

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

DINA MANNERINO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-08-210
- vs -	:	<u>OPINION</u>
	:	4/9/2012
DAVID MANNERINO,	:	
Defendant-Appellant.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
Case No. DR08-07-0859

M. Lynn Lampe, 1248 Nilles Road, Suite 7, Fairfield, Ohio 45014, for plaintiff-appellee

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

**POWELL, P.J.**

{¶ 1} Defendant-appellant, David Mannerino (Husband), appeals the decision of the Butler County Court of Common Pleas, Division of Domestic Relations, ordering child support and dividing property in a divorce action involving himself and plaintiff-appellee, Dina Mannerino (Wife). For the reasons discussed below, we affirm in part, reverse in part, and remand the cause to the trial court for further proceedings.

{¶ 2} The parties were married on September 30, 2000. On July 15, 2008, Wife filed for divorce against Husband. Following multiple hearings in 2009 and 2010, the trial court issued a decision on March 30, 2010. The Judgment Entry and Decree of Divorce were filed on July 30, 2010.

{¶ 3} Husband timely appealed the trial court's decision, raising four assignments of error for our review.

{¶ 4} Assignment of Error No. 1:

{¶ 5} THE TRIAL COURT ERRED TO THE PREJUDICE OF [HUSBAND] IN ITS CALCULATION OF CHILD SUPPORT.

{¶ 6} Within this assignment of error, Husband argues that "[i]t is improper for a court to issue a 300% upward deviation in child support precisely because of a child's extraordinary medical and educational needs, and to then require the obligor to pay yet an additional amount for those same educational and medical needs." Husband contends that the children's extraordinary educational and medical costs were accounted for in the upward deviation to child support, and therefore he should not be additionally ordered to pay one-half of the non-reimbursed school costs for his son.

{¶ 7} There were two children born of the parties' marriage: Luca and Bianca. Luca suffers from a severe form of autism that renders him self-injurious and essentially non-verbal. He is currently enrolled at the Cincinnati Center for Autism at a cost of \$41,500 during the school year and \$8,100 for the summer. Half of that cost is paid for by the state, with Wife's father paying for the balance along with assistance from scholarships Wife has obtained. Additionally, both children suffer from numerous food allergies, Bianca requires counseling, and Luca has frequently exhibited violent behavior towards his sister. Because of Luca's condition, Wife also requires a caregiver to help her with the children's needs.

{¶ 8} According to child support guidelines, Husband would be required to pay

\$1,867.54 per month for both children. In the present case however, the trial court issued an upward deviation based upon the court's finding that the children required additional care, private schooling, day care, and therapy. In consideration of the deviation factors contained in R.C. 3119.23 and 3119.24, the trial court ordered that Husband pay \$5,100 per month for both children. The court then further ordered that Husband pay one-half of all of Luca's non-reimbursed school costs effective April 1, 2010. Husband argues that those non-reimbursed school costs were already accounted for in the upward deviation to the child support, thus requiring that he pay double on those costs. We disagree.

{¶ 9} "The purpose of the child support system is to protect the child and his best interest." *Kauza v. Kauza*, 12th Dist. No. CA2008-02-014, 2008-Ohio-5668, ¶ 10, quoting *Richardson v. Ballard*, 113 Ohio App.3d 552, 555 (12th Dist.1996). "The trial court possesses considerable discretion in child support matters." *Pahls v. Pahls*, 12th Dist. No. CA2009-01-005, 2009-Ohio-6923, ¶ 10, quoting *Murray v. Murray*, 128 Ohio App.3d 662, 666 (12th Dist.1999). Therefore, "[m]atters involving child support are reviewed under the abuse-of-discretion standard." *Van Osdell v. Van Osdell*, 12th Dist. No. CA2007-10-123, 2008-Ohio-5843, ¶ 20.

{¶ 10} Pursuant to R.C. 3119.22,

the court may order an amount of child support that deviates from the amount of child support that would otherwise result from the use of the basic child support schedule and the applicable worksheet \* \* \* if, after considering the factors and criteria set forth in section 3119.23 of the Revised Code, the court determines that the amount calculated pursuant to the basic child support schedule \* \* \* would be unjust or inappropriate and would not be in the best interest of the child.

