

IN THE SUPREME COURT OF OHIO

Norman H. Lawton

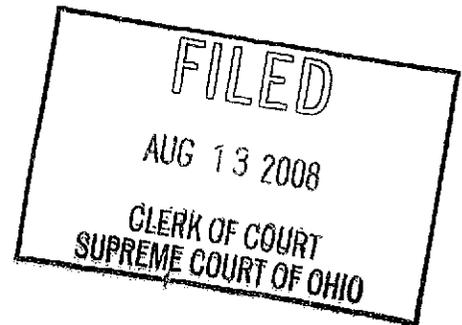
Appellant,

v.

Case No. : 08-0719

Katherine Ann Howard

Appellee.



On Appeal from the Tenth Appellate District Court Franklin County, Ohio
Case No. 07 APF 0603

MOTION FOR RECONSIDERATION

NORMAN H. LAWTON

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MEMORANDUM IN SUPPORT
FOR RECONSIDERATION
Norman H. Lawton

1. The Appellant, pursuant to Sct. R XI section 2, requests reconsideration for jurisdiction and acceptance of this civil case 08-719 based upon the following grounds having filed the required documents within the 10 day time period.
2. The Appellants presents the entry received declining jurisdiction as exhibited, Exhibit A as the reason for this Motion.
3. The Appellant attaches the Appellant's Merit Brief pursuant to S ct R. VI section 2 to present the law and argument of the five issues presented, the Supplement to the Appellant's Brief, pursuant to Sct. R. VI and Sct R VII section 2, detailing the relevant evidence from the Court of Common Pleas Domestic Relations Court Case 06 DR 03 1051, Tenth Appellate District Court Case Number 06 AP 754 and Case Number 07 AP 0603 , the Appendix to the Appellant's Merit Brief pursuant to Sct.

R. section 2 (B) (5).

4. The Appellant files a Notice of Supplement pursuant to Sct. R VII section 1 (A) and serves the Attorney of the Appellee as consultation and evidence of this fact to minimize the Supplement of this case.

*Clerk refused to accept Supplement when filed
ad pro 4 Dela Aug 13, 08
Norm H Lawton*

5. The Appellant requests approval and acceptance of jurisdiction based upon the above case documents for review and decision of the five issues presented brought before this COURT at this time.

Respectfully submitted

Norman H. Lawton
Norman H. Lawton *CSB*
Appellant
Litigant pro se
P.O. Box 340673
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Susanna Marlowe
8/11/08



SUSANNA MARLOWE
Notary Public, State of Ohio
My Commission Expires 04-04-2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion and documents referenced have been served to the following parties by US Mail certified with proof of service;

Clerk
Supreme Court of Ohio
65 South Front Street, 8th floor
Columbus, Ohio
43215-3431

Robert B. Hawley II (Sct. No. 0066366)
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On the ^{13th} ~~X~~ day of August 2008 *Norman H. Lawton usba*

Norman H. Lawton usba
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Susanna Marlowe



SUSANNA MARLOWE
Notary Public, State of Ohio
My Commission Expires 04-04-2011

FILED

AUG 06 2008

CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

Katherine S. Howard

Case No. 2008-0719

v.

ENTRY

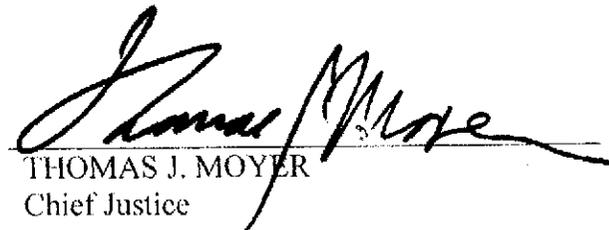
Norman H. Lawton

Upon consideration appellant's motion for writ of supersedeas,

It is ordered by the Court that the motion is denied.

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case.

(Franklin County Court of Appeals; No. 07AP603)



THOMAS J. MOYER
Chief Justice

Exhibit A.

IN THE SUPREME COURT OF OHIO

Norman H. Lawton

Appellant,

v.

Case No. : 08 -0719

Katherine Ann Howard,

Appellee.

On Appeal from the Tenth Appellate District Court Franklin County, Ohio
Case No. 07 APF 0603

MERIT BRIEF OF APPELLANT Norman H. Lawton

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Counsel For Appellee, Katherine Ann Howard

*Attached to Motion For
Reconsideration*

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SUPPLEMENTAL INDEX TO APPELLANT'S BRIEF

Issue 1.

Sup Ind.	Record Ref.	Date filed	Title of Document	Page Nos.	Brief Page Nos.
1-1	29/30	Mar 17, 2006	Request Temporary Orders	1	2
1-2	62	Mar 31, 2006	Magistrate's Status Conference Orders	1	2 31,34
1-3	95/96	Apr 24, 2006	Request Temporary Spousal Orders	1	2
1-4	130	May 2, 2006	Magistrate Order	1-3	2
1-5	153	May 12, 2006	Defendant's Response to Vacate	2	2
1-6	176/177	May 16, 2006	Request Temporary Spousal Orders	1	2
1-7	219/220 222	June 12, 2006	Judgment Entry	1	2
1-8	256	June 23, 2006	Entry/recusal/transfer	1	3
1-9	432	July 20, 2006	Transcript of Hearing	1	3
1-10	17	July 20, 2006	Motion Stay Pending Appeal (Case no. 06 AP 7 754)	1	3
1-11	22	Aug 3, 2006	Journal Entry (Case no. 06 AP 7 754)	1	3
1-12	1	(July 19, 2006) (Entry order due facts relevant not chronological)	Financial Disclosure	1,2	3,33
1-13	283	Aug 10, 2006	Complaint	2	4
1-14	NFD	Aug 10, 2006	Letter Attorney Hawley II	1	4
1-15	293	Sep ¹⁴ 21 , 2006	Pre Trial Statement/Affidavit	7,13 15	4

SUPPLEMENTAL INDEX TO APPELLANT'S BRIEF

Issue 1.

Sup. Ind.	Record Ref.	Date filed	Title of Document	Page Nos.	Brief Page Nos.
1-16	430	Sep 21, 2006	Transcript of Hearing	8-10 14,21	5
1-17	307/308	Oct 25, 2006	Request Temporary Spousal Orders	1	5
1-18	316/317	Oct 30, 2006	Memo Support Temporary Orders	2	5
1-19	NFD	Nov 10, 2006	Plaintiff's Property Division Assets and Liabilities Statement	1-3	6
1-20	429	Nov 8, 2006	Transcript of Hearing	3,5 13-16 24,25 27,28 31,43 46-49 51,52 55-58	6
1-21	322/323 326	Nov 14, 2006	Journal Entry Motion for Temporary Orders	1,2	6
1-22	344	Dec 11, 2006	Reply Memo of Defendant	2	6
1-23	428	Jan 11, 2007	Transcript of Hearing	125,126 138,177 178,199 200-205 240-241 257,277	7
1-24	378	Feb 12, 2007	Plaintiff's Closing Arguments	1,8	7

SUPPLEMENTAL INDEX TO APPELLANT'S BRIEF

Issue 1.

Sup. Ind.	Record Ref.	Date filed	Title of Document	Page Nos.	Brief Page Nos.
1-25	380/381	Feb 27, 2007	Defendant's Closing Arguments	8,17 21	7
1-26	400	July 19, 2007	Decision Judgment Entry Decree of Divorce	5,6,9 13-16	7

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Issue 2.

Sup Ind	Record Ref	Date filed	Title of Document	Page Nos.	Brief Page Nos.
2-1	68	Apr 4, 2006	Amend To Answer and Counterclaim	1,6,7	8
2-2	109	May 1, 2006	Response to Supplemental Affidavit Sup Orders	2, AFF 1,3	8
2-3	432	July 20, 2006	Transcript of Hearing	29	8
2-4	293	Sep 14, 2006	Pre Trial Statement/Affidavit	2,8	9
2-5	344	Dec 11, 2006	Reply Memo Defendant	2,3	9,37
2-6	428	Jan 11, 2007	Transcript of hearing	125,126 178,180	9
2-7	378	Feb 12, 2007	Plaintiff's Closing Arguments	1,9	10, 37
2-8	381	Feb 27, 2007	Defendant's Closing Arguments	4-9	10, 37
2-9	400	July 19, 2007	Decision and Judgment Entry	14,15	11, 37, 39

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Issue 3.

