

[Cite as *Beamer v. Beamer*, 2010-Ohio-3143.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

JUDY BEAMER, :
 :
 Plaintiff-Appellee, : CASE NO. CA2009-08-107
 :
 - vs - : OPINION
 : 7/6/2010
 :
 TODD BEAMER, :
 :
 Defendant-Appellant. :

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR0831970

Judy Beamer, 2283 Lilac Road, Loveland, Ohio 45140, plaintiff-appellee, pro se

Fred S. Miller, Baden & Jones Building, 246 High Street, Hamilton, Ohio 45011, for defendant-appellant

YOUNG, P.J.

{¶1} Defendant-appellant, Todd Beamer, appeals a decision of the Warren County Court of Common Pleas, Domestic Relations Division, regarding property division and spousal support obligations. For the reasons discussed below, we affirm the decision of the domestic relations court.

{¶2} Todd and plaintiff-appellee, Judy Beamer, were married in 1985. There

were two children born issue of the marriage, both of whom were emancipated at the time Judy filed for divorce on May 12, 2008.

{¶13} The evidence presented at the final hearing on May 20, 2009 established the following relevant facts. Todd was an employee and 25 percent shareholder in Beamer Brothers Trucking, a closely-held subchapter "S" corporation operated by his family. Todd earned a yearly salary of \$66,040 from Beamer Brothers. He testified that he did not receive any shareholder distributions. Todd also had an ownership interest in two additional closely-held businesses: Beamers Piggy Back Sales and Service, LLC, and T.A.B. Cincinnati Properties, LLC. Although he testified that he was the sole shareholder of Beamers Piggy Back and an 80 percent shareholder in T.A.B., Todd did not receive any employment compensation or shareholder distributions from either company.

{¶14} The record indicates that Judy did not work outside the home, as she was in very poor health and suffering from a self-described "terminal illness." The parties stipulated that Judy's health prohibited her from seeking employment. Pursuant to the trial court's June 2008 temporary order, Todd paid Judy \$2,000 in monthly spousal support. Judy also received \$1,289 in private disability insurance benefits each month totaling \$15,468 per year, and produced evidence showing monthly living expenses of approximately \$3,895. As a result of her illness, Judy also incurred significant medical expenses. The record indicates that she had accrued \$8,219.42 in unpaid medical bills.

{¶15} During the pendency of the divorce, Judy lived in the marital residence and Todd occupied a 28-foot travel camper on the premises of Beamer Brothers. Judy testified that because of her health issues, she did not want to remain in the

marital home and assume responsibility for the necessary upkeep and repairs. Todd indicated at the hearing that he wanted to reside in the house.

{¶16} The trial court issued its decision on the matter on May 22, 2009. In dividing the marital property, the court determined that the closely-held entities suffered huge losses in 2008 as a result of an economic downturn in the construction industry. Based on the evidence presented at the hearing, the trial court found that there was no equity in the businesses to divide.

{¶17} With regard to the marital residence, based on the information provided by Todd's realtor, the trial court determined that the property was valued at \$110,000, with a first mortgage balance of \$101,276.¹ The trial court awarded the property and \$8,724 in equity to Todd. The court also ordered Todd to be responsible for the payment of Judy's unpaid medical bills to offset the equity he received in the property. The court further ordered Todd to pay Judy \$1,685 per month in spousal support.

{¶18} The court subsequently incorporated its decision into a judgment entry and decree of divorce on July 13, 2009.

{¶19} Todd has appealed from the decree of divorce, raising two assignments of error for our review.

{¶10} Assignment of Error No. 1:

1. The record indicates that there was also a line-of-credit on the property in the amount of \$28,300.52, which was primarily for business purposes and was being paid by Beamer Brothers. As a result, the trial court determined that the line of credit was a debt of the business and excluded it from the equity calculation. There was also a \$3,600 second mortgage on the property to secure the payment of Judy's legal fees. The court similarly determined that the second mortgage would not be used for the equity calculation.

{¶11} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT IN THE WAY IT STRUCTURED THE PROPERTY DIVISION BETWEEN THE PARTIES."

