[Cite as *Homme v. Homme,* 2010-Ohio-6080.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

MORTEN ORVILLE HOMME II,	:	
Plaintiff-Appellant,	:	CASE NO. CA2010-04-093
	:	O P I N I O N
- vs -		12/13/2010
	:	
VERONICA ROCCO HOMME,	:	
Defendant-Appellee.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR2009-04-0346

Thomas G. Eagle, 3386 N. State Route 123, Lebanon, Ohio 45036, for plaintiff-appellant

Veronica Rocco Homme, 6929 Tylersville Road, #17, West Chester, Ohio 45069, defendant-appellee, pro se

RINGLAND, J.

{¶1} Plaintiff-appellant, Morten Orville Homme II (Husband), appeals from the decision of the Butler County Court of Common Pleas, Domestic Relations Division, classifying and dividing assets, as well as its decision to award attorney fees, following his divorce from defendant-appellee, Veronica Rocco Homme (Wife). For reasons outlined below, we affirm in part, reverse in part, and remand for further proceedings.

{¶2} Husband, an airline pilot, and Wife, a ballroom dance instructor, were

married on October 6, 2003. The couple separated on March 24, 2008. The marriage did not produce any children.

{¶3} On July 24, 2008, Husband filed a complaint for divorce. On August 25, 2008, Wife filed an answer, a motion to establish spousal support, a motion to allocate debt, and a motion for attorney fees and costs. A hearing on the Wife's motions was held on October 2, 2008. At the conclusion of the hearing, the parties entered into a temporary agreed order that required Husband to pay Wife $3,500 in attorney fees.

{¶4} On February 26, 2009, the trial court held a pretrial conference. At the pretrial conference, the trial court informed the parties that the final contested divorce hearing was scheduled for March 30, 2009, and that "if [Husband] can't go forward on your trial dates, [he has] no other choice but to dismiss" his complaint and refile at a later date.

{¶5} On March 5, 2009, Husband, who was out of the country on business, voluntarily dismissed his complaint pursuant to Civ.R. 41(A). Thereafter, while still out of the country, Husband refiled his complaint on April 2, 2009, a mere 28 days later.

{¶6} On April 30, 2009, Wife, in response to Husband's newly filed complaint, filed another answer, as well as another motion to establish spousal support, a motion to allocate debt, and a motion for attorney fees and costs. In her new motion for attorney fees, Wife stated, in pertinent part, the following:

{¶7} "Now comes [Wife], by and through counsel, and states that she is without sufficient funds to pay her attorney for fees for this divorce and requests this Court order [Husband] to pay the sum of $3,500 in order for [Wife] to pay her attorney fees. Further, [Wife] states that the parties hereto were involved in a previous Divorce in this Court * * *, which was set for final hearing on March 30, 2009, but that [Husband] dismissed said case less than thirty (30) days prior to said final hearing. [Husband] then filed this

Divorce action less than thirty (30) days later. [Husband's] actions have caused [Wife] to incur a substantial amount of attorney fees and [Wife] is requesting that [Husband] be required to pay her attorney fees."

{¶8} On June 25, 2009, a hearing was held before a magistrate on Wife's motions. At the hearing, Wife testified that she did not have money to pay her attorney fees and requested the trial court to order Husband to "advance" her $3,500 for such fees. On July 1, 2009, the magistrate issued a decision ordering Husband to pay Wife $3,500 in attorney fees.

{¶9} On July 13, 2009, Husband filed an objection to the magistrate's decision. As part of his objection, Husband argued that awarding Wife $3,500 in attorney fees was improper since Wife "moved to have an award of attorney fees based on prior work * * *."

{¶10} On July 27, 2009, Wife filed a "Response to [Husband's] Objection to Decision of Magistrate." In her response, Wife stated, in pertinent part, the following:

{¶11} "[Wife] did not request that the award of attorney fees be based solely on prior work, however, [Wife] did feel that it was certainly relevant that [Husband] dismissed his prior Complaint for Divorce less than one month from the final hearing, and then filed a new Complaint for Divorce less than one month later. Simply, it is [Husband] that dismissed the prior case and then immediately re-filed a new Complaint, resulting in increased attorney fees for [Wife]."