Sup Ind.	Record Ref.	Date filed	Title to Document	Page Nos.	Brief Page Nos.
3-1	68	Apr 4, 2006	Amend To Answer And Counterclaim	1,3,4	12
3-2	293	Sep 14, 2006	Pre Trial Statement Affidavit	9	13
3-3	316/317	Oct 30, 2006	Memo Supplement Temporary Orders	2,3	13
3-4	429	Nov 8, 2006	Transcript of Hearing	31,32	13,41
3-5	344	Dec 11, 2006	Reply Memo Defendant	3	13
3-6	353	Dec 18, 2006	Amend to Complaint Contempt	2	14
3-7	428	Jan 11, 2007	Transcript of Hearing	40,181 182,243 244,263 265,266	14
3-8	378	Feb 12, 2007	Plaintiff's Closing Arguments	1,2	15
3-9	380,381	Feb 27, 2007	Defendant's Closing Arguments	14	15,41
3-10	387	Mar 13, 2007	Judgment Entry	1,2,3,3	15
3-11	400	July 19, 2007	Decision and Judgment Entry	11,13 15	16,41
3-12	31/36	Sep 27,2007 Oct 15, 2007	Initial Brief (Case 07 AP 0603)	2,6 10A,13 App A-3	16,41

SUPPLEMENTAL INDEX TO APPELLANT'S BRIEF

Issue 4.

Sup. Ind.	Record Ref.	Date filed	Title of Document	Page Nos.	Brief Page Nos.
4-1	NRN*	Apr 13, 2006	Complaint/ Affidavit by Defendant	1,2 Aff.1-5	17,18 42
4-2	86	Apr 14, 2006	Motion to Add Parties to Case	1,2	19
4-3	222	May 30, 2006	Motion to Terminate Dower	2	19
4-4	432	July 20, 2006	Transcript of Hearing	28,29	19
4-5	14/15	July 20, 2006	Motion to Stay (Pending Appeal) (Dower Rights) (Case No. 06 AP 7 754)	1,*	20
4-6	17/18	July 27, 2006	Motion to Stay Pending Appeal 2 (Case No. 06 AP 7 754)	2-5	20
4-7	23/24	August 10, 2006	Motion For Writ of Prohibition (Case No. 06 AP 7 754)	2,3	20
4-8	431	August 18, 2006	Transcript of Hearing	4,5	20
4-9	35	August 28, 2006	Brief of Appellant	6	20, 42
4-10	293	Sep 14, 2006	Pre Trial Statement/ Affidavit	9	21
4-11	316/317	Oct 30, 2006	Memorandum in Support Temporary Orders	2,4*	21
4-12	429	Nov 8, 2006	Transcript of Hearing	11	23
4-13	344	Dec 11, 2006	Reply Memorandum of Defendant	2	22

* NRN – No Record Number

SUPPLEMENTAL INDEX TO APPELLANT'S BRIEF

Issue 4.

Sup. Ind.	Record Ref.	Date filed	Title of Document	Page Nos.	Brief Page Nos.
4-14	428	Jan 11, 2007	Transcript of Hearing	56,68 69,71 72 74-76 101,102 134-136 142-144 163,165 166,178 197,198 250-256 258	23 24
4-15	378	Feb 12, 2007	Plaintiff's Closing Arguments	1,9 11-14	25, 43
4-16	381	Feb 27, 2007	Defendant's Closing Arguments	8,9,15 18,20 21	22, 24, 43
4-17	400	July 19, 2007	Decision and Judgment Entry Decree of Divorce	4,11 13,15	24

SUPPLEMENTAL INDEX TO APPELLANT'S BRIEF

Issue 5.

Sup Ind.	Record Ref.	Date filed	Title of Document	Page Nos.	Brief Page Nos.
<hr/>					
(Chronological Order of Documents except Sup Ind. 5-1)					
5-1	400	July 19, 2007	Decision and Judgment Entry Decree of Divorce	7,9 11,12 15,17 19 Exhibit B p.2	26-28 45-47
5-2	84	Apr 14, 2006	Supplemental Affidavit in Support of Temporary Orders	1,2	46
5-3	91	Apr 24, 2006	Complaint/ Motion of Contempt of Court Affidavit	1,2	27
5-4	156	May 8, 2006 May 11, 2006 2 nd filing separate	Affidavit of Michael Juhola, ESQ.	1,2	27 46
5-5	275	July 20, 2006	Memorandum of Agreement	1	28,47
5-6	428	Jan 11, 2007	Transcript of trial	52,53 124,125 188-190 204, 220,221	26,27 45-47

STATEMENT OF THE CASE AND FACTS

The Appellant documents the case and facts relevant to the issues that are presented for appeal. The issue is stated followed by the chronological order of filed documents with detail to present the valid grounds and basis for review and proper adjudication with justice administered by this COURT.

Issue 1. Temporary spousal support was requested by law but denied during the suit

Pursuant to CIV R 75 and RC 3105.18 (C) (1).

1. On March 17, 2006, April 24, 2006, May 16, 2006 and October 25, 2006 the Appellant pursuant to CIV 75 (N) requested temporary spousal support in the amount Of \$1570.94 per month to be paid as written in State of Ohio law, CIV R 75 “during The suit”. The suit/ case was initiated on March 9, 2006 through July 19, 2007. The Appellant adhered to the minimum filing requests and notes that the Court erred in its Discretion of awarding money to the most neediest poor financial person having a Filed indigent financial disclosure/ affidavit and presented an estimate of money Needed due to not having money to relocate. (REF. S.I. 1-1, 2, 3, 6).
2. On May 2, 2006 Magistrate Bosques Milliken entered an Order establishing that No money was to be awarded to the Appellant- Defendant. The indigent Defendant Needed money for sustenance, relocating, seeking independent employment and Establishing a new lifestyle that is provided by law CIV R 75 (N) if awarded properly And adjudicated within the specified time limit (30) days. (REF. S.I. 1-4 p.2).
3. On May 12, 2006 the Appellant responded to Motion to Vacate by striking or Objecting based upon the need of \$ 1570.94 per month having been denied for 3 Months or \$ 4712.82 by law which is to be acted upon by the Judge within 30 days As cited on p. 2 of the Memorandum in Support. (REF. S.I. 1-5).
4. On June 12, 2006 Judge Puisse over ruled the valid objection by the Appellant Defendant based upon the temporary spousal support having established Court Approved indigent financial status and requested estimated need of money to become Independent and reestablished. (REF. S.I. 1-7)

5. On June 23, 2006, all of the Franklin County Domestic Relations Court Judges Recused themselves and recommended to have assigned a visiting judge, JUDGE Galvin, on special sitting by Chief Justice Thomas J. Moyer, Ohio Supreme Court, (REF SJ 1-8).
6. On July 20, 2006, an introduction hearing was held at which time the issue of Temporary spousal support was discussed as evidence on page 11 on the transcript. For the amount of \$ 1,570.94 and page 28 having the correct interpretation of CIV R 75 (N) explained and the denial by the prior judge- Judge Preisse. (REF SJ 1-9).
7. On July 20, 2006 the Appellant appealed to Case No. 06 AP 754 based upon the Domestic Relations Court entry over ruling and filed a stay of the appeal due to the Abusive negligence of money denial of award for temporary spousal support noting In the Memorandum in Support that Judge Galvin stated ref Par G and H that the Defendant Appellant needs of money were not met by law and that the decision that Settlement comes at the end of the suit inaccurately adjudicated CIV R 75 (N), the COURT errs, and not during the civil judicial process which is in direct contradiction To the specific words described in CIV R 75. (REF SJ 1-10).
8. On August 3, 2006, the Tenth District Appellate Court filed a journal entry Denying the stay for temporary spousal support based upon no financial information By affidavit. The Defendant Appellant had on file a current Financial disclosure/ Affidavit which was necessary to file the Appeals case 06 AP 754. (REF SJ 1-11).
9. On July 19, 2006, the Appellant filed the required financial disclosure/ Affidavit Of Indigency having the case number stamped by the file clerk at the bottom of the page as evidence that in fact the affidavit is filed but the Appeals Court denied any award of money as requested in the amount of \$ 1570.94 per month (REF SJ 1-12).

