

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

VICKI J. ROETTING, :
 :
 Plaintiff-Appellee, : CASE NO. CA2014-06-128
 :
 - vs - : OPINION
 : 6/22/2015
 :
 CHRISTOPHER P. ROETTING, :
 :
 Defendant-Appellant. :

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR2013-05-0531

Fred S. Miller, Baden & Jones Bldg., 246 High Street, Hamilton, Ohio 45011, for plaintiff-appellee

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RINGLAND, J.

{¶ 1} Defendant-appellant, Christopher P. Roetting (Husband), appeals the judgment of the Butler County Court of Common Pleas, Domestic Relations Division, regarding his divorce from plaintiff-appellee, Vicki J. Roetting (Wife).

{¶ 2} Husband and Wife began living together in June 2006, and were married on June 22, 2007. It was not the first marriage for either party, and both brought assets into the

marriage. At the outset, both parties were fully employed: Husband worked as a master plumber for RotoRooter, and Wife worked as a teaching assistant in a local school district.

{¶ 3} Husband managed the marital finances, including the retirement and investment accounts Wife retained after the dissolution of her previous marriage, and the record suggests the parties enjoyed a relatively extravagant lifestyle together. For instance, in the course of their approximately seven-year relationship, the parties dined out frequently; went on three cruises; held a \$15,000 wedding, with custom-made wedding rings, an opera singer, a violinist, and an elegant venue; purchased multiple vehicles and varied electronics equipment; and acquired timeshares in Cabo San Lucas and Lake Geneva, Florida, and a parcel of real property in Tazewell, Tennessee.

{¶ 4} Almost all of the parties' spending was financed, resulting in substantial debt in the form of credit cards, car loans, and a mortgage on the Silax Drive home that Husband owned outright prior to the marriage. This debt caused financial strain when Husband left his work at RotoRooter, reducing the parties' combined annual income stream to the approximately \$14,500 Husband received in social security disability benefits and Wife's \$19,000 salary from the school district. On May 23, 2013, Wife filed a complaint for divorce.

{¶ 5} Prior to trial, the parties agreed to several stipulations. The stipulations provided that Husband would keep his home on Silax Drive, which the parties agreed had a net equity value of \$42,000; the timeshares in Cabo San Lucas and Florida; the lot in Tennessee; four of the parties' five vehicles; and his own employment retirement benefits from RotoRooter. Additionally, he would be responsible for repaying the \$103,000 balance on the mortgage encumbering his Silax Drive home, the loan balances on the vehicles that he retained, and the balance owed on the Florida timeshare.

{¶ 6} The stipulations also provided that Wife could identify approximately \$180,000 in Merrill Lynch accounts as her separate property, and that she would keep her employment

retirement benefits from the school district, her USAA bank accounts with an aggregate balance of around \$110,000, one of the parties' vehicles, and her retirement annuities. Additionally, she would be responsible for repaying the loan balance on the vehicle she retained.

{¶ 7} Notwithstanding the numerous issues resolved by the stipulations, there were several issues still in dispute. Thus, the stipulations reserved the following for trial: "issues of equity in the division of all identified separate property, the divisions [sic] of personal property, the division of credit card debts * * * and Wife's pending motions for contempt."

{¶ 8} The trial was held in March 2014, and the trial court issued its decision on April 16, 2014. In the decision, the court adopted the stipulations as fair and equitable, and proceeded to address the parties' unresolved issues. Relevant to the present appeal, the court identified several items of personal property that were in dispute, awarded a "3D television" to Husband and a treadmill to Wife, divided various articles of jewelry between the parties, and allowed Husband to retain the assortment of coins and collectibles he had accumulated both prior to and during the marriage.

{¶ 9} The trial court declined to value some of the items in dispute on the ground that the parties had not presented sufficient evidence. Of the items that the court did value, the television allocated to Husband was valued at \$2,800, and the items allocated to Wife were valued at \$3,650.¹ Although they were not in dispute, the court also recited the stipulated values of the parties' various vehicles: a utility trailer at \$1,000 (Husband's separate property), a Toyota FJ Cruiser at \$12,390 (marital property, retained by Husband), a Ford truck at \$7,000 (marital property, retained by Husband), an ATV at \$2,000 (marital property, retained by Husband), and a Honda CRV at \$2,455 (marital property, retained by Wife).

1. Wife was allocated two rings with an aggregate value of \$2,200; two rings of unknown value; a necklace valued at \$800; and a treadmill valued at \$650.

