

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

DONOVAN L. DONOHOO, JR.,	:	
Plaintiff-Appellant/Cross-Appellee,	:	CASE NOS. CA2011-11-080 CA2011-11-081
- vs -	:	<u>OPINION</u> 9/10/2012
JILL R. DONOHOO,	:	
Defendant-Appellee/Cross-Appellant.	:	

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
Case No. 2009 DRB 1042

Dayle E. Donithan, 1231 Nagel Road, Cincinnati, Ohio 45255, for plaintiff-appellant/cross-appellee

Michael A. Kennedy, 70 North Riverside Drive, Batavia, Ohio 45103, for defendant-appellee/cross-appellant

**PIPER, J.**

{¶ 1} Plaintiff-appellant/cross-appellee, Donovan Donohoo (Husband), appeals a decision of the Clermont County Court of Common Pleas, Division of Domestic Relations, ordering spousal support and child support after his divorce from defendant-appellee/cross-appellant, Jill Donohoo (Wife). Wife appeals the same decision of the trial court, which accepted Husband's valuation of his business for division of property purposes.

{¶ 2} Husband and Wife were married in May 1985, and had two children born issue of the marriage. Tyler was born in 1987 and Alex was born in 1990. While Alex was born healthy, Tyler was born prematurely and spent four months in the hospital after his birth. Tyler was diagnosed with velocardiofacial syndrome, a congenital genetic disorder, which has caused him several physical and cognitive issues. Tyler's disorder prompted a surgery at age 12, during which rods were placed in his back, and he has been subjected to a life-time of medication and treatment. Due to his syndrome, Tyler suffers from heart issues, pain in his legs, changes in his facial appearance, mild to moderate mental retardation, attention deficit hyperactive disorder, impulsivity problems, difficulty with thinking, seizures, severe separation anxiety, organic affective disorder, depression, obsessive compulsive disorder, and various behavioral disorders. Tyler has had aggression issues towards himself and others throughout his lifetime, and has attempted suicide multiple times and engages in self-mutilation.

{¶ 3} Wife has been Tyler's primary caregiver since his birth. Tyler lived in Wife's care his entire life, except for nine months while Tyler audited college courses and lived in a communal living arrangement with other college students. Wife, who is a nurse, worked only part time during the marriage, due to her caregiving responsibilities for Tyler and Alex, including homeschooling Tyler for several years. Tyler has had three part-time jobs since graduating from high school, with all three employers being clients of Husband's accounting firm. Tyler qualified for Social Security Disability, and also receives Social Security Supplemental Income.

{¶ 4} After 24 years of marriage, Husband moved out of the home and filed for divorce. At the time of the divorce, Tyler was 22 years old, and Alex was 18. After the divorce, Tyler continued to live with Wife, and rarely spends time with Husband. Tyler, however, often sent his father threatening and "nasty" text messages, and has also

threatened to kill Husband's girlfriend. As a result of the text messages and threats, Husband tried to have Tyler involuntarily committed for evaluation purposes.

{¶ 5} The parties' divorce was heard before a magistrate during a three-day hearing, and both parties offered extensive evidence. One of the more contested issues included the value of Husband's accounting firm, of which he is an 86 percent owner. Both parties offered evidence regarding the value of the business, as well as the parties' living expenses. The magistrate also held a hearing on the admissibility of the parties' exhibits, and then issued a decision in which Husband was ordered to pay \$5,120 per month in spousal support, and \$208.40 in child support for Tyler. Both the spousal support and child support were ordered indefinitely.

{¶ 6} Both parties filed numerous objections to the magistrate's decision, and the trial court reduced the spousal support order to \$4,600 per month, but ordered such support indefinitely. The trial court also increased the child support order to \$249.87 per month, and ordered such to continue indefinitely. The trial court overruled Wife's objections to the magistrate's decision regarding the valuation of Husband's accounting firm. Husband and Wife now appeal the trial court's decision, raising the following assignments and cross-assignment of error. For ease of discussion, we will address Husband's first two assignments of error together.