10. On August 10, 2006, the Appellant objected to the Domestic Relations Court judgment entry and filed a Memorandum Contra based upon the new assigned visiting Judge Galvin not reviewing nor hearing the filed motions including the requests for temporary spousal support, criminal activities being over looked and neglected due to the new Judge's Court JUDGE Galvin not being continuous with the prior JUDGE Dana Preisse- timely recuse of the case due to over crowding and neglect of moneu award temporary spousal support award (Ref 5.II-13).

11. On September 14, 2006, The Appellant's pre trial statement/ Affidavit was filed Specific to ref Page 7, Par. H, ^{13 p. 2.} estimating the needed money of \$ 1570.94 per month Having the monthly expenses estimated that have been consistent since March 2006- Six months later during the suit. Note that the indigent Defendant could not vacate, Move or reestablish residence nor employment due to the fact of being indigent and Being held without money earned and entitled to by Ohio law (Ref 5.II-15).

12. On September 21, 2006, a trial was held and facts transcribed specific to the Spousal support issues (note the words temporary spousal support and spousal Support) (ref Page 8, the letter dated August 10, 2006, ^(Ref. 5.II-14) specific to the second Parargraph – The Appellant refers to par 9 above that on August 10, 2006, the PRE Trial Statement/ Affidavit was filed and served upon Attorney Robert B Hawley II, Satisfying the letter that was neglected. Note that no hearing was scheduled on August 21, 2006 and that a scheduled hearing on August 18, 2006 was cut short of Time and continued to September 21, 2006. Page 10 states that no reply was received But the Pre trial statement/ref par H Contested Spousal Support, ref pg 7 and spousal

Support^h pg 13, par. D/satisfies as the reply served to the Attorney and the Court. The Certificate of Service shows that the Pre trial/ Affidavit was served to Attorney Robert B. Hawley II after the filing with the Clerk's Office ref Pg 14. All of the Discovery request of the personalized questions that were all answered being satisfied by the indigent financial disclosure/ Affidavit the only financial information that the Appellant had truthfully filled out and approved by the Domestic Relations Court.

(Ref. S.I. 1-16)

13. On October 30, 2006, the Appellant filed a Memorandum in Support of Temporary Orders with Affidavit again summarizing the needs and by Ohio law- CIV R 75 (N) entitlement of spousal support temporary orders of \$ 12, 567.52 based Upon the request of \$1570.94 per month for 8 months supporting the request for Temporary Spousal Support Order filed October 25, 2006. Note that JUDGE Galvin Awarded \$12,000.00 after the final hearing July 19, 2007 and after September 22, 2007 and also in an amount less than needed to survive using this date as the factual Date that the COURT erred (Ref. S.I. 1-17, 18).

14 On November 10, 2006, a non filed legal document (NFD) titled " Plaintiff's Proposed Division OF Marital Assets and Liabilities" citing pg. 2. par. B (9) "That Neither party will pay spousal support to the other and the Court will not retain jurisdiction over the issue Attorney Robert B. Hawley II was asked on May 28, 2008 and shown the document if in fact that the document noting service to the Appellant was not filed in Domestic Relations Court which explained why there is no case record entry for this out of Court correspondence being introduced to this Court because of the Plaintiff's position of paying spousal support and the Court's jurisdiction which I totally disagree with since the Plaintiff is a resident of the County

and State in which the civil proceeding is adjudicated and not finalized but appeal
able by law (*Ref SI 1-19*).

15. On November 8, 2006 a hearing was held and transcript evidence of facts before
Judge Galvin citing *Ref SI 1-20*

pp.3,5,13,14,15,16,24,25,27,28,31,34,43,46,47,48,51,52,55,56,57,58; details the
position for temporary spousal support, the valid grounds and good reasons presented
and summarized noting the abuse upon the Appellant pro se having properly filed the
required documents but having the professional Attorney write false statements
demeaning the Appellant and deceiving the Court into a decision of let's help the
poor pro se indigent Appellant but abuse in law neglecting the valid responses of
money needed.

16. On November 14, 2006 A journal entry was filed/ref par. 2, no award of spousal
Support is Ordered at this time November 9, 2006. (*Ref SI - 21*)

17. On December 11, 2006, the Appellant filed a Reply Memorandum responding to
the Plaintiff's proposal and specific to pg.2 par. 4B (1) the requested money
\$1570.94 for 9 months during the suit equates to \$14,138.46 was not awarded but
Owed. (*Ref SI - 22*)

18. On January 11, 2007, a trial was held for two days. The Appellant refers to the
transcript pp. 125 lines 24-25, pp.126,138, 177,178, 199- 205,240-241, 257, 277 and
cites interrogations of needed and estimated money of the indigent financial status,
not having an active driver's license to help in transportation and the duties to
maintain the Plaintiff's residence, property, the Affidavit items are questioned and
documented ref pg 257. Judge Galvin ref lines 12-13, 15, 24 returning to the already

journal entry November 14, 2006 ref par. 15 going back over already filed since September 2006 four months ago having no money awarded for temporary spousal Support to be detailed in the respective Closing Arguments (REF SJI-23)

19 On February 12, 2007 the Plaintiff Closing Arguments declared ref. Pg 8 par E. Spousal support should not be an award in this case. However, the Appellant cites The income of the Plaintiff to be in excess of \$73,000. per year with monthly Expenses of \$17,216.52 leaving a balance of \$55,783.48 from which the Temporary Spousal support Orders can be deducted very easily leaving an amount of \$ 36,932.20 Or 50.59 percent of her income, a very equitable settlement but not awarded. (REFSJI-24)

20 On February 27, 2007, the Appellant filed Closing Arguments and cited p.8 par 3(e) , Spousal Support P. 17 summarizing total by law \$25,135.04 noting a lump sum Of \$12,000. after the final hearing, not in line with State of Ohio law CIV R 75 (N) And deficient in the amount of \$13,135.04 ref. Conclusion/p. 21 par B \$20,422.22 Updated to reflect the post decree account deficiency of \$25,135.04. (REFSJI-25)

21 On July 19, 2007, The Court Honorable Judge Galvin filed the Decree and Judgment entry/Decree of Divorce citing the ref. ^(SJI-26) p14 pr 36, p15 pr 40, 41 p5 pr 7, p6 pr 8, p 9 pr 19, p13 pr 35, p14 pr 36 p 15 pr 36,40,41, p 16 pr 46 A lump sum of \$12,000.00 is awarded after the suit not in accordance with Ohio Civil Rules of Procedure CIV 75 (N) laws governing the award of Temporary Spousal Support.

Issue 2. Alimony was not awarded having complied with Ohio law on valid grounds and good cause pursuant to CIV R 75 and RC 3105.01 (F).

1. On April 4, 2006, The Appellant filed and Amend to Answer and Counterclaim P. 6 pr. 3 and p. 7 pr. B/presenting a claim for spousal support/ alimony based upon the required legal elements as valid grounds and basis to compensate for the abusive and neglected behavior and neglect of duties from the then married wife/ spouse and to compensate for the needier person filed and approved as indigent financial economic status in the amount of \$100.00 per week forever. (REF SI 2-1)
2. On May 1, 2006, The Appellant filed a Response to Supplemental Affidavit In Support of Temporary Orders Ref p. 2 pr. 3, the Appellant requests that his wish be fulfilled referring to the Spousal Support needed and required. The Affidavit pr. 2 details the gross negligence and breach of duty to initiate the claim for abusive behavior towards the husband/ spouse noting that spousal support has not been awarded during the suit due to the period of time to clearly separate the money to be equitably distributed and awarded fairly, justly and considering the total circumstances of both parties. The Appellant ends the Affidavit ref. pr. 9 for the relief sought / alimony by law and the amount requested based upon the new elements forced upon him of new residence, employment transportation, changes in lifestyle without a wife and assistance from a family (REF. SI 2-2).
3. On July 20 2006, The Appellant presents as transcribed /ref. p. 29 lines 12,13, 20- 24/as evidence the issue of alimony that the Court agrees in the referenced lines. (REF SI 2-3)

4. On September 14, 2006, The Appellant filed a Pre trial Statement/ Affidavit of Defendant ref. p.2, pr. 2A and p.8 pr, A II Defendant's position , the Appellant further Defines the specific grounds for abusive behavior and introduces the RC 3105 01 (E) and R.C.3105 (K) laws pertinent for gross negligence as the only acceptable criteria for award of spousal support/ alimony. (Ref. S.I 2-4).