{¶12} On September 2, 2009, the trial court held a scheduling conference and heard arguments regarding Husband's objection to the magistrate's decision. At the conference, during which Husband's trial counsel indicated "discovery ha[d] been completed," the trial court took Husband's objection under advisement and scheduled the final contested divorce hearing for December 8, 2009.

{¶13} On December 4, 2009, the trial court issued a decision overruling Husband's objections to the magistrate's decision to award Wife $3,500 in attorney fees. In its decision, the trial court determined that the award was proper because Wife "incurred further attorney fees," that the fees were "being incurred to duplicate the work previously completed" in the prior divorce action, and that "[Husband] is responsible for the duplicative incurrent [sic] of fees."

{¶14} On December 8, 2009, prior to the start of the final contested divorce hearing, Husband provided the trial court with his "Itemized Evidence Inventory" that listed 45 items he intended to introduce at the hearing. Included within those 45 items was a "HUD Settlement Statement for 50 N. Sierra St., #703 and Deeds," a condominium located in Reno, Nevada Husband purchased on May 22, 2008, and "Comparable MLS listing for the Reno property." No other evidence regarding the Reno, Nevada property was included within Husband's "Itemized Evidence Inventory."

{¶15} Thereafter, during the initial stages of the December 8, 2009 final contested divorce hearing, the following exchange occurred:

{¶16} "[COURT]: Next piece of real estate.

{¶17} "[HUSBAND'S TRIAL COUNSEL]: 50 North Sierra, Unit 703, and that's in Nevada – Reno, Nevada.

{¶18} "[COURT]: I don't have jurisdiction to divide a piece of real estate in another state. I don't have physical – I don't have jurisdiction over it."

{¶19} After discussing the matter further, the trial court declined to hear any evidence regarding the parties' Reno, Nevada property. However, despite this ruling, the trial court heard evidence regarding the parties' other assets, including, among other things, their Butler County residence and Scottrade and Options Xpress brokerage accounts. The trial court then reserved the issue of attorney fees and scheduled the

matter to be heard on January 29, 2010.

{¶20} On January 6, 2010, the trial court issued its decision and order. In its decision, the trial court determined that the parties' outstanding mortgage balance on their Butler County residence was $60,800, and that Wife should retain all interest in the Scottrade and Options Xpress brokerage accounts, assets the court valued at $50,000 and $42,467, respectively. In addition, the trial court stated, in pertinent part, the following:

{¶21} "At the time of trial the Court indicated it did not have jurisdiction to issue an order regarding real property which is physically situated outside of its jurisdiction. * * * At that time the Court recognized it had subject matter jurisdiction over the controversy, in personam jurisdiction over the parties, and in rem jurisdiction over the real and personal property situated within Butler County. While the Court does not have jurisdiction over the real estate in Nevada to physically sell or dispose of the property, the Court does * * * have the jurisdiction to determine the parties [sic] interest in the real estate."

{¶22} Recognizing that it had "subject matter jurisdiction to determine and divide marital property and in personam jurisdiction over the parties," the trial court ordered the parties to present "testimony and evidence * * * on the issue of the Nevada property in conjunction with the testimony on attorney fees" at the January 29, 2010 hearing.

{¶23} On January 15, 2010, just two weeks prior to the January 29, 2010 hearing, Husband's trial counsel provided numerous documents to Wife that were not previously disclosed to her, nor listed on his "Itemized Evidence Inventory" he provided to the trial court prior to the December 8, 2009 hearing. Included within these previously undisclosed documents was an alleged "Reno Nevada Tracing" document, a mortgage statement and appraisal for the Reno property, as well as a number of bank statements

that purportedly traced the purchase of the property to Husband's nonmarital funds.