{¶ 10} Additionally, the trial court divided the parties' credit card debt. After noting that Wife claimed \$4,000 to \$5,000 in premarital debt, the court ruled that Husband would be responsible for paying \$23,285.47 of the credit card debt, and Wife would be responsible for paying \$6,646.05. The court also noted that Husband claimed an additional \$4,830.56 on a "CSC Visa" card, and ruled that because there was no statement for this card in the record, repayment of the CSC Visa debt was also Husband's responsibility.

{¶ 11} In making the foregoing division of marital assets and liabilities, the trial court indicated that it "considered all the relevant factors" including those factors set forth in R.C. 3105.171(A), (B), (C), and (F). Nevertheless, the court offered little in the way of explanation. The court stated only that

the foregoing may not be an exactly equal division [of] property. However, the Court finds that an unequal division of property is appropriate considering all of the facts and circumstances and finds the division to be equitable.

Similarly, in denying Husband's request for a distributive award, the court summarily stated, "[a]fter reviewing factors outlined in [R.C. 3105.171], the Court declines to make a distributive award to Husband."

{¶ 12} The parties' stipulations and the trial court's April 16 decision were incorporated into the final decree of divorce filed on May 20, 2014. In the decree, the court again found that the division of marital property was fair and equitable, and "appropriate considering all of the facts, circumstances, and applicable law." In addition, the court specifically found "the division of [the] real estate to be fair and equitable to the parties."

{¶ 13} Husband now appeals, raising three assignments of error.

{¶ 14} Assignment of Error No. 1:

{¶ 15} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT IN THE DIVISION OF MARITAL PROPERTY.

{¶ 16} In his first assignment of error, Husband argues that the trial court failed to adequately explain the basis for its unequal division of marital property, and that the property division was inequitable.

{¶ 17} Property division in a divorce action is a two-step process, with each step subject to a different standard of review. *Boyer v. Boyer*, 12th Dist. Butler Nos. CA2010-04-083 and CA2010-05-109, 2011-Ohio-989, ¶ 6. First, the court must classify the property by determining what constitutes marital property and what constitutes separate property. R.C. 3105.171(B). The court's classification must be supported by the manifest weight of the evidence. *Boyer* at ¶ 8.

{¶ 18} After classifying the property, the trial court must disburse a spouse's separate property to that spouse, and divide the marital property equally between the spouses, unless the court finds that an equal division would be inequitable. R.C. 3105.171(C) and (D); *Roberts v. Roberts*, 12th Dist. Clinton Nos. CA2012-07-015 and CA2012-07-016, 2013-Ohio-1733, ¶ 34. R.C. 3105.171(F) identifies the factors the court must consider in dividing the marital property. If, after a consideration of the relevant factors, the court finds an equal division of marital property would be inequitable, the court must divide the property in a manner the court determines to be equitable. R.C. 3105.171(C)(1). The trial court's determination as to what constitutes an equitable division of property will not be disturbed absent an abuse of discretion. *Briganti v. Briganti*, 9 Ohio St.3d 220, 221-222 (1984); *Grow v. Grow*, 12th Dist. Butler Nos. CA2010-08-209, CA2010-08-218, and CA2010-11-301, 2012-Ohio-1680, ¶ 13.

{¶ 19} To facilitate meaningful appellate review of the trial court's division of marital property, R.C. 3105.171(G) requires the trial court to "make written findings of fact that support the determination that the marital property has been equitably divided * * *." See also *Williams v. Williams*, 12th Dist. Warren No. CA2012-08-074, 2013-Ohio-3318, ¶ 55.

These findings are especially important where the division results in an unequal distribution of property. *Id.* The requirements of R.C. 3105.171(G) are satisfied when the trial court indicates the basis for its determinations in sufficient detail to enable the reviewing court to ascertain whether the property division is fair, equitable, and in accordance with the law. *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 97 (1988); *Mannerino v. Mannerino*, 12th Dist. Butler No. CA2010-08-210, 2012-Ohio-1592, ¶ 19.

{¶ 20} After a thorough review of the record, this court is unable to determine whether the division was fair, equitable, and in accordance with the law. In particular, we find the trial court failed to sufficiently explain the basis for its allocation to Husband of what appears to be a disproportionate amount of marital debt.

{¶ 21} It is well-settled that in making an equitable division of property, courts must consider the totality of the circumstances of each case. *Briganti*, 9 Ohio St.3d at 222. See also R.C. 3105.171(F)(1) through (9). Although R.C. 3105.171(C)(1) does not explicitly mention debt, courts have found that the starting point for allocating marital property is an equal division of marital assets and debts. *Ornelas v. Ornelas*, 12th Dist. Warren No. CA2011-08-094, 2012-Ohio-4106, ¶ 32. Thus, R.C. 3105.171(F)(2) requires the trial court to consider the assets *and* liabilities of the spouses when dividing marital property.