5. On December 11, 2006, The Appellant filed Reply Memorandum of Defendant Ref. p.2 pr. 3 debt owed specifying the wife's duty abusing fidelity and as witnessed By law enforcement during the marriage and during the Restraint period of the Divorce proceedings having detail the start of the 26 factual basis for Court decision and award being expanded being properly presented during the civil proceeding.

6. On January 11,12 2007 a trial was held and transcribed evidence citing ref. p. 125, 126, 178, and 180. The basis for award, the physical violence referred in two places and the false identification defrauding the Appellant not only during the marriage but also currently having an outstanding refused amount of money plus interest owed being a continuous problem the entire period of time that should be compensated which is the reason for spousal support/ alimony. (Ref. S.I 2-5)

7. On February 12, 2007, The Plaintiff's Closing Arguments p. 9 pr e. states the Duration of the marriage which is used in determining the award of spousal support/ alimony which the duration was over 9 years and considered to be a mature marriage citing that page that the Plaintiff also AGREES that support should be awarded. The Appellant also cites that the previous marriage child that was labored for care taking Hindered the Appellant from paying his owed child support in arrears that also

Contributes to the fact that spousal support should be granted (Ref SI 2-7).

8. On February 27, 2007, The Appellant filed the Defendant Closing Arguments Requesting that the issues from his position be reviewed and awarded. The Specific breach of duties, first defining ref p. 3 (A), p. 4 A(1)- fidelity, A (2) mutual Respect having described ref. pr. a-m as a basis for the breach due to not performing Behaving abusively , nor respecting her husband ' p. 8 pr 3, the non support from the wife is presented in: pr. a, d, e, f, g. The Appellant concludes the damages pertinent and compensated by alimony (Pg. 22 pr.3 summarized the good grounds, and Reasoning. ref. PS Pr-2. (REF SI 2-8).

9. On July 19, 2007, The final Decision And Judgment Entry/ Decree Of Divorce Filed by JUDGE Galvin documents/ p.14, Pr.36, the amount of spousal support to be Limited to \$500.00 per month for two years lump sum equating to ref. p. 15 \$ 12,000.00. This amount does not fairly compensate for the gross negligence and Abusive behavior that the husband received during the marriage and during the Separated period forcing the husband to maintain her house, property, animals and Cope for unwarranted reasons with her stressful, intrusive and intimidating visits for no reasons other than to bring peace Officers onto the residence violating the Restraint Order, remove items from the property without accountability or signing For including a photo that is evidentiary fact of sincere marriage that is a definite Element that the marriage was then avowed to last forever the main reason that the Appellant requested Alimony forever, also violating the Restraint Order, having the police support her abusive neglecting their duty of care for the Appellant, her behavior and intimidating the federal Officer/ agent husband causing several federal

Civil cases to be filed against both the Plaintiff for divorce, the local law enforcement
And causing the federal agencies that the Appellant works with in confidence to be
Called and reports filed. The compensation awarded has been minimal to relocate to
An undesirable location, lower class high crime neighborhood, and demeaned the
Appellant and the Plaintiff has defrauded by with holding money be refusal of the
Court Order using excuses of property taken that she wants to receive money back but
Was properly responded to and reasonably answered for by the Appellant. Note that
The property some of the items were never itemized on the official list prepared
Agreed to in Court but filed with revenge by her legal counsel for the return of money
That still owed to the Appellant, held by the Plaintiff but never paid as Ordered in
contempt for over a period of eight months a very unreasonable amount of time and
still not adjudicated properly by the Civil Division Court .

The Appellant only requested a minimum amount consistent payable by the ex spouse
That does not infringe upon her lifestyle nor take from more than half of her income
Noting \$ 73, 000. per year as her income requesting \$ 100. per week or \$ 5200. or
.0071 or .71% which is very minimal as compensation. (Ref. S.I 2-9).

Issue 3. Money for reimbursable expenses of maintenance that was documented with Valid receipts was entitled to but not reimbursed (Note by Order to be Paid).

1. On Apr 4, 2006, The Appellant filed an Amend to Answer and Counter claim in Response to the complaint for divorce. Ref p.3 pr. 22, the Appellant documents the Routine maintenance tasks that were considered labor and as the Appellant's Contributing share as the spouse/ husband for his distribution award being Considered in total circumstances due to either contributing money or an equal share of labor to the total family. Ref p. 4 pr. 22, the Appellant details some of the annual maintenance that needed to and was agreed upon by both spouses to be completed to maintain the existing condition of her property. (Ref 33 3-1).

2. On September 14, 2006, the Appellant filed a Pre Trial Statement/Affidavit of the Defendant ref p.9. The Appellant cites pr. 4 A,B for labor on the Plaintiff's property not the Appellant's property. This is cited to present that maintenance was honestly completed, owed due to the Appellant being forced due to financial indigent status and restricted in confronting the Plaintiff by Restraint Order for payment of maintenance required on her property because the Court did not award Temporary Spousal Support money to relocate "during the suit" by law but forced the Appellant to stay at the residence for the Plaintiff's benefit but made the situation look more beneficial to the poor indigent Appellant. The Appellant cites the Decision and Judgment Entry/ ref. P.14 pr. that "ordinarily spousal support would have been Awarded but was not in this case" thereby the Court abused the entitlement of the Poor indigent spouse to received the rightful and by law money for the reasons

Needed. The money requested was not given due to the legal fact from a non specific Amount of money using the "repairs" as a not to include non party to property rights For reimbursable labor coerced into forfeiting money for child support arrears not Paid during the Christmas/ holiday season. The money for labor is considered to be The main career/ education and means of income that was and should be considered a Loss of wages as part of the issue about care taking as well. The spouses in this case And subsequent to the final Order not married parties maintained a separate Florida Licensed marriage not Ohio marriage that the laws are different pertinent to family Law (Ref. S.I 3-2).

3. On October 30, 2006, the Appellant filed a Memorandum In Support Of Temporary Orders with Affidavit (Ref p. 2 pr. 2B, 2C, 2D) at the order of the Judge To record the expenses incurred (Ref S.I 3-3)
4. On November 8, 2006 the Appellant was present at a hearing and transcribed. ref p. 31,32) shows the specific maintenance that was performed including costs, reasons and discussion pertinent to the Pre Trial documents being consistent money owed. (Ref S.I 3-4)
5. On December 11, 2006, the Appellant filed Reply Memorandum of Defendant ref. p.3, pr. 4,5,6 (C,D) updating the maintenance costs. (Ref S.I 3-5)
6. On December 18, 2006, the Appellant filed Amend to Complaint For Contempt Of Temporary Support (ref. p. 2 pr. A,B.) Note that the major cost was for the HVAC Repair from August, September 4 months ago. The Appellant understood that the Repair was to be paid according to Court documents 30 days from the "repair" Completion. Subsequent to that period and justifying the filing dates in December due

to the reasoning having no court specified Order/entry to follow turned into a res judicata Small Claims case decision March 2007 having the Attorney for the Plaintiff get a non existent entry filed not allowing the Appellant to receive labor money having no definitions of "repair" to mean ie labor performed by who which when consulted to another Attorney that fact should stand up in court for granting. Money was not granted based upon the decision of the Domestic Relations assigned Judge based having a good basis and for good cause to be paid but was abused and not awarded. (REF S I 3 -6).