{¶24} On January 21, 2010, Wife filed a "Notice of Objection to the Admissibility of Documents." In her motion, Wife stated the following:

{¶25} "[Wife] formally objects to the introduction of the documents provided to [Wife], as there were discovery orders in this matter which are far past due. Further, the issue was originally set to be heard on December 8, 2009, and [Husband] cannot take advantage of the delay of this issue by acquiring additional information that has been within his control during the entire pendency of this case."

{¶26} The trial court did not take any action regarding Wife's motion prior to the January 29, 2010 hearing. However, while Husband's trial counsel questioned Wife during the hearing, the following exchange occurred:

{¶27} "[HUSBAND'S TRIAL COUNSEL]: Um, I'd like to direct your attention to Exhibit 42.

{¶28} "[WIFE'S TRIAL COUNSEL]: Wait a minute, wait a minute. What is 42?

{¶29} "[COURT]: Exhibit 42 is a Master Card dated April 28th of '08.

{¶30} "[WIFE'S TRIAL COUNSEL]: Your Honor, this wasn't presented at the trial.

{¶31} "* * *

{¶32} "[COURT]: I already have an Exhibit 42 so you can take this back. Your Exhibit 42 was already admitted into evidence and that is a Master Card dated April 28th of '08. * * * So I'm not really sure why I'm going back to the Master Card statement.

{¶33} "[HUSBAND'S TRIAL COUNSEL]: Thank you, Your Honor. Uh, then what I'm going to do is I'm going to have you turn to what I'm going to mark as 42A.

{¶34} "[WIFE'S TRIAL COUNSEL]: Your Honor, I have no idea what 42A is.

{¶35} "[COURT]: [Husband's trial counsel], have you provided [Wife's trial

counsel] with 42A before today?

{¶36} "[HUSBAND'S TRIAL COUNSEL]: Yes.

{¶37} "[WIFE'S TRIAL COUNSEL]: And we filed an objection to that being introduced into evidence or discussed, Your Honor.

{¶38} "[HUSBAND'S TRIAL COUNSEL]: Your Honor, and we go over at the end of the hearing the objections to the admissibility of documents and I'd be more than happy to have the Court address that issue at this time. If I can just make my record then, you know, at that time we'll go ahead and rule on the documents.

{¶39} "[WIFE'S TRIAL COUNSEL]: I'd like to be heard on that, Your Honor.

{¶40} "[COURT]: Okay. Go ahead. Tell me why you don't want to do this.

{¶41} "[WIFE'S TRIAL COUNSEL]: On December 8th, we had a trial on this matter and all of the exhibits were presented to the Court as required by our Court rules. [Husband's trial counsel] provided – on January 15th at 5:30 p.m. – provided me with a three inch stack of documents that he said he's going to introduce into evidence at this hearing. These documents were not presented at the trial. They have nothing to do with attorney fees, nothing to do with real estate, and I presented the Court with a written objection to these documents and I think it's absolutely inappropriate for him to present new evidence at this hearing."

{¶42} Following a brief discussion on the matter, the trial court determined that Husband's trial counsel was "stuck" with the previous discovery orders, that it did not issue any "new discovery orders allowing [him] to go out and get new evidence" or "re-open" the case, and that he was only permitted to proceed with the exhibits listed on his "Itemized Evidence Inventory" provided to the court prior to the December 8, 2009 hearing. Subsequent to this ruling, Husband's trial counsel continued questioning Wife regarding the disputed property based solely on the previously disclosed documents

listed on his "Itemized Evidence Inventory."

{¶43} In addition, also at the January 29, 2010 hearing, the trial court heard testimony and reviewed evidence regarding Wife's attorney fees. After hearing this evidence, the trial court denied Husband's request to receive a credit for the $3,500 in attorney fees he was previously ordered to pay and ordered him to pay $10,625 for "[Wife's] attorney fees – all that have accrued – up until the date of final hearing."

{¶44} On March 29, 2010, the trial court incorporated its January 6, 2010 decision and order, as well as its order awarding Wife $10,625 in attorney fees, into a judgment entry and decree of divorce. Husband now appeals from the trial court's decision, raising two assignments of error for review.