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY ASSUMING SUBJECT MATTER JURISDICTION [SIC] OVER AN ADULT CHILD WHO HAD ATTAINED THE AGE OF MAJORITY AND GRADUATED FROM HIGH SCHOOL.

{¶ 9} Assignment of Error No. 2:

{¶ 10} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY ISSUING A CHILD SUPPORT ORDER, WITHOUT JURISDICTION TO DO SO, FOR AN

ADULT CHILD OVER THE AGE OF MAJORITY, WHO WAS DEEMED DISABLED BUT IS NOT AND WAS NOT FOUND INCAPABLE OF SELF SUPPORT PRIOR TO ATTAINING THE AGE OF MAJORITY.

{¶ 11} Husband challenges the trial court's decision ordering him to pay child support for Tyler indefinitely.

{¶ 12} Although Tyler was over 18 at the time of the parties' divorce, the trial court ordered Husband to pay child support because of Tyler's disability. In doing so, the trial court cited the Ohio Supreme Court's decision in *Castle v. Castle*, 15 Ohio St.3d 279 (1984), for the proposition that a parent has an ongoing moral and legal duty to support a disabled child, even past the age of majority.

{¶ 13} In 2001, the Ohio General Assembly codified the *Castle* decision in R.C. 3119.86, which states in pertinent part, "the duty of support to a child imposed pursuant to a court child support order shall continue beyond the child's eighteenth birthday only under the following circumstances: (a) the child is mentally or physically disabled and is incapable of supporting or maintaining himself or herself \* \* \*."

{¶ 14} Husband argues on appeal that R.C. 3119.86 is not applicable to the case at bar because there was never a court order in place before Tyler turned 18, and therefore, the domestic relations court lacked jurisdiction to impose a child support order at the time of the divorce because Tyler was 22. Since the time of the parties' filings before this court, the Tenth District Court of Appeals has issued a decision that directly supports Husband's arguments. *Geygan v. Geygan*, 10th Dist. No. 11AP-626, 2012-Ohio-1965.

{¶ 15} In *Geygan*, the Tenth District considered R.C. 3119.86, and determined that the statute did not apply unless a court order actually existed prior to the disabled child turning 18 years of age. In so determining, the court reviewed contrary cases from the Sixth, Seventh, and Eleventh Districts in which the courts rely on the fact that a disabled child is never

technically emancipated, and therefore, is always subject to an order from the domestic relations court. See *Wiczynski v. Wiczynski*, 6th Dist. No. L-05-1128, 2006-Ohio-867, discretionary appeal not allowed, 86 Ohio St.3d 1403; *Abbas v. Abbas*, 128 Ohio App.3d 513 (7th Dist.1998); and *In re Edgell*, 11th Dist. No. 2009-L-065, 2010-Ohio-6435. Generally, these courts rely on R.C. 3109.01, which defines the age of majority as, "all persons of the age of eighteen years or more, who are under no legal disability\* \* \*." The sections within R.C. Chapter 3109 do not define "legal disability." Therefore, the *Wiczynski* and *Edgell* courts applied the definition of "legal disability" found within the probate court section of the Ohio Revised Code as, "persons of unsound mind." R.C. 2131.02(B). R.C. 1.02(C) then defines "of unsound mind" as including all forms of mental retardation.

{¶ 16} The *Geygan* court declined to interpret R.C. 3119.86 by using a definition that is used within probate court jurisprudence. Instead, the *Geygan* court reasoned that had the Legislature intended to permit the domestic relations court to impose child support orders during a divorce proceeding after the disabled child has already reached 18 years old, it would have stated as such. The *Geygan* court emphasized that the statute states that "the duty of support to a child *imposed pursuant to a court child support order shall continue beyond* the child's eighteenth birthday \* \* \*." R.C. 3119.86(A)(1). (Emphasis added). The court continued,

in enacting R.C. 3119.86, the General Assembly considered the question of child support for adult children with disabilities. In so doing, legislators chose to incorporate the words "continue" and "beyond." The General Assembly, at the time of the enactment or in a subsequent amendment, very easily could have deleted these words and stated simply that child support may be imposed for a child who is over the age of 18 and is mentally or physically disabled and incapable of supporting or maintaining himself or herself. It did not.