{¶12} In his first assignment of error, Todd contends that the trial court erred in dividing the parties' marital property. He initially challenges the trial court's decision to offset the equity he received in the marital residence by requiring him to pay Judy's past-due medical bills.

{¶13} "A trial court has broad discretion in making divisions of property in domestic cases." *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 401, 1998-Ohio-403. Under R.C. 3105.171(C)(1), marital assets, including debts, are to be divided equally unless such a division would be inequitable. Since the trial court possesses a great deal of discretion in attaining an equitable distribution, we will not reverse the court's division of property absent an abuse of discretion. *Vaughn v. Vaughn*, Warren App. No. CA2007-02-021, 2007-Ohio-6569, ¶41. An abuse of discretion is more than error of law or judgment; it requires a finding that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶14} The record indicates that there were very few assets subject to division in this case. In addition to the marital residence, the only assets to be divided were two vehicles, insurance policy proceeds totaling \$7,967.29, and approximately \$18,628.23 in Todd's retirement accounts. In its May 2009 decision, the court divided the equity in the vehicles, as well as the insurance proceeds and retirement funds equally between the parties. After dividing the assets, the only marital debt involved the \$8,219.42 in unpaid medical bills. The court found that "[g]iven that

[Todd] has received [\$8,724] in equity in the real estate, he shall be solely responsible for the medical bills * * * as an offset."

{¶15} Todd argues that the allocation was in error because by requiring him to pay the entirety of Judy's bills, Todd was effectively left with no equity in the property. However, the trial court was required to equitably divide the parties' marital assets and liabilities, and there is no dispute that the unpaid bills constituted marital debt. Moreover, the trial court specifically noted that Todd may be able to "significantly compromise" the amount owed in light of the fact that he had previously negotiated the settlement of \$3,300 in unpaid medical bills for \$1,500. Because the overall division was equitable in this case, we do not find that the trial court's decision requiring Todd to pay Judy's past-due medical bills constituted an abuse of discretion.

{¶16} Todd also takes issue with the trial court's decision to equally divide the insurance proceeds received by the parties for damage to the marital residence. The record indicates that in the fall of 2008, the roof of the parties' home sustained damage as a result of a windstorm. The parties' homeowner's insurance policy paid them total proceeds of \$7,967.29.

{¶17} On appeal, Todd claims that Judy unfairly benefited from the distribution because as the homeowner, his insurance proceeds would go toward the repairs while Judy's distribution would remain unencumbered. He also argues that the cost of the repairs would exceed his share of the proceeds. However, as noted by the trial court, Todd had requested that Judy not make the repairs because he thought he could perform some of the work himself. Although he estimated that the cost of the repairs would be between \$4,000 and \$5,000, he had not surveyed the

damage personally and admitted that the estimates he provided were unsubstantiated. He further testified that he believed the cost of the roofing materials would be between \$1,500 and \$2,000.

{¶18} The court determined that regardless of whether Todd made the repairs himself or hired a company to perform the work, each party would be entitled to one-half of the resultant increase in the value of the property, if any. Although Judy's real estate agent opined at trial that the property was valued at \$119,000, the trial court noted that it had established a lower value of \$110,000 by accepting Todd's claim that the residence was worth less because of the repairs needed to the roof. In addition, Todd would be entitled to any increase in the value of the property following the repairs. As a result, it cannot be said that Judy gained any advantage as a result of the distribution and, therefore, we find no abuse of discretion in the trial court's decision to evenly divide the insurance proceeds.

{¶19} Todd's first assignment of error is overruled.

{¶20} Assignment of Error No. 2:

{¶21} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT ORDERED HIM TO PAY SPOUSAL SUPPORT IN AN AMOUNT THAT HE CANNOT AFFORD."

{¶22} In his second assignment of error, Todd challenges the amount of spousal support awarded by the trial court. He argues that the court failed to adequately explain the basis for its award, and that it did not properly account for his financial inability to pay the amount ordered.