{¶45} Assignment of Error No. 1:

{¶46} "THE TRIAL COURT ERRED IN DETERMINING THE NATURE OF AND DIVIDING PROPERTY."

{¶47} In his first assignment of error, Husband argues that the trial court erred in its decision classifying and dividing property. In support of his argument, Husband advances a number of issues for our review. For ease of discussion, we will address Husband's claims in relation to each disputed asset.

Reno, Nevada Real Property

{¶48} Initially, Husband argues that the trial court erred in its decision to exclude "evidence to identify and divide out of state real estate owned by the parties."[1] In support of this argument, Husband claims that the "evidence was relevant and should have been allowed," that the trial court had "no reason to disallow it," and that such a decision to exclude the evidence was "arbitrary." However, while we may agree with

Husband that the excluded evidence was relevant to the trial court's ultimate decision regarding the classification and division of property, we find the trial court had sufficient justification to exclude such evidence as a discovery sanction resulting from Husband's failure to obey the trial court's discovery order and local court rules.

{¶49} This court reviews a trial court's decision to impose discovery sanctions for an abuse of discretion. *Lucchesi v. Fischer*, Clermont App. No. CA2008-03-023, 2008-Ohio-5935, ¶6, citing *Nakoff v. Fairview Gen. Hosp.,* 75 Ohio St.3d 254, 1996-Ohio-159, syllabus. An abuse of discretion is more than an error of law; it implies the trial court acted unreasonably, arbitrarily or unconscionably. *Allgeier v. Allgeier*, Clinton App. No. CA2009-12-019, 2010-Ohio-5313, ¶11; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶50} Pursuant to Civ.R. 37(B)(2)(b), a court may preclude a party from introducing designated matters in evidence if that party "fails to obey an order to provide or permit discovery[.]" *Bailey v. Bailey*, Clermont App. No. CA2004-02-017, 2004-Ohio-6930, ¶30. This is true even "when the failure to comply with the discovery rules results merely from neglect, a change in trial strategy, or inadvertent error." *McKinney v. Schlatter* (Jan. 19, 1999), Butler App. No. CA98-05-101, at 8, citing *Huffman v. Hair Surgeons, Inc.* (1985), 19 Ohio St.3d 83; *Nead v. Brown Cty. Gen. Hosp.*, Brown App. No. CA2005-09-018, 2007-Ohio-2443, ¶17.

{¶51} Furthermore, pursuant to Loc.R. DR 30(D)(1), before a final contested divorce hearing begins, each party shall provide the trial court with, among other things, an "Itemized Evidence Inventory" list, a tabbed index of exhibits, and copies of *all* exhibits. (Emphasis added.) For any party that violates this rule, the "court may, upon

1. The excluded evidence also includes documents regarding, among other things, Wife's ballroom dance schedule, a variety of bank statements, and the Options Xpress brokerage account. However, Husband

its own motion, impose sanctions." Loc.R. DR 30(D).

{¶52} After a thorough review of the record, we find the trial court did not abuse its discretion by prohibiting Husband from introducing the disputed evidence at the January 29, 2010 hearing. As noted above, although discovery was allegedly "complete" on September 2, 2009, it is undisputed that Husband failed to disclose a number of the exhibits to Wife, failed to include a number of exhibits on his December 8, 2009 "Itemized Evidence Inventory," and failed to provide copies of the disputed exhibits to the trial court as required by Loc.R. DR 30(D). Moreover, based on his own "Itemized Evidence Inventory," which merely listed a "HUD Settlement Statement for 50 N. Sierra St., #703 and Deeds" and "Comparable MLS listing for the Reno property," it is clear that Husband did not even intend to present this evidence at the original December 8, 2009 hearing. In turn, although evidence regarding the parties' interest in the Reno, Nevada property was initially excluded from consideration, Husband, as the party burdened with tracing the Reno, Nevada property to his nonmarital funds, should not benefit from the trial court's delay in addressing this asset. Therefore, based on the facts and circumstances of this case, Husband's first argument is overruled.