7. On January 11, 12, 2007 a trial was held and the facts were transcribed that/ref. p. 40, 181, 182 243, 244, 263, 265, 266. The Appellant was denied money for labor completed but the reimbursable items were presented but never paid. The Appellant cites again, the Decision and Judgment entry/paragraph 10 below that these maintenance/ bills and other debts/ref. p.13 were never paid nor means to be paid were never addressed. (REF. S I 3 -7)

8. On February 12, 2007 the Plaintiff filed Plaintiff's Closing Arguments that show Without a doubt that/ref. p. 2 the Plaintiff is the owner and title owner of the Residence/ property. Consistently during the entire civil case, the Attorney for the Plaintiff historically referred in error to the marriage property as shared which is Entirely false, incorrect and used as a very unfair basis for property distribution Especially for the Appellant's Defendant's property position. The Appellant had no rights because of no name being on the title, no property legal documents nor quit claim deed in Franklin County or any other legal instruments pertinent. The Domestic

Relations Court Judge Galvin ordered that the quit claim deed be removed but there were no relevant quit claim deed filed. The Appeals Court also decided that no money was allowed since the Defendant was performing labor on his own property but the property in this case is not the Appellant's nor claimable by the Appellant and therefore labor performed should be paid. The parties were considered "not" married technically due to the civil proceedings being litigated with no marriage legally binding. (Ref S.I. 3-8)

9. On February 27, 2007, the Appellant filed the Defendant's Closing Arguments Ref. p.9 pr. 3 g totaling the maintenance costs not paid and summarizing the costs (Ref. p. 21 pr. 2C, S.I. 3-9)

10. On March 13, 2007, the Court filed a judgment entry 3 months later related to the Contempt referring to the rationale and justification from paragraph 5 above. The time is drawn out due to only one week per month sessions. The Attorney drafted the Entry noting (ref. p.2 pr. 4) denying the Appellant money for labor performed. The Appellant is trained in HVAC work/ repair and has prior to this civil case performed routine maintenance by oral agreement/ contract with the owner, Plaintiff to perform the work. The Appellant could not pay some other person and be reimbursed which was never discussed as the operating procedure in this very abusive case. The Appellant questions why a second page of Judge's Galvin's signature was affixed not clearly signed but part of the record. This document was presented in the Small Claims Court after the Appellant initiated a valid claim. Again denying the indigent poor litigant money honestly and pre Court decision entitled to and earned but held.

(Ref S.I. 3-10)

11. On July 19, 2007 the Court decided and filed the final Decision and Judgment Entry Decree of Divorce noting that no money for maintenance was awarded. The Appellant kept receipts per Court orders prior to the final Order but this entry contra-Indicates that the Appellant was entitled to money for maintenance costs paid for But as documented all along for greater than two and one half years in the end Was summarized as bills and debts owed/ref p. 13. The Appellant documented in the Defendant's Closing Arguments/reference paragraph 7 above that any of those items Not awarded were going to be appealed noting the abusive actions by the Court During the civil proceedings against an indigent defendant having no Attorney named To the Defendant's position for legal justification other than the pro se litigant Himself for the reason documented herein. (Ref SI 3-11).

12. On September 27, October 25, 2007, the Appellant appealed the Decision and Judgment entry finalizing the divorce. The Initial Brief issue No. 3 (ref 2) cited Specific maintenance items that were not awarded but entitled and Ordered to be Paid/ reimbursable. The itemized list/ref p. 6 pr. 3 was updated due to forced residing At the Plaintiff's own residence/ property and not being given temporary spousal Support after the final Order and vacating after the divorce granted but still Maintaining the property in a responsible manner. The Appellant cites p. 10A Referring to the maintenance costs but were ignored due to the thinking that the Appellant had rights to the property but actually did not have any claimable rights. The Appellant summarized the new amount of money owed on p. 13 that was agreed

Upon but never paid. The Appendix has the detail of (ref. A-3-1,2, A-3-2, A-3-3, A-3-4 with supporting documents) (Ref SI 3-12)

Issue 4. Care taking money earned for the out of marriage minor child having prior Mutually agreed arrangements and no opposing guardians, relatives interested Parties nor bans of care taking pursuant to RC 3109 or any other statutes.

1. On April 13, 2006 the Appellant filed a complaint referring to the character Behavior of the grandparents named Gerrit Van Straten (Stratten) grandfather and Jane Van Straten (Stratten) grandmother presenting the prior living cohabiting Conditions about the Plaintiff Katherine Ann Howard, who grew up and was raised In a very strict and physically abusive teenage environment. Ref Sup Ind 4-1 Affidavit p.3, pr. B 1, that relates to the Decision Judgment Decree of Divorce final Order ref Sup Ind. 4-17, p. 11, pr. 28, 30. having the same grandmother care take for the grand daughter Jennifer Lynn Howard who caused great harm and mental health problems as documented upon the Plaintiff which started during her teen age years, specific to 15 years old. This civil case has moved that grand daughter into the same environment at the same age. Other yelling and non positive desirable living conditions existed at the grandparents residence. The Appellant was threatened as documented. Ref Sup Ind 4-1 p1,2, Affidavit p.1-5.

2. On April 14, 2006 the Appellant attempted to Add the grandparents as third Parties to the case but was denied by JUDGE DANA PREISSE as a litigant pro se during this civil proceeding. This document was filed on the grounds for character reference and banning the grandparents as care takers, power of attorney, and being told of them (grandparents) being involved that was documented and proven to be true for adverse and non legal (illegal reasons) pursuant to RC 3109.51 through RC 3109.80 having prior historic knowledge and observations of their family maladies relevant to adult supervision of children and teenagers due to the violence

including verbal abuse and mental health conditions that have permanently affected the Plaintiff. Ref Sup Ind 4-1 p. 1,2.

3. On May 30, 2006 The Appellant filed a Motion for Termination of Dower due to ref p.2 pr. 2 the settlement of the issue due to the gross neglect of the wife support, the money owed but not received money for prior care taking prior accepted and being forced and coerced to waiver the rights to put the Appellant's name on the property as claimable mortgage documents four years prior to the initiation of the civil proceedings of divorce and also noting that a non party but witness family member, Gerrit Van Straten, assisted the Plaintiff by threatening the Appellant not to go through with claims for money that were actually owed and known that these actions were deterring the loss of income and benefiting the Plaintiff's side of the family Ref p.3 The care taking labor out of marriage was for Jennifer Lynn Howard not being compensated but to act in a legal manner to claim the money owed. Ref p.2 pr. 2,3 This motion was filed during this time frame because of the legal time permitted causing a burden/ lien that comes into effect only during a marriage and since the divorce proceeding were in process but were not finalized, the Appellant had the right but was denied by the Domestic Relations Judge Preisse (REF 514-3).

4. On July 20, 2006 the Appellant presented the issues by law including the care taking labor with detail explaining the argument, situation, including the prior agreed arrangement as the stay at home dad parent, the period of times and the fact these responsibilities were creating a loss of the Appellant's income unless compensated with money. The Appellant had full time employment prior to entering Ohio and taking the

care taking labor at a loss of income which should be compensated. The detail states the facts about the confrontations, the parties involved and the estimated money that was itemized in detail later documents. (REF SJ 4-4).

5. On Jul 20, 2006, The Appellant filed an appeal to the Domestic Relations Court to the Tenth Appellate District Court , Case No. 06 AP 7 754 for a decision and over ruling of spousal support and Termination of Dower. The Memorandum in support p.1 pr. E documents the reasons for the compensation which was denied in the trial court. The next page explains the relief requested because of the denied motion for Hearing of Contempt and the final page requests his needs. (REF SJ 4-5).

6. On Jul 27, 2006 the appellant filed a Motion , Appeals Court -Case No. 06 AP 7 754 for stay pending the right to terminate Dower which is allowable by Ohio law. The appellant further states that the Plaintiff used coercion and duress which violates Ohio law to force the Appellant to do unwanted that when presented in Court was denied fair and claimable compensation, Ref p. 2 pr. 3,4.)The Appellant cites (ref p. 3 pr 1B, 1C, p.4 1D, 1F, 1G; As conversations about the money owed for care taking even to the subject minor herself so she understood that money was owed. This was another time that the issue of money was documented as a statement of fact. REF SJ 4-6).

7. On August 10, 2006 , the Appellant filed a Motion for Writ of Prohibition Case No. 06 AP 7 754 (ref p. 2, 2B, p. 3 pr. C- G). These facts explain the physical confrontations, Domestic violence that occurred, the parties involved, the law and fact pertinent to Attempting legally obtain Order in a chaotic situation having no responsible law Enforcement/ peace Officers and violations to Ohio law neglected specific to Domestic

Relations violence restraint Order reporting regardless of injury upon a victim, in this case the Appellant. Note that a federal case 07/3422, 07 3610 is in process US Court of Appeals, Cincinnati, Ohio Sixth Circuit relevant to these negligence of law Enforcement duty of care and other issues. (REF SI 4-7).