{¶ 22} The stipulations make clear that the mortgage encumbering Husband's Silax Drive home was executed during the marriage: the closing date for the mortgage was January 24, 2013, and the stipulated "end of marriage" date was July 31, 2013. Further, of the nearly \$103,000 balance on the mortgage, the stipulations indicate that \$49,437 went toward repayment of a loan from First Century Bank that was used to purchase the Tennessee property, and \$49,011 was used to pay off a prior home equity loan from First Financial Bank that was also accumulated during the marriage. Thus, the \$103,000 mortgage would appear to be a marital debt. See *Kranz v. Kranz*, 12th Dist. Warren No.

CA2008-04-054, 2009-Ohio-2451, ¶ 24 ("debts accumulated during the marriage are presumed to be marital debt").

{¶ 23} In response to Husband's argument that the trial court erred by failing to properly consider the mortgage in making the property division, Wife contends that Husband's stipulation to the assumption of the \$103,000 mortgage precludes him from complaining about the debt on appeal. We disagree with Wife's contention.

{¶ 24} A stipulation is "a voluntary agreement entered into between opposing parties concerning the disposition of some relevant point in order to avoid the necessity for proof on an issue * * * [or to] narrow the range of issues to be litigated." (Citations omitted.) *Rarden v. Rarden*, 12th Dist. Warren No. CA2013-06-054, 2013-Ohio-4985, ¶ 21. Once a stipulation is entered into, filed, and accepted by the court, it is binding upon the parties as "a fact deemed adjudicated for purposes of determining the remaining issues in the case." *Id.* Hence, when parties clearly intend their stipulations to be a complete settlement of all issues to be addressed in their divorce, the court may imply a waiver of the provisions of R.C. 3105.171. *Pawlowski v. Pawlowski*, 83 Ohio App.3d 794, 799-800 (10th Dist.1992) (finding waiver of the court's duty to make findings under R.C. 3105.171[G] where the parties entered into a total settlement of the marital issues).

{¶ 25} In the present case, however, Husband's stipulation to the assumption of the \$103,000 mortgage did not constitute a waiver of the mandates of R.C. 3105.171. Because the parties expressly reserved "equity in the division of all identified separate property" as an issue for trial, it is clear they did not intend their stipulations to be a complete settlement of all issues to be addressed in their divorce. Thus, R.C. 3105.171(F)(2) required the trial court to consider the mortgage in making its division of property. See, e.g., *Wood v. Wood*, 10th Dist. Franklin No. 10AP-513, 2011-Ohio-679, ¶ 16 (finding R.C. 3105.171[F][2] required the trial court to consider a marital debt on a timeshare, even when the parties stipulated to an equal

split of the debt).

{¶ 26} While we could assume that the trial court did, in fact, consider the mortgage, and found \$49,437 of the \$103,000 balance to be offset by Husband's retention of the Tennessee property the money was used to purchase, our role as an appellate court does not allow such conjecture. See *Flynn v. Flynn*, 196 Ohio App.3d 93, 2011-Ohio-4714, ¶ 46 (12th Dist.). Moreover, we are not permitted to speculate as to the origin of the underlying \$49,011 home equity loan, which is a source of dispute between the parties that the trial court did not explicitly resolve.² *Id.*

{¶ 27} In the absence of an explanation, the \$103,000 mortgage encumbering Husband's separate property (i.e., the Silax Drive home), and the trial court's allocation of more than \$23,000 in marital credit card debt to Husband, appears to burden Husband with a disproportionately high percentage of the marital debt when compared with the \$6,646.05 that was allocated to Wife.³ Such a drastic disproportion does not render the division inequitable per se, but we agree with Husband that R.C. 3105.171(G) requires the trial court to provide a more thorough explanation. See, e.g., *King v. King*, 4th Dist. Adams No. 99-CA-680, 2000 WL 326131, *3 (Mar. 20, 2000) (finding the trial court failed to comply with R.C. 3105.171[G] where the court's entry leaves its rationale "a virtual mystery").

{¶ 28} Consequently, we find the trial court failed to comply with R.C. 3105.171(G). Husband's first assignment of error is sustained, and the trial court's property division is reversed and remanded with instructions to make sufficient findings of fact consistent with

2. At trial, Husband claimed that the \$49,011 home equity loan was used to satisfy Wife's excessive premarital debt; Wife testified that the excessive debt Husband refers to was actually the expense incurred by Husband for their extravagant wedding and honeymoon.