{¶53} Next, although not explicit in his argument, Husband alleges that the trial court erred by excluding the disputed evidence because it "*was* part of the same documents Wife used in *her* evidence." (Emphasis sic.) However, after an extensive review of the record, we find no support for Husband's claim as the record is devoid of any evidence indicating Wife somehow used the excluded documents in the presentation of her case. Accordingly, Husband's second argument is overruled.

{¶54} Finally, Husband argues that the trial court "erred by failing to assign or allocate the Nevada real estate between the parties." We agree. Although the trial

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makes no claim regarding these other excluded exhibits.

court classified the Reno, Nevada property as marital, the trial court did not completely dispose of the asset, but instead, merely ordered "Husband and Wife to share equally in any deficiency that may result from the foreclosure of the property." Therefore, because "[a] divorce decree which does not dispose of all the property involved in a settlement between the parties is insufficient and incomplete," we find the trial court erred in its decision by not completely disposing of this asset. *Goffinet v. Goffinet* (Jan. 22, 1996), Butler App. Nos. CA94-11-197, CA95-02-028, at 3, citing *Rowe v. Rowe* (1990), 69 Ohio App.3d 607, 613. Accordingly, we reverse the trial court's decision and remand this matter to the trial court so that it may dispose of the parties' Reno, Nevada property in an equitable manner.

Butler County Real Property

{¶55} As it relates to the parties' Butler County residence, Husband argues that the trial court erred in its decision "determining the balance of an existing home mortgage by accepting the statement that was nearly a year old, instead of the statement that was within months of the court-ordered valuation date." We disagree.

{¶56} Originally, Husband argues that the trial court's decision to use a valuation date other than the parties' date of separation to calculate the parties' outstanding mortgage balance "violated" Loc.R. 30(B)(2)(b). However, Loc.R. 30(B)(2)(b), which is found under the subsection titled "Scheduling Conferences," merely sets forth the procedure in which the trial court's valuation date is established.[2] Nothing in this rule

2. **{¶a}** Loc.R. 30(B)(2)(b) states, in pertinent part, the following:

{¶b} "The following property issues will be addressed and appropriate orders issued at the scheduling conference:

{¶c} "* * *

{¶d} "The valuation date of marital property shall be the date of the scheduling conference unless a party, at least seven (7) days prior to the scheduling conference, files a motion to establish an alternate date. The valuation date of marital debt is the date of separation, unless it is shown that a debt incurred after separation is for marital purposes.

precludes the trial court from using a different valuation date when equity so requires. Accordingly, Husband's first argument is overruled.

{¶57} Next, Husband argues that the trial court's decision to use a different valuation date "implicates the inequity of inconsistently using valuation dates for assets and debts, and between different assets and debts." However, while we may certainly understand his frustration, contrary to Husband's claim, because "the circumstances of some cases may require the court to use different dates for different valuation purposes," the court need not utilize the same valuation date for each item of marital property. *Singh v. Singh*, Warren App. No. CA2002-08-080, 2003-Ohio-2372, fn.1. In other words, as this court has previously stated, "a trial court does not abuse its discretion in selecting different dates to value certain marital assets so long as the court sets forth its specific reasons for doing so, with those reasons having a basis in the evidence presented." *Moore v. Moore*, Clermont App. No. CA2006-09-066, 2007-Ohio-2355, ¶55, citing *DeWitt v. DeWitt,* Marion App. No. 9-02-42, 2003-Ohio-851, ¶19.

{¶58} In this case, neither party provided the court with any evidence indicating the outstanding mortgage balance as of the trial court's valuation date. However, despite this, the trial court found that using the outstanding mortgage balance of $60,800 as of August 3, 2009, the date for which Wife requested, was "equitable." In so holding, the trial court determined that if it were to use the outstanding mortgage balance of $68,160 as of April 2, 2008, the date for which Husband requested, Husband "would seek to receive a credit for the difference" and be "unjustly enrich[ed]" since "marital funds were used to pay down the mortgage from April 2, 2008 through August 3, 2009." We find no error in this decision. Therefore, because the trial court set forth a

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{¶e} "Any party filing a motion to establish an alternate date of valuation shall obtain a hearing date from the Case Management Office. The motion shall contain the date, time, and place of hearing; * * *."

specific reason for selecting a different date to value the parties' outstanding mortgage balance that had a basis in the evidence presented, the trial court did not abuse its discretion in its decision finding the parties' outstanding mortgage balance to be $60,800 based on the August 3, 2009 mortgage statement. Accordingly, Husband's second argument is overruled.