8. On August 18, 2006, the Appellant presented facts pertinent to an appeal from Judge Preisse, the former Judge assigned to the Civil Domestic Relations Divorce case. The Justification of the Appellant actions were presented relevant to the Domestic Relations Court decisions entered and the rights of the Appellant were presented due to knowing the historical actions of Judge Galvin, not reviewing the Case 06 Dr 03 1051, not hearing the serious issues the Appellant had encountered and needed to be heard. (REF SI 4-8)

9. On August 28, 2006, the Appellant filed a Brief Case No. 06 AP 7 754/ref p. 6 pr. 2 Stating that due to the large sum of money held from March 2003, and the conditions Criminal in nature duress and coercion were not heard at the lower court and due to the duties of the Appellate judges that are authorized to hear such actions is the valid reason for the actions of the Appellant. (REF SI 4-9)

10. On Sep 14, 2006, the Appellant filed a Pre Trial Statement/ Affidavit noting the Specific amount of care taking money owed p. 9 pr. C 2 equating to \$102,528. The detail of hours, times are documented later to support the valid claim. (REF SI 4-10)

11. On October 30, 2006, the Appellant filed a Memorandum in Support of Temporary Orders/ Affidavit. The Appellant, ref. p.2 pr.2 documents the amount owed \$102,528.00. (REF SI 4-10)

12. On November 8, 2006 the Appellant questioned the mother of the out of marriage Minor child during a hearing at which time her Attorney objected to finding out the truth

Due to hiding the facts that prior arrangements were made, and the largest amount of Money owed to the Appellant from the mother in this case ref p. 11 (REF SI 4-12).

13. On December 11, 2006, the Appellant responded to open issues counter to Plaintiff's Proposal of settlement. Note that p. 2 pr. 2) the care taking money is documented ref Paragraph 9 above. (REF S.I 4-13).

14. On January 11, 12 2007, the Appellant documents 29 pages of testimony that proves the fact that care taking was done by the Appellant, the loss of income was evident that started when the care taking was started, a prior agreement (p. 69, 71 (oral contract)) was made, the definitions and actions to validate the care taking (Ref. p. 69). The answers from the Plaintiff mother were very evasive not detailed and when asked correct direct questions, her Attorney would object. The mother in law was not involved, no contract/Affidavits legal documents were filed allowing any grandparents to care take the minor child, there no other ^{parents, guardians, custodians or} relatives documented in school records having the responsibility to care take the minor child except the Appellant. Ref RC 3109 and following sections. Ref p. 135, In Maitland, Florida, Nina Tipton a thirteen year old neighbor cared for Jennifer Lynn Howard was paid on a regular basis negating the under oath sworn statements but false to counter the truthful case for labor as the care taker. The Appellant has researched child care taking ranging from \$145-200 per week and higher during the summer from three references local as a guide to support that care taking is a paid responsibility. And that the hourly rate is reasonable. The issue of dower as a means to claim the money owed ref p. 142 and the lessening in income was evident that only one job could be done at a time. The mother wanted the Appellant to
Ref. SI 4-14)

Work three jobs- the stay at home dad care taking for Jennifer Howard, labor for my own Financial support knowing that the care taking was payable by prior arrangement initiated by her but manipulating through duress and coercion knowing that the owed child support arrearage by prior marriage was very stressful taking total dedication of time and being a responsible husband to the family as married maintaining the house, property and earn a separate living an unobtainable goal.

15. On Feb 12, 2007 the Plaintiff documented the Closing Arguments/ref. p. 9, pr. F Existence of minor children. The Appellant cites the rationale that there existed a minor child who required care taking due to her age and that there is an impact on her income to care for her child even receiving child support from her former husband. The Appellant also/ref. p. 11, pr. 1, lost income due to marital responsibilities , the Plaintiff states that the Plaintiff (mother) requested and agreed for the Appellant to take care of the minor child Showing that a prior agreement was made. The loss of wages was due to the individual Attention /labor that was completed. Further/ref. p. 13, pr. F; the Appellant claims that There was a child needing care taking because of age and having no other adult/ grandparent or otherwise person having legal documents as care taker/ Affidavit or equivalent on record and that the Appellant had no bans nor opposing documents or agreements to stop nor detain the care taking that was completed. (REF S I 4-15)

16. On Feb 27, 2007, the Appellant filed Defendant's Closing Arguments/ref. pp. 8,9/ details the facts that no money was received but prior arrangements were made. The Appellant expand the labor taxing/ and benefits due to money owed for labor completed (Ref. p. 15, pr. 1) that no Social Security benefits were paid due to be added that are owed Increasing the total amount owed. The Appellant/ref. p. 18) in a rebuttal argument details That total care taking burdened the Appellant and by law not having any bans, nor Opposing parties relating to the legal matters allows the right to claim having Prior mutual agreement without restrictions to be paid. The Appellant/ref. p. 20,) had the Only civil legal procedures to claim for money owed the previous married waiver of Rights to the property/ residence even though married having a too amicable relationship To give up half of the total circumstances for later unforeseen separation and divorce.

work outside the home for his support/ income, care take Jennifer and support her- the wife performing three jobs in three different locations at the same time which is unrealistic, impossible and overburdening. Ref. 144 documents that the Plaintiff did in fact pay her worker money that was reported for tax purposes and other reporting. The witness, mother testified under oath, note name miss spelled. There are no care Taking legal documents filed I Franklin County nor any other county relevant that allows The grandmother to be responsible for the minor child Jennifer Lynn Howard, Granddaughter by second marriage to Curtis G. Howard II, divorced and living in Maitland, Florida (Ref. p 178.) refers to the detail of a valid claim for money owed. The witness stated false information during this hearing to support her daughter During this civil divorce proceeding. The appellant attempted to initiate Third party Pleadings ^{REF: PAR 2 ABOVE} against the mother of the Plaintiff but was denied the right by Judge Preisse During the early stages of the divorce proceeding. The grandfather, Gerrit Van Straten, Was questioned about the Appellant's employment and the care taking labor/tasks. Again the Appellant states that no care taking documents/ Affidavits were filed nor Spoken about during the hearing. The employment facts were false due to evidence Filed after showing false support of a false identified Plaintiff defrauding her ex spouse For the gain of money which has been proven held back in contempt of court Order And swaying the Court into believing that the Appellant was not worthy to receive Money earned and entitled. Finally, the Appellant is a degreed engineer that presented A resume to the PE Professional Engineer Gerrit Van Straten, lying about the opportunity of work/ labor relating to his former wife's husband. (REF. S. I 4-16)

The money or any money for that matter of fact was never given freely without abusive Actions and verbal abuse for the betterment of the child being raised in a very rightful and accepted manner. The Appellant (ref. p 21) summarized the amount of money as \$ 102,528.00 which finalizes the consistent issue having explicit detail and valid Grounds to be paid. (Ref. SI 4-12, 14, 16).

17. On July 19, 2007 The Court filed the Decision and Judgment Entry Decree of Divorce noting the references to care taking as follows. The daughter is established as a Burden upon the family to be cared for due to her age and circumstances as an out of marriage minor child ref. p. 4, pr. 3, The Court acknowledges a supplement to care taking having the necessary facts for valid grounds that a loss of income was burdened by the prior arrangements of care taking, that in fact specific times and dates were presented but the Court overlooked, ref. p. 11, pr. 30. The Appellant has full time employment prior to relocating to the property/residence relevant to the marriage. The evidence of hours, days and total time is detailed in Affidavit ref. SD4-11 p. 222. The choice versus prior agreement was based upon the mother having returned to Ohio From Florida predicated upon a job/ permanent position with OSU her former employer and also being her sole money source of income which she would not sacrifice for her daughter nor hire other care taker businesses. The Appellant, ref. p. 13, 15, that pertinent and appropriate motions and pleadings were filed after legal consultation with an Attorney for claims of money owed but not paid justifying the Appellant's actions even though the Domestic Relations Court denied the rights of the pro se litigant to proceed for proper adjudication which was explained during the Court sessions. The Appellant, ref. p. 15, pr. 42 cites that the Court does not acknowledge that all valid labor is not governed

by law stipulating that honest and rightful earnings not being opposed can be entitled and earned but the Court documented that the defendant could not find any law or prove facts in support of his requests because there exists labor that can be performed without the bounds of law or restricted by any law but has written documents filed in detail of the hours, days , total and amount of money pertinent (REF SI 4-17).

Issue 5. Inaccuracies in the documenting of findings of fact and conclusion of law Generated and transcribed during the course of this divorce proceeding have Caused the judges decisions to be in agreement based upon invalid Information.

1. On July 19, 2007 the Domestic Relations Court Honorable Judge Galvin decided and filed an entry finalizing the trial court decisions. The appellant refers specifically to that document and presents evidentiary facts that contradicts and corrects the legal document as filed. Ref Sup Ind. 5-1.