3. To put the allocation of marital liabilities into context, we note that the value of the marital assets allocated by the trial court – including the stipulated vehicle values – was \$24,190 to Husband and \$6,105 to Wife. We further note that Husband argues these aggregate values are distorted, to some degree, by the trial court's failure to address an iPad, despite the fact that the iPad was discussed in both parties' testimony.

R.C. 3105.171(G), and divide the parties' marital property consistent with those findings.

{¶ 29} Assignment of Error No. 2:

{¶ 30} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT AND ABUSED ITS DISCRETION WHEN IT FAILED TO MAKE A DISTRIBUTIVE AWARD IN HIS FAVOR.

{¶ 31} In his second assignment of error, Husband asserts that the trial court's refusal to make a distributive award to him out of Wife's separate funds was an abuse of discretion.

{¶ 32} A distributive award is "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 * * *." R.C. 3105.171(A)(1). R.C. 3105.171(E)(1) permits the trial court to "make a distributive award to facilitate, effectuate, or supplement a division of marital property." The trial court has broad discretion to determine whether a distributive award of a party's separate property is equitable and appropriate, and its decision will not be disturbed absent an abuse of discretion. *Swartz v. Swartz*, 110 Ohio App.3d 218, 223 (12th Dist.1996).

{¶ 33} As previously stated, the trial court's failure to comply with R.C. 3105.171(G) prevents this court from determining whether the court's division of marital property is fair, equitable, and in accordance with the law. Consequently, in the absence of such statutory findings, we are also unable to evaluate the court's decision with respect to a distributive award, which is designed to "facilitate, effectuate, or supplement" its division of marital property. R.C. 3105.171(E)(1).

{¶ 34} Therefore, Husband's second assignment of error is sustained, and the trial court's decision with respect to the distributive award is reversed. Upon remand the court shall consider, in light of its findings under R.C. 3105.171(G), whether a distributive award is

warranted as part of the property division.

{¶ 35} Assignment of Error No. 3:

{¶ 36} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT AND ABUSED ITS DISCRETION IN AWARDING ATTORNEY FEES.

{¶ 37} In his third assignment of error, Husband contends the trial court abused its discretion in ordering him to pay \$1,000 to Wife for attorney fees.

{¶ 38} In May 2013, Wife filed the complaint for divorce that serves as the basis of the present appeal. At the same time, Wife also filed her first set of interrogatories, which asked Husband – among other things – to describe any property he intended to claim as a nonmarital asset. Husband did not disclose his assortment of coins and other collectibles in his initial response to Wife's interrogatories.

{¶ 39} Further, the trial court initially scheduled such discovery to close by mid-September 2013. Nevertheless, in November 2013, the trial court had to intervene to order Husband to make his assortment of coins and other collectibles available to Wife within two weeks of the order for the purposes of appraisal, and to respond to Wife's various other discovery requests. Husband appears not to have complied with the court's November order, so the court issued a second order in December 2013. The December order again required Husband to make his coins and collectibles available for appraisal, and to produce the other discovery as previously ordered.

{¶ 40} In January 2014, Wife filed respective motions for contempt, to compel discovery, to impose sanctions, and for attorney fees and costs. Wife's motions alleged that Husband failed to comply with the trial court's discovery orders from November and December 2013, and that Husband's failure had caused Wife to incur additional attorney fees. In support of her position, Wife submitted into evidence several communications from Wife's counsel to Husband's counsel seeking cooperation with Wife's discovery requests.

{¶ 41} The court noted in its April 16 decision that as a result of Husband's failure to promptly comply with the court's discovery orders, the trial had to be postponed nearly two months, from January to early March 2014. Thus, the court awarded Wife \$1,000 in attorney fees.

{¶ 42} In an action for divorce, R.C. 3105.73(A) permits a trial court to award all or part of reasonable attorney's fees * * * to either party if the court finds the award equitable. In determining whether the award is equitable, the court may consider * * * the conduct of the parties, and any other relevant factors the court deems appropriate.

It is well-settled that a trial court's decision to award attorney fees will only be reversed if it amounts to an abuse of discretion. *Potter v. Potter*, 12th Dist. Butler Nos. CA2013-12-222 and CA2013-12-232, 2014-Ohio-5490, ¶ 34. An abuse of discretion connotes more than an error of law or judgment; it implies the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 43} Given Husband's repeated failure to cooperate in Wife's discovery efforts, including his failure to timely comply with the trial court's discovery orders, we find the award of \$1,000 of attorney fees to Wife was not an abuse of discretion. Accordingly, Husband's third assignment of error is overruled.

{¶ 44} Judgment affirmed in part, reversed in part, and the cause is remanded for proceedings consistent with this opinion.

PIPER, P.J., and HENDRICKSON, J., concur.