For these reasons, we conclude that the domestic relations court lacked jurisdiction to enter a child support order relating to [the

disabled child] because he was 38 years old at the time of the final judgment entry.

2012-Ohio-1965 at ¶ 17-18.

{¶ 17} We disagree with the Tenth District. Contrary to the *Geygan* court's strict textual analysis, we do not read anything in R.C. 3119.86 that *prohibits* a domestic relations court from ordering child support for disabled children after the child turns 18. The statute merely codified the Ohio Supreme Court's decision that the moral and legal obligation to support disabled children *does not stop* simply because the disabled child turns 18, as do traditional support orders regarding children with no disabilities. Nor do we believe that the statute was written in such a way as to create two distinct classes of disabled children, those who did not turn 18 before their parents' divorce and therefore are entitled to support, and those who just happened to turn 18 after the divorce and therefore are not entitled to support. Hinging a disabled person's entitlement to support, regardless of the need, upon the timing of the divorce makes no sense.

{¶ 18} Often times, the Legislature codifies a legal decision, or otherwise creates legislation in direct response to a pronouncement from the Ohio Supreme Court. When the Legislature codified the Ohio Supreme Court's *Castle* decision, we believe that the Legislature was codifying Ohio's common law principle that the obligation to support a disabled child remains even after that child has turned 18. The statute does not foreclose the possibility that a domestic relations court could order a parent to provide child support for a disabled child that had already turned 18 by the time of his parents' divorce. The trial court's implementation of R.C. 3119.86 appears to us to be in compliance with Ohio Supreme Court's policy as set forth in *Castle*.

{¶ 19} In *Castle*, the Ohio Supreme Court addressed whether a domestic relations court retains jurisdiction over a case to modify or continue child support payments for a

disabled child after that child had reached the age of majority. Before it began its analysis, the court noted, "if there does exist a common-law duty to support a disabled child, who was so disabled before he or she attained the statutory age of majority, then the domestic relations court retains jurisdiction over parties in a divorce, dissolution, or separation proceeding to modify the support payments for that child as if the child were still an infant." *Castle* at 281. The court's only qualifier in that statement was whether the child was disabled before turning 18, not whether the divorce or support order was created before the child turned 18.

{¶ 20} The court relied on secondary sources and case law from jurisdictions outside of Ohio when reaching the conclusion that providing support for disabled children is inherently different than providing support for a child that has no disabilities.

The law regards a normal child as capable of providing his or her own support at the age of eighteen. \* \* \* An exception to this general rule has been recognized by a majority of states which have reviewed the question as follows: [but] where a child is of weak body or mind, unable to care for itself after coming of age, and remains unmarried and in the parent's home, it has been held that the parental rights and duties remain practically unchanged, and that the parent's duty to support the child continues as before. The obligation to support such a child ceases only when the necessity for the support ceases.

*Id.* at 282.

{¶ 21} After reviewing the public policy underlying a parent's duty to support their children, the court concluded,

In the case of mentally or physically disabled children there must exist a duty both morally and legally on parents to support and maintain such children. The common-law duty imposed on parents to support their minor children may be found by a court of domestic relations having jurisdiction of the matter to continue beyond the age of majority if the children are unable to support themselves because of mental or physical disabilities which existed before attaining the age of majority.

*Id.* at 283. This statement from the supreme court clearly indicates that the duty to support one's disabled child is both a legal and moral duty, and one that continues to exist after the child turns 18. The only qualifier set forth by the supreme court is that the child must not be able to support himself because of mental or physical disabilities, which existed before attaining the age of majority.

{¶ 22} Without doubt, the Legislature chose to import portions of the supreme court's language when codifying R.C. 3119.86. However, nothing from the *Castle* decision or the current version of R.C. 3119.86 limits the duty to support disabled children to parents who divorce before their child turns 18. Nor does the language or policy of *Castle* or R.C. 3119.86 prohibit a court from ordering support for a disabled child simply because that child's parents chose to divorce after the child turned 18.