2. The Appellant refers to p.7 pr. 13, notes that the Defendant did not obtain a Master's degree in Divinity as evidence that the Appellant cites Sup ind. 5-6 p. 189, Lines 1-6, p.190 lines 2-4. The Appellant progressed steadily as a dedicated family Care taker of the minor child on an individual basis and not voluntarily unemployed Or underemployed as documented due to the money owed in excess of \$102, 528.00 During that time period.

3. The Appellant claims to be an employee of the US Government performing Confidential work and justified as employment ref Sup ind. 5-1 p.8, pr. 16 due to The affiliation with the Agency.

4. The Appellant cites Sup Ind 5-1 p.8, pr 15 and claims that the judge documents in Err that the Defendant is an ordained minister which is not truthful information. The Appellant refers to the trial transcript SUP Ind. 5-6 p. 220 line 5, 15,16, p. 221 lines 9-18.

5. The Appellant has only one Bachelor degree (BSEE) accredited. The allegations By the Attorney for the Plaintiff and subsequent Judge Galvin followed to demean the Defendant making wrong assumptions, abuse the level of education as the parties Involved being criticized and stereotyped as an unemployed father who couldn't be

Employed doing care taking for the minor child and employed elsewhere doing Engineering work at the same time. Ref Sup ind. 5-6 p. 189, 189 line 8

6. The Appellant refers to Sup Ind. 5-1 p. 1 pr 30 that there were pretrial and detail Facts to support child care taking being performed. The fact that the Court used the Grandparents as providing day care noting that by legal rights, pursuant to RC 3109.51 through 3109.80 that the relevant Affidavits of Child Care need to be filled Out and filed pertinent to good parents being the care taking responsible adults. There Were no such documents filed. Ref Issue 4 paragraph 1 and 2 relate to the grandparents character behavior and historical violence during the marriage period and supports valid grounds for banning that the Defendant was denied by the lead Judge of Juvenile Division who recuse later. Note there were no documents to support only one effective power of attorney or affidavit in effect per child pursuant to RC 3109.80 ever filed. Conversely, if the grandparents were banned having filed the appropriate documents, for legal edification and evidence the Defendant was still the only one responsible care taker.

7. The Appellant presents Sup ind. P.11, 12 pr.32 incorrectly states when the Plaintiff and her minor daughter left her property. The Appellant has documents that they left shortly after on March 14, 2006 and moved in with her mother and father. The Appellant cited Sup ind. 5-4 Affidavit issues were discussed with an Attorney on March 14, 2006 that relate to this departure. The Appellant cites Sup ind. 5-3 p. 2 That Perry Township Police were called after the summons was delivered for Authenticity of the currier.

8. The Appellant cites Sup ind. 5-1 p. 17, pr 52 referring to committing waste. The Appellant did not commit waste but left the house and property in a clean and undisturbed condition. The Appellant refers to the Court decision Sup ind. 5-1 p.15, pr 39 that waste /garbage removal was denied and that this err caused, if any post divorce claims, the allegation from the Plaintiff and her Attorney as an excuse for revenge, legal action money and further abuse against the Appellant. The waste removal by Perry Township contracted business was not completed having a delinquent bill not paid. The Appellant had witnesses on September 13, 2007 who stated the house was clean and also there were witnesses on September 18, 2007 when the Appellant locked the doors and vacated the house. The Appellant was approached by a representative of Waste Management that a bill was delinquent. The Appellant filed the bill in Court as a maintenance bill for the Plaintiff to pay. The Court's decision is explained here due to the cause why if any waste was claimed, Falsely to be left behind as the reason being denied by the Judge.

9. The Appellant refers to Sup. Ind 5-1 p. 19, pr 56 presents that there was only one Vehicle. The Plaintiff and the Judge not being familiar with the facts of the case documented as a balance of property that each party is awarded each is currently driving. The fact that the Appellant has no vehicle, no current driver's license nor mode of transportation but is handicapped due to FCCSEA suspension of the Appellant's Ohio driver's license privileges was a negative and not a positive balance. Ref Sup ind.5-5 item 3.

10. The Appellant refers to Sup ind 5-1 Exhibit b p. 2 fourth paragraph. The Order Relevant to the Defendant now Appellant does not specify in words, nor implied Who, not To Whom, when the exchange for the items to take place. The major Court Err in fact with the Defendant being a federal Officer/Agent of the US Government Having a federal civil case against the local law enforcement Perry Township Police Active to date and also that the peace Officers employed with Perry Township police Stated that they were not into property business or moving property was brought out In Court during hearing/trial and post hearing before JUDGE GALVIN.

ARGUMENT IN SUPPORT OF THE PROPOSITION OF LAW

The Appellant documents the issues with the relevant the State of Ohio Revised Code (R.C.), the rules of Civil Procedure (CIV R.), and pertinent valid good reasoning in Argument for proper civil adjudication and the administration of justice.

ISSUE 1. Temporary spousal support was requested by law but denied during the suit Pursuant to CIV R 75 and RC 3105.18 (C) (1).

1. The appellant argues that CIV R 75 (N) specifies the civil procedure, pleadings and form of Motion to obtain spousal support for good cause shown.
2. The Appellant refers to paragraph (N) (1) specific to the reason for the allowance of temporary spousal support is the parties' sustenance and expenses. The Appellant has filed indigent financial status, being the most person in need and poorest being lower than ^Npoverty, prior to this civil proceeding and during this entire suit using the words in the Rules of Civil Procedure section of the State of Ohio law.
3. The Appellant presents contrary information on the form cited in the Supplemental section that notice given shall be "heard", but upon affidavits only and Without oral testimony.
4. There is no other supporting documents to detail the amount being denied by the Appeals Court when appealed after the recuse of the entire bench of Franklin County Domestic Relations Judges.
5. The form further states a "status conference" shall, meaning mandatory, be Conducted that all parties be present to reach a amicable settlement. There were no Status conferences held. The Appellant asked the Magistrate's assignment desk and the Judge's assignment desk about this fact there were "only the Attorney's ". REF. RECORD REF62
033106. SUP.1-2.
6. The Appellant cites the Order filed on May 2, 2006 that there were no status Conference meetings held, one scheduled, but the Appellant was never informed until After and then never present.

Franklin County Domestic Relations uses a form that substitute as a legal document with Affidavit that summarizes the Temporary Orders as referenced. The lower portion is Titled "Notice of Hearing And Status Conference" paraphrasing the civil rule having Blank spaces for Magistrate's Name, Hearing room, standard 8:30 AM on blank date. The supplement contains copies of the filed documents as examples- Issue 1 Supplement..

7. The Order denied money and documented "PASS" as the allowed sustenance for the Appellant spouse having the indigent financial status the entire time of the civil suit.

8. The Judge assigned, JUDGE Preisse, also denied temporary spousal support to the Indigent party which her duty as Judge of the case ended in recuse.

9. Judge Galvin continued neglecting the entitled and allowable temporary spousal Support requested and stated that this issue is settled at the end of the case.

10. A separate hearing was held and transcribed allowing the Appellant to present the Legal right for "temporary spousal support" having a good reason of being indigent and the need to vacate the property of the divorcing party without financial support during the suit. The Court ruled against the requested money and entered the denial decision.

11. Judge Galvin erred in interpreting the State of Ohio law allowing spousal support relevant and specific to CIV R 75 (N) (1) words "during the suit" for Temporary. These facts are supported by the dates of the case that started as filed on March 9, 2006 and the final entry Decree of Divorce was filed on July 19, 2007. There was no (money) spousal support allowed.

12. The Appellant argues that for each month of the case, the Appellant was entitled to The requested amount of \$1570.94 per month for the entire duration of the suit. This amount totaled to \$25135.04.

13. The Appellant argues that he was forced to stay at the property of Katherine Ann Howard due to the lack of sustenance, money for relocation expenses and due to the Negligence of the Court decision abusing the indigent husband/ defendant favoring the Wealthy female in an inequitable settlement abusing and unfairly not allowing Temporary Spousal Support during the suit by law.

14. The Appellant claims that Judge Galvin, the trial Court assigned Judge, not only Abused the law for Temporary Spousal Support allowance by total negligence against the Indigent poor male party that has been historically linked to females having children Which by law there is no legal link of temporary spousal support, child support and existing orders of the same to be considered but the Court has linked Temporary Spousal Support using abusive and arbitrary unconscionable attitude.