*Zollar v. Zollar*, 12th Dist. No. CA2008-03-065, 2009-Ohio-1008, ¶ 22. The statutory factors listed in R.C. 3119.23 include, but are not limited to, the special and unusual needs of the child, the income disparity between the parties, any extraordinary costs associated with

parenting time, the child's standard of living had the marriage continued, the physical and emotional condition and needs of the child, the need and capacity of the child for educational opportunities that would have been available had the marriage continued, and any other relevant factor. See R.C. 3119.23(A), (G), (L), (M)-(P).

{¶ 11} In the case at bar, the trial court weighed all of the evidence presented and found there to be substantial expenses associated with providing for the special needs of the parties' children. While schooling was certainly a factor, the court also heard ample evidence regarding numerous other costs including therapy, medical issues, and the need for an additional full-time caregiver to help Wife provide for the basic needs of the children at home. That caregiver alone results in a nearly \$2,000 per month increase in the cost of caring for their children.<sup>1</sup> The court also heard testimony describing the myriad of allergies the children suffer from that require special dietary considerations, as well as their frequent trips to the doctor for various ailments.

{¶ 12} Having thoroughly reviewed the record, there is no doubt that these children, and especially Luca, require significant additional expenses beyond the cost of schooling that could justify an upward deviation in child support. Courts possess considerable discretion in determining child support, and we cannot find that the trial court abused that discretion in ordering an upward deviation in addition to requiring that Husband pay one-half of Luca's non-reimbursed school costs.

{¶ 13} Accordingly, Husband's first assignment of error is overruled.

{¶ 14} Assignment of Error No. 2:

{¶ 15} THE TRIAL COURT ERRED TO THE PREJUDICE OF [HUSBAND] WHEN IT REQUIRED HIM TO BE SOLELY RESPONSIBLE FOR THE \$300,000.00 DEBT FOR THE

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1. The caregiver, Amanda Raines, testified that she works an average of 35 hours a week at \$12 an hour. At an average of 4.3 weeks in a month, this results in a cost of \$1,806 per month for the caregiver.

PARTIES' PROPERTY IN FLORIDA.

{¶ 16} During the course of the parties' marriage, Husband purchased a property in Florida at a price of \$423,000 for investment purposes. When that investment failed, Husband was left with a bank note in the amount of \$300,000, but without any remaining ownership interest in the property. The trial court ordered that Husband be responsible for the entirety of that \$300,000 debt. Husband argues that the trial court failed to "equitably divide the parties' assets and debt and to provide written findings if the division is not equal." We agree.

{¶ 17} R.C. 3105.171(A)(3)(a)(i)-(iii) defines "marital property" as all real and personal property, as well as any interests in real or personal property, acquired by either or both of the spouses during their marriage.

{¶ 18} Property division in a divorce proceeding is a two-step process that is subject to two different standards of review. *Boyer v. Boyer*, 12th Dist. Nos. CA2010-04-083, CA2010-05-109, 2011-Ohio-989, ¶ 6. Initially, pursuant to R.C. 3105.171(B), "the court shall \* \* \* determine what constitutes marital property and what constitutes separate property." A trial court's classification of property as marital or separate must be supported by the manifest weight of the evidence, and an appellate court will not reverse the trial court's classification if it is supported by competent and credible evidence. *Id.* at ¶ 8; *Zollar v. Zollar*, 12th Dist. No. CA2008-03-065, 2009-Ohio-1008, ¶ 10. "Because the trial court must consider the assets and liabilities of both parties, dividing marital property requires the trial court to also divide marital debt. See R.C. 3105.171(F)(2)." *Wolf v. Wolf*, 12th Dist. No. CA2009-01-001, 2009-Ohio-3687, ¶ 23.