{¶ 23} The relevant inquiry, therefore, becomes whether or not Tyler is mentally or physically disabled and is incapable of supporting or maintaining himself. If so, then the trial court had proper jurisdiction to order Husband to pay support.

{¶ 24} "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.

{¶ 25} The trial court heard ample evidence that Tyler is disabled and incapable of supporting himself. Tyler's doctor testified that Tyler was born with velocardiofacial syndrome, which is a genetic disorder caused by a chromosomal abnormality that leads to multiple physical and cognitive issues. The physical issues include problems with the heart, abdomen, kidney, and stomach, as well as structural changes of the face, hearing problems, eye problems, genital/urinary problems, immunological problems, and problems with the



extremities.

{¶ 26} The cognitive issues include neurological problems, seizures, strokes, balance issues, developmental delay, learning disabilities, difficulty concentrating, difficulty thinking, attention deficit hyperactivity disorder, as well as mental retardation. Tyler has also exhibited signs of obsessive compulsive disorder, impulsivity problems, and difficulty with concrete thinking ability. Tyler's doctor testified specifically that Tyler does not intellectually and cognitively progress in relation to the rate at which his body is growing, and that he has mild mental retardation. For example, despite being 22 years old, Tyler reads at an eighth or ninth grade level, and has difficulty writing comprehensively, such as in essay form.

{¶ 27} Tyler's doctor also testified to how the syndrome affects Tyler, and that Tyler has "difficulty with understanding the immediate need of what is going on and the importance of certain things", such as taking medications. Tyler has often refused to take his medication, which worsens his physical and psychological symptoms. Tyler has also been suicidal, self-mutilates, and has suffered from seizures as a result of the anti-depressant medication he was taking. Tyler has threatened to kill Husband and a girlfriend Husband had after he separated from Wife, as well as the girlfriend's daughter.

{¶ 28} After discussing all of the issues related to Tyler's disorder, Tyler's doctor testified that it "would be very difficult for Tyler to independently function as an adult." Tyler's doctor recommended to Husband and Wife that Tyler have guardianship to help Tyler in the future due to his "inability to sustain \* \* \* daily functioning."

{¶ 29} Despite the fact that Tyler is disabled and receives social security and supplemental security benefits, Husband argues that Tyler is able to support and maintain himself despite his disability. In support of his argument, Husband presented evidence that Tyler lived for nine months with other college students while auditing college courses after high school graduation. However, that situation ended because several of the boys that

Husband and Wife knew and trusted moved out of the shared-house after the school year, and Husband and Wife no longer wanted Tyler auditing classes. There were also incidents where Tyler's roommates took advantage of the financial support Tyler obtained from his parents, as well as Tyler's ability to purchase alcohol when the underage friends could not.

{¶ 30} Husband also presented evidence, and relies heavily upon the fact that Tyler has been employed in the past. However, Tyler's employment often ended because of his behavioral problems, such as aggression toward others. On one occasion, Tyler called his employer's wife and threatened her. On another, Tyler quit his job because he thought that the people at work did not like him. Tyler's doctor testified that while Tyler can perform simple employment tasks, he must have "control of impulsivity" in order to maintain employment. However, the court heard evidence that Tyler has been unable to control his impulsivity successfully. Tyler's doctor also stated that, in his belief, "employability in and of itself means very little" as it relates to whether one is able to be independent.

{¶ 31} Regardless of his ability to work, Tyler's doctor testified that even if he were to earn money, Tyler is not able to manage finances successfully enough to live and function independently. The court heard evidence from multiple witnesses that Tyler is unable to make change, does not understand financial concepts, and that his ability to count is very limited. Tyler misused the debit card his parents provided to the point that they took it away from him because of his inability to manage finances.

{¶ 32} Husband also presented evidence that Tyler has a driver's license and can care for his own needs because he can drive. However, the court heard testimony that Tyler is uncomfortable driving outside his hometown, and cannot drive on the highway. Tyler becomes confused if he is unfamiliar with directions, and he once traveled the wrong way down a road because he was unfamiliar with his surroundings. The court also heard testimony that Tyler could not drive himself to his many doctor appointments, and that he

obtained help from a family friend to even pass the temporary driver permit test.