Scottrade and Options Xpress Brokerage Accounts

{¶59} Turning now to the disputed Scottrade and Options Xpress brokerage accounts, Husband initially argues that the trial court erred by "determining assets existed, and dividing it, when it was liquidated and transferred to other assets * * *." In support of this argument, Husband claims "[t]here was no evidence of any kind that the Scottrade account existed after 2006, or that the Options Xpress account existed separately from it * * *." This argument lacks merit.

{¶60} The trial court's classification of property as marital or separate must be supported by the manifest weight of the evidence. *Kevdzija v. Kevdzija,* 166 Ohio App.3d 276, 2006-Ohio-1723, ¶6. An appellate court will not reverse the trial court's factual findings as to the classification of property as either marital or separate so long as its determination is supported by competent and credible evidence. *Putman v. Putman*, Clermont App. No. CA2008-03-029, 2009-Ohio-97, ¶26; *Montgomery v. Montgomery,* Brown App. No. CA2003-04-008, 2004-Ohio-3346, ¶2. In determining whether competent and credible evidence exists, "[a] reviewing court should be guided by a presumption that the findings of a trial court are correct, since the trial judge is best able to view the witnesses and observe their demeanor, gestures, and voice inflections, and use those observations in weighing the credibility of the testimony." *Bey v. Bey,* Mercer App. No. 10-08-12, 2009-Ohio-300, ¶15, quoting *Barkley v. Barkley* (1997), 119 Ohio App.3d 155, 159.

{¶61} After a thorough review of the record, we find no error in the trial court's decision finding the Scottrade and Options Xpress accounts existed. Besides Husband's bare assertions to the contrary, there was no evidence presented indicating Husband closed the Scottrade account, nor was there any evidence to prove that such funds were then used to create the Options Xpress account. If Husband wanted to show the Scottrade account was closed, and such funds were then used to create the Options Xpress account, it was incumbent upon him to provide the trial court with such evidence. He did not.[3] In turn, because the trial court was best able to view the witnesses and observe their demeanor, gestures, and voice inflections, and use those observations in weighing the credibility of the testimony, we find no error in the trial court's decision finding the Scottrade and Options Xpress accounts existed, nor any error in its decision finding such assets were subject to an equitable division as marital property. Accordingly, Husband's first argument is overruled.

{¶62} Next, Husband argues that the trial court erred by using "different valuation dates" to value the Scottrade and Options Xpress accounts, as such findings "were based on statements predating" the July 17, 2008 valuation date. However, while it may be true that "a trial court should consistently apply the same set of dates when evaluating all marital property that is subject to division and distribution in a divorce proceeding," as this court has previously stated, "it is within the trial court's discretion to use different valuation dates where the valuation or account balances at a certain date were the only evidence before the court." *Singh*, 2003-Ohio-2372 at fn.1; *Smith v. Smith*, Butler App. No. CA2001-11-259, 2002-Ohio-5449, ¶7; *Keyser v. Keyser* (Apr. 9, 2001),

3. **{¶a}** Specifically, when asked by the trial court if he funded the Options Xpress account from money allegedly withdrawn from his Scottrade account, Husband testified as follows:

{¶b} "I believe that that – that that's what I used to open up the, uh – well, when I closed, -- you know, I'll have – I'll have to re-look what I did with that."

Butler App. No. CA2000-06-127, at 7. In turn, because the record does not contain any evidence indicating the exact value of the Scottrade or Options Xpress accounts on July 17, 2008, the valuation date, we find no error in the trial court's decision to use differing dates in its attempts to value the Scottrade and Options Xpress accounts. Husband's second argument is overruled.

