[Cite as *Sheehy v. Sheehy*, 2010-Ohio-2967.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

DOROTHY SHEEHY,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-01-007
	:	O P I N I O N
- vs -		6/28/2010
	:	
DANIEL P. SHEEHY,	:	
Defendant-Appellant.	:	

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 2005DRB1412

Dorothy Sheehy, 5829 Wolfpen Pleasant Hill Road, Milford, Ohio 45150, plaintiff-appellee, pro se

Michael A. Kennedy, 70 N. Riverside Drive, Batavia, Ohio 45103, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Daniel Sheehy, appeals the decision of the Clermont County Court of Common Pleas, Domestic Relations Division, modifying his spousal support obligation to his ex-wife, plaintiff-appellee, Dorothy Sheehy.[1]

{¶2} After 31 years of marriage, appellee filed for divorce in 2005. By divorce decree filed November 1, 2006, the trial court divided the assets and ordered appellant

1. Pursuant to Loc.R. 6(A), we sua sponte remove this case from the accelerated calendar and place it on

to pay $1,600 per month in spousal support for an indefinite period of time. The trial court also reserved jurisdiction over both the amount and the duration of the spousal support order.

{¶3} At the time of the divorce, appellant was earning $72,678 per year. He continued to earn income at that level through 2008. Appellant, however, was laid off by his employer, Cast-Fab, in February 2009. At that point, he began receiving unemployment compensation benefits in the amount of $372 per week.

{¶4} Between December 2008 and April 2009, appellant received two distributions from his deceased aunt's estate in the amount of $64,107. From his aunt's estate, appellant also inherited a condominium, which is not subject to a mortgage. In addition, appellant owns four separate properties that could potentially generate rental income, although he has not utilized the properties for such purpose.

{¶5} On April 13, 2009, appellant filed a motion to terminate/reduce spousal support. Following a hearing before the magistrate on the motion, the magistrate reduced appellant's spousal support to $900 per month. Appellant filed objections to that decision. On December 23, 2009, the trial court issued a decision and entry further reducing spousal support to $600 per month. Appellant timely appeals that order, asserting a single assignment of error.

{¶6} "THE TRIAL COURT ERRED IN FAILING TO TERMINATE SPOUSAL SUPPORT."

{¶7} Appellant argues the trial court erred in calculating appellant's income and failing terminate spousal support to appellee. A trial court has broad discretion in determining a spousal support award, including whether or not to modify an existing award. *Hutchinson v. Hutchinson*, Clermont App. No. CA2009-03-018, 2010-Ohio-597,

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the regular calendar for purposes of issuing this opinion.

¶16, citing *Strain v. Strain*, Warren App. No. CA2005-01-008, 2005-Ohio-6035, ¶10. Thus, absent an abuse of discretion, a spousal support award will not be disturbed on appeal. Id. 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. Id.; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶8} In exercising its discretion to modify a spousal support award, the trial court must determine: "(1) that the divorce decree contained a provision specifically authorizing the court to modify the spousal support, and (2) that the circumstances of either party have changed." *Strain* at ¶11; R.C. 3105.18(E). Additionally, the change in circumstances must be substantial, not purposely brought about by the moving party, and not contemplated at the time of the divorce decree. *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, ¶31-32. The party seeking to modify a spousal support obligation bears the burden of showing that the modification is warranted. *Hill v. Hill*, Clermont App. Nos. CA2004-08-066, CA2004-09-069, 2005-Ohio-5370, ¶5.

{¶9} In this case, the magistrate and trial court both found there to be a change in circumstances that warranted a modification in spousal support. The court noted that appellant's termination from his employment and his inheritance each constituted a change in circumstances that warranted a modification. See R.C. 3105.18(F); *Howell v. Howell*, 167 Ohio App.3d 431, 2006-Ohio-3038.

{¶10} Once a trial court finds a change in circumstances, the court must then determine whether spousal support is still necessary, and if so, what amount is reasonable. *Hutchinson*, at ¶24, citing *Carnahan v. Carnahan* (1997), 118 Ohio App.3d 393, 398. To ensure the new spousal support award is "appropriate and reasonable," the trial court must consider the factors listed in R.C. 3105.18(C)(1). Id.

{¶11} Appellant argues the trial court erred in considering his cash inheritance as

income rather than considering only the income the inheritance generates. Appellant also argues the court miscalculated his salary by including income from his prior job as projected income for the future.