{¶ 19} After classifying the assets and debts as separate or marital property, "the court shall disburse a spouse's separate property to that spouse" and divide the marital property equally, unless the court finds an equal division would be inequitable. See R.C.

3105.171(C)(1); R.C. 3105.171(D). Pursuant to R.C. 3105.171(G), a trial court must indicate the basis for its division of marital property in sufficient detail to enable a reviewing court to determine whether the award is fair, equitable, and in accordance with the law. *Kaechele v. Kaechele*, 35 Ohio St.3d 93, 97 (1988); *Davis v. Davis*, 7th Dist. No. 2000 CO 31, 2001 WL 1667852 (Dec. 26, 2001).

{¶ 20} In the present case, the trial court ordered that Husband shall be responsible for the entirety of the \$300,000 debt, holding Wife harmless thereon. However, the court did not make a finding that the debt was separate rather than marital property, nor did the court explain why it made an unequal division of the marital assets and debts, if an unequal division was the court's intent.<sup>2</sup> The court said nothing about making an equitable as opposed to equal property division. If the court instead intended to divide the assets and debts evenly, then the method the court used did not create an equal division of the assets and debts. In either instance, this aspect of the case must be remanded for an explanation from the trial court.

{¶ 21} Accordingly, Husband's second assignment of error is sustained.

{¶ 22} Assignment of Error No. 3:

{¶ 23} THE TRIAL COURT ERRED TO THE PREJUDICE OF [HUSBAND] WHEN IT CALCULATED HIS PREMARITAL INTEREST IN HIS INSURANCE AGENCY AT \$135,000.00.

{¶ 24} Within this assignment of error, Husband argues that "[w]hen a party provides sufficient proof of his premarital interest in certain property, it is erroneous for the court to ignore that proof and to, instead, choose a figure that is between two experts' valuations."

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2. Wife argued to the trial court and in her briefs that Husband committed financial misconduct on numerous occasions, thus justifying the inequity of the division of this debt. The trial court, however, made no findings of financial misconduct on the part of Husband, and Wife has not appealed that issue.

{¶ 25} Prior to the parties' marriage, Husband was an employee of the Allstate Insurance Agency. In September of 1999, Husband purchased an independent agency from James Kelly for \$135,000, thus altering his position from that of an Allstate employee to that of an independent contractor with Allstate.

{¶ 26} Husband argues that he provided the court with sufficient evidence to prove that his insurance agency had a premarital value of \$400,999, and thus should be distributed to him as separate property. It is Wife's contention that Husband did not provide adequate financial documentation to prove the premarital value of the agency, and therefore Husband should be credited with no separate interest in the insurance agency.

{¶ 27} Husband, as the party seeking to have a particular asset classified as separate property, has the burden of proof, by a preponderance of the evidence, that the asset is separate property. *Peck v. Peck*, 96 Ohio App.3d 731, 734 (12th Dist. 1994); *Balser-LeForge v. LeForge*, 12th Dist. No. 2002-12-047, 2003-Ohio-5878.

{¶ 28} A trial court has broad discretion to make a determination as to the value of property. *Donovan v. Donovan*, 110 Ohio App.3d 615, 620-621 (12th Dist.1996). Therefore, a trial court's decision regarding property valuation will not be disturbed on appeal absent an abuse of discretion. *Id.*

{¶ 29} Husband argues that it was error for the trial court to assign a pre-marital value between those offered by the two experts. However, when expert testimony is admitted into evidence regarding property valuation, the trial court may believe all of what the witness says, none of it or part of it. *Baker v. Baker*, 12th Dist. No. CA96-10-216, 1997 WL 162388, at 1 (Apr. 7, 1997). Furthermore, when valuing an asset, a trial court is neither required to use a particular valuation method nor precluded from using any method. *Purdy v. Purdy*, 12th Dist. App. No. CA2002-11-089, 2003-Ohio-7214, ¶ 19. "Our task on appeal is not to require the adoption of any particular method of valuation, but to determine whether, based on all the

relevant fact and circumstances, the court abused its discretion in arriving at a value." *James v. James*, 101 Ohio App.3d 668, 681 (2nd Dist.1995).