{¶63} That being said, however, we find the trial court's decision to value the Options Xpress account at $42,467 was not supported by competent, credible evidence, and therefore, was an abuse of discretion.[4] See *Brown v. Brown*, Madison App. No. CA2008-08-021, 2009-Ohio-2204, ¶42-44. As a result, because the trial court's finding was not supported by competent, credible evidence, we reverse the trial court's decision as it relates to the value of the Options Xpress account and remand this matter to the trial court to determine its value, if any, based on the evidence identified and admitted at the December 8, 2009 and January 29, 2010 hearings. Accordingly, Husband's third argument is sustained.

{¶64} In light of the foregoing, Husband's first assignment of error is sustained in part and overruled in part.

{¶65} Assignment of Error No. 2:

{¶66} "THE TRIAL COURT ERRED IN AWARDING ATTORNEY FEES TO WIFE INCURRED IN A PREVIOUSLY DISMISSED CASE."

{¶67} In his second assignment of error, Husband argues that the trial court erred by awarding Wife attorney fees. In support of his argument, Husband once again advances a number of issues for our review. For ease of discussion, we will address

4. The record does indicate that during the December 8, 2009 hearing, Wife's trial counsel claimed the Options Xpress account had a value of $42,467 based on a February 29, 2008 statement. However, while Husband did not object to this valuation, the February 29, 2008 statement, which was marked as Wife's Exhibit EE, was never identified nor admitted into evidence during the December 8, 2009 or January 29, 2010 hearings.

Husband's claims separately and as they relate to the trial court's decisions filed December 4, 2009 and March 29, 2010, respectively.

December 4, 2009 Decision

{¶68} Initially, Husband argues that the trial court erred by overruling his objection to the magistrate's decision awarding Wife $3,500 in attorney fees. In support of this claim, Husband argues that the trial court erred by "awarding to Wife attorney fees she claimed to have incurred in litigating a previous case between the parties, that was voluntarily dismissed before trial." This argument lacks merit.

{¶69} "It is well-established that an award of attorney fees is within the sound discretion of the trial court." *Wolf v. Wolf*, Preble App. No. CA2009-01-001, 2009-Ohio-3687, ¶39, quoting *Rand v. Rand* (1985), 18 Ohio St.3d 356, 359; R.C. 3105.73(A). In turn, the trial court's decision to award attorney fees will be reversed only if it amounts to an abuse of discretion. *Hampton v. Hampton*, Clermont App. No. CA2007-03-033, 2008-Ohio-868, ¶70.

{¶70} After a thorough review of the record, we find it devoid of any evidence to support Husband's claim that the trial court awarded Wife attorney fees for work completed as a result of his original complaint for divorce, which he voluntarily dismissed pursuant to Civ.R. 41(A). As noted above, on April 30, 2009, Wife, in response to Husband's newly filed complaint, filed another answer, as well as another motion to establish spousal support, a motion to allocate debt, and a motion for attorney fees and costs. In her new motion for attorney fees and costs, Wife explicitly stated the following:

{¶71} "Now comes [Wife], by and through counsel, and states that she is without sufficient funds to pay her attorney for fees for *this divorce* and requests this Court order [Husband] to pay the sum of $3,500 in order for [Wife] to pay her attorney fees."

(Emphasis added.)

{¶72} In addition, in her response to Husband's objection to the magistrate's decision to award her attorney fees, Wife specifically stated that she "did not request that the award of attorney fees be based solely on prior work," but instead, felt "that it was certainly relevant that [Husband] dismissed his prior Complaint for Divorce less than one month from the final hearing, and then filed a new Complaint for Divorce less than one month later."

{¶73} As a result, based on Wife's own motion for attorney fees, as well as her response to Husband's objection, we find it clear that Wife was not requesting Husband to pay attorney fees she incurred in the previous divorce action.