{¶23} It is well-established that a trial court has broad discretion in deciding whether an award of spousal support is proper based on the facts and circumstances

of each case. *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67. "A reviewing court cannot substitute its judgment for that of the trial court unless, considering the totality of the circumstances, the trial court abused its discretion" in making the award. Id.

{¶24} After the division of marital property, a trial court may order an award of reasonable spousal support to either party in a divorce proceeding. R.C. 3105.18(B). Pursuant to R.C. 3105.18(C)(1), "[i]n determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support * * * the court shall consider all of the * * * factors" set forth in R.C. 3105.18(C)(1). See, also, *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, paragraph one of the syllabus. "These factors include each party's income, earning capacities, age, retirement benefits, education, assets and liabilities, and physical, mental and emotional condition; the duration of the marriage; their standard of living; inability to seek employment outside the home; contributions during the marriage; tax consequences; and lost income capacity due to a party's fulfillment of marital responsibilities." *Brickner v. Brickner*, Butler App. No. CA2008-03-081, 2009-Ohio-1164, ¶21, citing R.C. 3105.18(C)(1)(a)-(m). In addition, a trial court is "free to consider any other factor it deems relevant and equitable." Id., citing R.C. 3105.18(C)(1)(n). If the trial court orders an award of spousal support, it 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." *Kaechele*, paragraph two of the syllabus.

{¶25} Todd initially contends that he was deprived of an appropriate review on appeal because the trial court did not reference the factors of R.C. 3105.18(C)(1) in its decision. Contrary to Todd's argument, a trial court is not required to specifically

comment on each factor of R.C. 3105.18(C)(1). *Campbell v. Campbell*, Warren App. No. CA2009-04-039, 2009-Ohio-6238, ¶22. Instead, the record must show that the court considered each factor in making its award. *Id.* A presumption exists that the trial court considered all of the factors in R.C. 3105.18(C)(1) when it states within its entry that it did so. *Id.*, citing *Mavity v. Mavity*, Butler App. Nos. CA2000-12-244, CA2000-12-247, 2002-Ohio-556, ¶5. In addition, although he argues that the trial court's decision did not provide this court with an adequate basis for review on appeal, the record indicates that Todd failed to file a motion with the trial court requesting findings of fact and conclusions of law. See *Campbell v. Campbell* (June 12, 2000), Fayette App. No. CA99-07-018 (a trial court is not required to comment on each spousal support factor unless there is a specific request for findings of fact and conclusions of law).

{¶26} In its decision, the trial court stated that it considered all of the factors in R.C. 3105.18(C)(1) in determining that spousal support of \$1,685 per month was reasonable and appropriate. Therefore, we must presume that the court took into account all of the factors it was required to consider in making the support award. The court noted that Todd was 43 years old, in good health, and had a high school education. The court further observed that Todd had an annual income of \$66,040, with anticipated monthly expenses of \$3,200. In contrast, Judy, at age 46, was in very poor health and "clearly unable to work." Her only source of monthly income was private disability payments of \$1,289. Her anticipated basic living expenses were between \$3,370 and \$3,895 each month.

{¶27} Although Todd also claims that the trial court failed to take into account his inability to pay, the record indicates that the court considered the financial

constraints of both parties. At the hearing, the court stated that it had been aware for some time of the difficulties the parties were experiencing, and that there were "not enough monies to go around." In its decision, the court noted that in establishing the term of spousal support, it gave consideration to the fact that Todd had been paying Judy \$2,000 each month in temporary support since June of 2008. Todd also testified at the hearing that his income had remained fairly consistent since 2008.

{¶28} The trial court was certainly presented with a difficult situation in fashioning the spousal support award. However, based upon our review of the record, and the totality of the circumstances presented in this case, we cannot conclude that the court's decision to award spousal support to Judy in the amount of \$1,685 per month was unreasonable, arbitrary or unconscionable so as to constitute an abuse of its discretion.

{¶29} Todd's second assignment of error is overruled.

{¶30} Judgment affirmed.

BRESSLER and RINGLAND, JJ., concur.