{¶ 33} After thoroughly reviewing the record, we cannot say that the trial court abused its discretion in finding that Tyler is unable to support himself or in ordering Husband to pay child support. As such, Husband's first and second assignments of error are overruled.

{¶ 34} Assignment of Error No. 3:

{¶ 35} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY AWARDING APPELLEE SPOUSAL SUPPORT OF THE INDEFINITE DURATION AND IN THE AMOUNT OF \$4,600.00 PER MONTH.

{¶ 36} Husband argues in his third assignment of error that the trial court abused its discretion in ordering him to pay Wife \$4,600 in spousal support for an indefinite amount of time.

{¶ 37} According to R.C. 3105.18(C)(1):

In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors:

- (a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;
- (b) The relative earning abilities of the parties;
- (c) The ages and the physical, mental, and emotional conditions of the parties;
- (d) The retirement benefits of the parties;
- (e) The duration of the marriage;
- (f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;
- (g) The standard of living of the parties established during the marriage;

- (h) The relative extent of education of the parties;
- (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;
- (j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;
- (k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;
- (l) The tax consequences, for each party, of an award of spousal support;
- (m) The lost income production capacity of either party that resulted from that party's marital responsibilities;
- (n) Any other factor that the court expressly finds to be relevant and equitable.

{¶ 38} "A trial court has broad discretion to determine the proper amount and duration of spousal support based on the facts and circumstances of each case, and a trial court's award of spousal support will not be disturbed absent an abuse of discretion." *Kedanis v. Kedanis*, 12th Dist. No. CA2012-01-015, 2012-Ohio-3533, ¶ 10, citing *Woodrome v. Woodrome*, 12th Dist. No. CA2000-05-074 (Mar. 26, 2001); and *Gregory v. Kottman-Gregory*, 12th Dist. Nos. CA2004-11-039, CA2004-11-041, 2005-Ohio-6558.

{¶ 39} The trial court considered each of the factors as set forth in R.C. 3105.18(C)(1) before ordering Husband to pay spousal support indefinitely. After thoroughly reviewing the record, we cannot say that the trial court abused its discretion in ordering spousal support as it did.

{¶ 40} The trial court considered the income of the parties from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under

section 3105.171 of the Revised Code, and found that the parties had a huge disparity in their income. Husband earns a yearly salary of \$150,000 in his position at his accounting firm. Husband also earns approximately \$3,851 in additional income a year, for a total salary of \$153,851, whereas Wife earns \$23,489 a year as a part-time recovery room nurse.

{¶ 41} The court also considered the relative earning abilities of the parties, and took into consideration the parties' ages, physical, mental, and emotional conditions. While both parties were 50 at the time of the hearing, Husband is healthy, whereas Wife suffers from multiple medical conditions. Specifically, Wife was diagnosed with osteoarthritis and fibromyalgia. These conditions cause Wife pain in her joints and extremities, and make it very difficult for her to work full-time.

{¶ 42} The trial court also considered the retirement benefits of the parties, and determined that the parties' pensions and retirement accounts would be divided equally based on their ability to contribute to the accounts. The trial court considered that the parties were married for more than 24 years, and that the marriage was a "long term" marriage. The court also considered that Wife has a few people to help her with Tyler so that she can keep working.

{¶ 43} Regarding the standard of living of the parties established during the marriage, the court considered that the parties had accumulated nonretirement assets with a net value of over \$800,000 and retirement assets valued near \$600,000. The parties' marital residence was valued at \$300,000 and their recreational/investment property was valued at \$663,000; and they owned pleasure horses and recreational vehicles.

{¶ 44} The court also considered the remaining factors, and found that Husband has a bachelor degree in accounting, while Wife has an associate degree in nursing. The court further found the parties would be receiving assets of equal value, and that Wife used \$8,000 in marital funds to pay off her student loans. The court also ordered that the spousal support

orders should be structured in such a way as to help Wife avoid federal income tax liability, but make spousal support tax deductible for Husband.