{¶74} Furthermore, while Husband objected to such an award as payment for "prior work," the trial court overruled this objection by finding Wife "incurred *further* attorney fees" due to Husband's actions, that such fees were "being incurred to *duplicate* the work previously completed * * *," and that "[Husband] is responsible for the *duplicative* incurrent [sic] of fees." (Emphasis added.) In turn, although some of the work completed in the pending divorce action was likely repetitive, the trial court's decision to award Wife $3,500 in attorney fees was not, contrary to Husband's claim, to compensate her for fees she incurred in the parties' previous divorce action.[5] Accordingly, Husband's first argument is overruled.

{¶75} Next, Husband argues that the trial court erred by overruling his objection to the magistrate's decision to award Wife $3,500 in attorney fees because "there was no evidence presented for any reasonableness or necessity" of such an award. However, although it is clear that he takes exception to the magistrate's finding,

5. It should be noted, Husband had already entered into a temporary agreed order on October 2, 2008 that required him to pay Wife $3,500 in attorney fees she incurred in the prior divorce action.

Husband did not raise this issue, even generally, in his objections to the magistrate's decision.[6] In turn, because Husband failed to raise the reasonableness of the attorney fee award, Husband is now precluded from raising this issue on appeal. See Civ.R. 53(D)(3)(b)(iv); see, also, *Cravens v. Cravens,* Warren App. No. CA2008-02-033, 2009-Ohio-1733, ¶30; *Koeller v. Koeller*, Preble App. No. CA2006-04-009, 2007-Ohio-2998, ¶18. Furthermore, even if Husband had objected to the reasonableness of the award, we find the trial court did not abuse its discretion by ordering Husband to pay Wife $3,500 in attorney fees as such an award was equitable based on the facts and circumstances of this case. See R.C. 3105.73(A); see, also, *Gore v. Gore*, Greene App. No. 09-CA-64, 2010-Ohio-3906, ¶35; *Rihan v. Rihan,* Greene App. No. 2004-CA-46, 2005-Ohio-309, ¶37, citing *Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St.3d 143, 146. Therefore, Husband's second argument is overruled.

March 29, 2010 Decision

{¶76} Moving now to the trial court's March 29, 2010 decision, Husband argues that the trial court erred in its subsequent decision to award Wife $10,625 in attorney fees "expressly without credit for what was ordered paid before." We agree. The trial court, by not giving Husband a credit for the $3,500 he was previously ordered to pay, essentially ordered Husband to pay the same fees on two separate occasions.[7] In turn, although the trial court should determine what is equitable in awarding attorney fees in a

6. Husband did object to the magistrate's decision alleging, among other things, that the magistrate erred by awarding such fees because Wife "was not required to provide evidence as contemplated in local rule DR 30(E)(3)," that it "failed to provide a continuance of sufficient length" for him to "provide documentary evidence regarding income and expenses," that the award was based on "speculation regarding [Wife's] assets and income," that it "failed to consider [Wife's] voluntary under employment and capacity to pay her own living expenses and attorney fees," and that he was "prohibited from presenting evidence as to his capacity to pay." None of these objections raised the issue of the reasonableness of the $3,500 award of attorney fees.

7. Wife's Exhibit ZZ indicates that she incurred approximately $3,500 in attorney fees for work completed between April 23, 2009 and August 27, 2009. Exhibit ZZ also indicates that Husband paid $3,500 to Wife's trial counsel on November 12, 2009.

divorce action, we find its decision to order Husband to pay $10,625 for Wife's attorney fees without giving him credit for the $3,500 he was previously ordered to pay was an abuse of discretion. Therefore, we reverse the trial court's decision to award Wife $10,625 in attorney fees and remand this matter to the trial court so that it may recalculate an appropriate award after taking into account the $3,500 Husband was previously ordered to pay. Accordingly, Husband's final argument is sustained.

{¶77} In light of the foregoing, Husband's second assignment of error is sustained in part and overruled in part.

{¶78} Judgment affirmed in part, reversed in part, and remanded for further proceedings.

YOUNG, P.J., and BRESSLER, J., concur.