{¶ 30} The trial court heard competing testimony from the parties' experts as to the premarital value of the agency. Husband's expert, Alan Bieber, testified that he calculated the premarital value of the insurance agency to be \$400,999. To arrive at that number, Bieber took into consideration the price Husband paid to purchase the Kelly Agency prior to their marriage (\$135,000), as well as a statement from Allstate indicating commissions earned for the year 2000. Those commissions were intended to represent the book of business Husband was carrying over into his new agency from his time as an Allstate employee. Bieber testified that he did not receive any tax returns, profit and loss statements, or income expense summaries for the dates prior to the parties' marriage. He further testified that he could not differentiate, based on the Allstate commission statement, what portion of that was bonus and what portion was commission. Finally, Bieber stated that he had to estimate and include the revenues for the final quarter of 1999 while subtracting the estimated final quarter of 2000 from the 2000 commission statement in order to arrive at an approximation for the revenues generated in the twelve months prior to the parties' marriage on September 30, 2000.<sup>3</sup> He therefore admitted that he could not state that the revenue number he used for the twelve months ending in September of 2000 was accurate.

{¶ 31} Wife's expert, Harold Kremer, testified that he was unable to provide a premarital value for the insurance agency due to a lack of available financial documentation. Mr. Kremer stated that he was provided with no tax returns or financial statements for the years prior to the parties' marriage. It was his opinion that without any information regarding

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3. The 2000 commission report covered the twelve months ending December 31, 2000. Because the parties were married on September 30, 2000, three of those months were not premarital. For this reason, Bieber attempted to estimate the revenues from the final quarter of 2000 and subtract those, while also estimating the revenues generated in the final quarter of 1999 and including them, in order to arrive at a figure for the twelve months ending September 30, 2000.



the debts owed against the agency, it was not possible to state with a reasonable degree of certainty what the agency was worth.

{¶ 32} As stated above, the party alleging that the property is separate bears the burden of proving the separate value. Furthermore, a failure to do so will result in no separate value being assigned to the property in question. *Fisher v. Fisher*, 3rd Dist. No. 7-01-12, 2002-Ohio-1297. The trial court weighed the conflicting evidence presented by the parties and determined that the \$135,000 premarital purchase price of the Kelly Agency was sufficiently proven to be separate property. However, the trial court also agreed with Wife's expert and found that the premarital value of Husband's own book of business that was brought over from his time as an Allstate employee was not sufficiently proven, and therefore it was given no value. We cannot find based upon the record that the trial court abused its discretion in valuing Husband's premarital interest in his insurance agency at \$135,000.

{¶ 33} Accordingly, Husband's third assignment of error is overruled.

{¶ 34} Assignment of Error No. 4:

{¶ 35} THE TRIAL COURT ERRED TO THE PREJUDICE OF [HUSBAND] WHEN IT DID NOT DIVIDE INSURANCE FUNDS RECEIVED BY APPELLEE.

{¶ 36} During the pendency of the case, the parties' marital residence was struck by lightning. An insurance reimbursement check in the amount of \$7,208.67 was issued to the parties on December 11, 2008. The record indicates that Wife then signed and deposited the check into an unknown account. Husband claims that he paid for the majority of the repairs, that the reimbursement check was a marital asset, and that the trial court erred in failing to account for or equitably divide that asset. We agree.

{¶ 37} Husband offered uncontroverted testimony that he paid for most of the repairs following the lightning strike. In her brief, Wife argues that the check was a reimbursement to her father who paid for the repairs. A thorough review of the record, however, does not

reveal any evidence to substantiate this claim. As stated above, a court is required to divide all marital property equally or equitably. In the present case, the trial court failed to acknowledge or account for this check in its division of property. Accordingly, Husband's fourth assignment of error is sustained.

{¶ 38} The trial court's judgment is affirmed in part and reversed in part, and this cause is remanded for further proceedings consistent with this opinion.

PIPER and YOUNG, JJ., concur.

Young, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.