{¶ 45} The trial court considered that Wife's career was "cut short" due to her caring for Tyler's disabilities from the time of his birth forward. While Wife can now leave Tyler unattended for periods of time, or has help from outside sources who are willing to stay with Tyler, Wife's role as primary caregiver for Tyler has historically denied her the ability to work outside the home on a fulltime basis.

{¶ 46} Regarding the catch-all factor of "any other factor that the court expressly finds to be relevant and equitable," the court specifically found that based on the parties' long-term marriage, the disparity in income-generating capacities, Wife's medical conditions, and her ongoing care of Tyler, the spousal support award would be indefinite and subject to the continuing jurisdiction of the court.

{¶ 47} The trial court considered each of the statutory factors, and properly determined that \$4,600 per month in spousal support was appropriate and reasonable. Given the facts and circumstances of this case, we cannot say that the trial court's award of spousal support was arbitrary, capricious, or unreasonable. Having found no abuse of discretion, Husband's third assignment of error is overruled.

{¶ 48} Cross-Assignment of Error No. 1:

{¶ 49} THE TRIAL COURT ERRED BY ACCEPTING THE BUSINESS EVALUATION OF THE HUSBAND'S EXPERT.

{¶ 50} Wife argues in her cross-assignment of error that the trial court erred in accepting Husband's valuation of his accounting firm, rather than her own.

{¶ 51} Prior to making an equitable division of marital property, a trial court must determine the value of marital assets. *Donovan v. Donovan*, 110 Ohio App.3d 615, 620-21 (12th Dist.1996). "Rigid rules to determine value cannot be established, as equity depends

on the totality of the circumstances." *Baker v. Baker*, 83 Ohio App.3d 700, 702 (9th Dist.1992), citing *Briganti v. Briganti*, 9 Ohio St.3d 220, 221-22 (1984).

{¶ 52} However, in determining the value of marital property, the trial court's decision must be supported by the manifest weight of the evidence in order to justify and/or support the figure that it establishes. *Moore v. Moore*, 12th Dist. No. CA2006-09-066, 2007-Ohio-4355, ¶ 45. The Ohio Supreme Court recently clarified the standard for reviewing whether a trial court's decision in a civil matter is supported by the manifest weight. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179.

Weight of the evidence concerns "the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*." (Emphasis sic.)

*Id.* at ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997)

{¶ 53} "In a manifest weight analysis, the reviewing court weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered." *Schneble v. Stark*, 12th Dist. Nos. CA2011-06-063, CA2011-06-064, 2012-Ohio-3130, ¶ 67; *Thompkins* at 387.

{¶ 54} During the hearing, the parties both presented expert testimony and accompanying reports in order to establish the value of Husband's interest in the accounting firm in which he has an 86.65 percent ownership share. Wife's expert valued Husband's interest in the accounting firm at \$824,000, while Husband's expert valued the interest at

\$364,478. The magistrate adopted the valuation given by Husband's expert for the following reasons: (1) while both experts agreed that the profitability of the firm was low compared to the industry standard, only Husband's expert took that factor into account when valuing the firm; (2) Wife's expert did not take into account the share agreement between Husband and his partners and how the buy-sell agreements with the minority shareholders impacted the value; (3) Wife's expert did not conduct a site visit before determining the value of the firm, even though the expert admitted during the hearing that a site visit is important to the valuation process; and (4) while Husband's expert considered the "personal good will" of the accounting firm, Wife's expert did not.

{¶ 55} Although Wife argues that the trial court should have accepted her expert's valuation, a review of the record indicates otherwise. The magistrate and trial court clearly evaluated which expert's testimony and report contained the greater amount of credible evidence, and determined that Husband's valuation was the more appropriate valuation to apply. After thoroughly reviewing the record, we cannot say that by using Husband's valuation, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. As such, Wife's sole cross-assignment of error is overruled.

{¶ 56} Judgment affirmed.

POWELL, P.J., and YOUNG, J., 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.