.3d 61, 68.

{¶25} Furthermore, failure to pay court-ordered spousal support is classified as a civil contempt. See *Pugh v. Pugh* (1984), 15 Ohio St.3d 136, 139-40. A prima facie case of contempt is established when the order is before the court along with proof of the contemnor's failure to comply with it. *Dzina v. Dzina*, 8th Dist. No. 83148, 2004-Ohio-4497. Because the nature of the contempt is civil, "willful disobedience" is not a necessary element. *Pugh* at 140. However, inability to pay support is a valid defense in a contempt proceeding. *Courtney v. Courtney* (1984), 16 Ohio App.3d 329, 334. The party who failed to comply with the court order to pay support bears the burden of proving an inability to pay. *Pugh* at 140. We will not reverse a contempt sanction absent an abuse of discretion by the trial court. *State ex rel. Ventrone v. Birkel* (1981), 65 Ohio St.2d 10, 11.

{¶26} In the present case, Peter's fifth assignment of error lacks argument and citations to the record asserting only that it was "clear" he was unable to pay the temporary orders. We cannot find an abuse of discretion when he failed to present any evidence of his 2007 or 2008 income. The court also explained that the parties clearly derived income from their business interests, as indicated by the lifestyle enjoyed during the marriage, albeit beyond their actual means. The court also did not believe that the 2006 income tax return was indicative of the actual earnings. Instead, the court indicated it was inclined to believe that the losses as noted were due to the financial and emotional constraints of the divorce litigation. Peter did not sufficiently rebut any of these bases to demonstrate he was unable to pay the ordered spousal support and attorney fees.

Therefore, the trial court did not abuse its discretion when it failed to modify the magistrate's temporary order or when it found Peter in contempt for failure to comply with such orders.

{¶27} We also note that Peter asserts in his fourth assignment of error that the trial court erred when it granted a "punitive" \$100 per month spousal support order to Cynthia and retained jurisdiction, which he claims was intended to give Cynthia a "second bite" if Peter makes a lot of money with the companies after the agreed termination date of the marriage or if she fails with the companies. The trial court ordered that Peter must pay Cynthia \$100 per month in permanent modifiable spousal support. Peter complains the trial court made no like provision for him if Cynthia were to make "a fortune" on the companies.

{¶28} In the decree, the trial court found there was uncertainty as to the income from the parties' business interests. The court found that, given Peter's actions and demeanor during the course of the litigation, the court was not convinced that Peter will not attempt to thwart Cynthia's right to an interest in the businesses. Should Peter succeed, the trial court found, Cynthia may be entitled to an increase in spousal support. However, there is no indication that the trial court was retaining jurisdiction so that it could increase Cynthia's spousal support should Peter make "a fortune" with the companies, as Peter alleges herein. Given the distribution of shares, Cynthia would be entitled to any "fortune" made from PSI and Detyzco to at least the same extent as Peter. The trial court's concern, based upon its observation of Peter's demeanor and his history of failing to pay Cynthia her due monies, was that Peter might manipulate some aspect of the companies' finances, structure, or other facet to diminish her rights or economic benefits



derived from the companies. For these reasons, Peter's fourth and fifth assignments of error are overruled.

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

*Judgment affirmed.*

FRENCH and CONNOR, JJ., concur.

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