{¶12} We note that appellant failed to request specific findings of fact and conclusions of law, under Civ.R. 52, regarding the trial court's spousal support award. In the absence of a request for separate findings of fact and conclusions of law, the trial court is not required to comment on each factor listed in R.C. 3105.18(C)(1) individually. Hutchinson at ¶24. Rather, "the trial court must indicate the basis for its award in sufficient detail to enable a reviewing court to determine that the award is fair, equitable, and in accordance with the law." *Campbell v. Campbell*, Warren App. No. CA2009-04-039, 2009-Ohio-6238, ¶22, quoting *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 97.

{¶13} In its opinion modifying the magistrate's decision and further reducing appellant's spousal support obligation, the trial court cited *Howell* for the proposition that "an inheritance is generally to be a source of income." Although the court considered appellant's "inheritance" in finding that he has "the ability to pay some support," it is evident that the court considered only the potential investment income from appellant's inheritance. Had the court considered the inheritance itself as income, it would not have had reason to reduce appellant's spousal support from $1,600 per month to $600 per month, as the inheritance combined with appellant's other sources of income would have resulted in only a negligible reduction in his total income for purposes of determining spousal support.

{¶14} The record indicates that appellant spent much of his inheritance on the expenses relating to his real estate investments. In its discussion of appellant's inheritance and his ability to pay spousal support, the trial court considered the potential

rental income from appellant's real estate investments. Although the court could have worded its entry more clearly, its decision to reduce appellant's monthly spousal support obligations by $1,000 shows that it considered only the potential income that could result from investment of appellant's inheritance.

{¶15} In addition, appellant has failed to show that the court improperly considered the income from his prior job in determining a reasonable support order. Although the magistrate included such income in its decision, the trial court, in reviewing the record and modifying the magistrate's decision, stated that appellant's "income has been significantly reduced as a result of his loss of employment." The court then stated that it also considered appellant's earning ability, a factor listed in R.C. 3105.18, and found it to be "far greater" than appellee's earning ability.

{¶16} Finally, appellant argues the court failed to give significant weight to evidence presented by a qualified vocational expert regarding the earning capacity of appellee. A trial court, in its role as a trier of fact, may choose to believe or disbelieve any witness, including an expert witness. *H.R. v. L.R.*, Franklin App. No. 08AP-588, 2009-Ohio-1665, ¶15, citing *State v. White*, 118 Ohio St.3d 12, 2008-Ohio-1623, ¶71 ("A trial court is not required to automatically accept expert opinions offered from the witness stand * * * on any * * * subject[.]"); *Stancourt v. Worthington City School Dist.,* Franklin App. No. 07AP-835, 2008-Ohio-4548, ¶30 ("as the trier of fact, the magistrate was free to believe or disbelieve any witness, including an expert witness"). Therefore, the trial court is free to accept or reject the opinion of a vocational expert witness who testifies to appellee's earning capacity. Expert testimony, however, "'may not be arbitrarily ignored, and some reason must be objectively present for ignoring expert opinion testimony.'" *White* at ¶71, quoting *United States v. Hall* (C.A.5, 1978), 583 F.2d 1288, 1294. See, also, *Stancourt* at ¶30 (even when expert testimony is not directly

controverted, the jury is not obliged to believe the testimony as long as the record contains objectively discernable reasons for rejecting the expert's testimony).

{¶17} In this case, the trial court acknowledged the testimony presented by appellant when it recognized that appellee works only part time. The court went on to consider the factors set forth in R.C. 3105.18 and found that the parties were married for over 30 years; appellee never worked full time during their marriage; appellee did not work outside the home for 16 years; and that she was awarded $1,600 per month in spousal support for an indefinite period of time. Based on these factors, the court found that the magistrate properly determined appellee's income. The court reviewed the record and determined that appellee "continues to have a need for support."

{¶18} Based upon the record, appellant has failed to show that the trial court's decision to reduce his spousal support order by $1,000 per month was unreasonable, arbitrary, or unconscionable. We find the trial court sufficiently explained the basis for its award and did not abuse its discretion by reducing appellant's spousal support obligation. The assignment of error is overruled.

{¶19} Judgment affirmed.

BRESSLER, P.J., and HENDRICKSON, J., concur.