15. The Appellant cites Blakemore v. Blakemore that the decisions were unreasonable, Arbitrary and unconscionable which is used as a standard having been decided and Accepted .

16. The Appellant argues that the trial court retained jurisdiction and authority during the Entire duration of the civil suit with respect to RC 3105.18 but denied monies needed to Relocate noting that the Plaintiff had an excess of money to give from including her Income and saved monies due to living with her parents for free.

17. The Appellant further argues that after being denied allowance for Temporary Spousal Support Orders from Magistrate Bosques Milliken, Judge Preisse, the first assigned judge, the Appeals Court Tenth Appellate District and finally Judge Galvin, proper adjudication due to recuse of the Franklin County Domestic Relations Court for a reason of not having a financial affidavit but citing Sup Ind. 1-12 Financial

Disclosure/Affidavit as the accepted and required document for filing the Domestic Relations civil cases in defense and appeals the Tenth Appellate District Court rules And State of Ohio law as filed. The Court erred due to the documents being filed as evidenced and were accessible for review in the record of both courts.

18. The Appellant argues that the income of the Plaintiff was in excess of \$73,000. per Year with monthly expenses of \$1434.71 per month or \$17,216.52 leaving a balance of \$55,783.48 from which the temporary spousal support can be deducted without financial Impact in the amount of \$18,851.28 leaving the Plaintiff \$36,932.20 or 50.59% of her Income. A fair and equitable settlement that was never brought or heard before the Magistrate judge ref. Sup Ind. 1-2 status conference.

19. On February 27, 2007 the Appellant filed the Defendant's Closing Arguments ref. p.8 pr. 3e and p.17 summarizes the total by law of \$25,135.04 argues that the lump sum of \$12,000. "after", not during the civil suit is in deficiency of \$13,135.04 p. 21 conclusion pr. B \$20,422 22 updated reflects the post decree accrual of money due not knowing the final hearing date. The difference is very significant which is not equitable nor reasonable but abusive against the pro se indigent defendant husband.

20. The Appellant argues that on July 19, 2007, the Court, Honorable Judge Galvin filed The Decision and Judgment entry Decree of Divorce referring to the pages in the Supplement to the Record that basically, the lump sum of \$12000. is awarded not as Temporary spousal support denied p.15 pr 41 but as a combination of another issue called Alimony that is argued under issue number 2, alimony, following and the Court erred in Non allowance of needed and required money to relocate provided by Ohio law CIV R 75 N as argued in the above 19 paragraphs.

In summary, the Appellant shows that the Court having been special seated by the Supreme Court of Ohio, due to the over whelming number of divorce cases filed in Franklin County, which could not be adjudicated properly and due to recuse of the Entire Franklin County Domestic Relations Court bench signing to transfer this case Was still not properly adjudicated on this issue due to the miss interpretation of the CIV R 75 N words, the time constraints for the normal civil procedure of proper civil Proceedings, the monitor of Judicial Case status to satisfy the Judge's Professional Code that the pro se litigant indigent defendant was abusively reminded almost every Hearing was used as an excuse for proper legal adjudication of this issue in favor of the Plaintiff/ Attorney having legal degrees of education and business influence but a very lengthy list of disciplinary complaint of legal Rules of Civil Procedure, local Domestic Relations Court rules violating actions, ref Case No. A 72423. filed with The Disciplinary Counsel of the Supreme Court of Ohio during the entire time of this Case. The Appellant has documented the witness Attorneys, legal personnel relevant and US Government agencies as witness to the above facts. The Court followed the Case of Record Attorney for the Plaintiff leading the proceedings with non acceptable civil practices as documented that the Court allowed in this civil case matter of family law pertinent to this issue 1. - Money owed \$25,135.04.

Issue 2.

Alimony was not awarded having complied with Ohio law and valid grounds
And good cause pursuant to CIV R 75 and RC 3105 01 (F).

ARGUMENT IN SUPPORT OF ISSUE 2

1. The Appellant argues that due to 10 years of relationship/ marriage was a long Duration that the Appellant being considered a senior due to age of 56 and had a Limited earning potential because he had devoted all of his money earning time during the marriage to care taking in Ohio for the minor child out of marriage and caring for the family. The Appellant cites Schaaf v. Schaaf pg 7, pr 1 to the Court's conclusion noting that these factors are very similar and treated as a standard for this case pg 7, pr 27 RC 3105,18 (e) (1)/ factor being considered whether spousal support is reasonable.

*AND SALUPO V. SALUPO P.2
A.2.*

2. The Appellant supports his argument with the nine supplemental references as detail described in the Statement of the Case and Facts.

3. The Appellant argues that the indefinite alimony has been awarded in other cases And specific to paragraph 1 above having the standard as a basis and reference.

4. The Appellant argues due to the devoted solemn vows and photograph as proof of a truthful amicable relationship believed to be supportive of the husband for the rest of his life was claimed and evidenced to be true.

5. The Appellant cites the criteria common to both temporary spousal support during the suit, issue 1, that was totally denied having the gross negligence and breach of duty as a wife to the husband defined by Ohio law RC 3105.17, CIV 75 N, seeking minimal amount of relief . These facts do not contain nor imply any children link nor any references to spousal support as a weight but the by law states the "only" criteria

being considered is defined but the Court erred by not allowing the requested alimony to be awarded but limited the money from the wealthy female divorcing party having combined and reduced the money requested as stated by the Court that this case is not an ordinary case and the law was not followed .

6. The Appellant argues that due to the physical confrontations which added to the Prior allegations documented which led up to the divorce proceedings , intimidations, Gross Negligence cited in the Supplement Ind. 2-5 p 2,3 details the specific facts During the separation which the Court stated for the party (Plaintiff) who left the property to remain off the property but accompanied by local law enforcement disobeyed the Restraint Order filed and Court Ordered during that time period .

7. The Appellant argues that ref Sup Ind.2-7 Plaintiff's Closing Arguments pr e Agrees with an award of support for a spousal support award. Further, the Appellant Cites Sup. Ind 2-9 Decision and Judgment Entry^{Sup. Ind. 1102-9} p.14,pr 36 Judge Galvin states "ordinarily the court would award spousal support to be paid periodically ...", The Court linked temporary spousal support in the most abusive, unreasonable, An arbitrary decision due to being a visiting judge, not caring about the Appellant's Welfare and unconscionable decision to close the case in the most expeditious Manner by Professional Code, ignoring the equitable, very thought through settlement And distribution of property by the unbiased husband as filed in the Defendant's Closing Arguments p.^{49 3A, 2a-11, 3a-9}pr knowing and presenting the truthful and honest facts during all of the hearings, pleading and requested motions that were justifiably filed with good reasons and valid grounds mostly denied, having consulted Attorney's

for professional advise but having the Court comment “not to go back to that Attorney because you are receiving bad legal advise. The responses and defendant filings were all properly adjudicated, in correct sequence and accepted by all of the civil courts involved.

8. The Appellant argues that the exception in this case is not the proper justice for all The poor indigent party, to maintain an independent lifestyle, be relieved of the gross Negligence and breach of duties of the wife and the criteria for “alimony” is not and does not specify having children of the relevant marriage but is used as a factor not documented but known to favor the female and more for those having children.

9. The Appellant argues that the Court’s reasoning of exception is frivolous to the Allowable child support as a relief for children born of the marriage and being cared For by the party taking custody and entitled to the correct award for the children of the marriage.

10. The Appellant cites the standard Schaaf v. Schaaf p 2. Holding pr 3 indefinite spousal support as warranted/ p.3 134K230 Permanent Alimony, 134K247 Comments and Termination: Most Cited cases RC 3105.18 C,F) The Appellant refers to the same specific deleted factors related as a good and proper basis for the same award in this case.

11. The Appellant argues that Schaaf v Schaaf p.6 pr 4, Ohio Courts have validated Open ended and lifted spousal support awards in specific cases and the standard to this case that the duration, parties of advanced age, 50’s, and the homemaker (stay at home dad) has little opportunity to develop a meaningful employment outside the

home citing Schieve v Schieve and other that refer to legally decided family cases that the Court should consider the marriage of sufficient and long duration and the trial court decided in fact abusely it's discretion by combining allowable money as spousal support as a lump sum award to relief the indigent stay at home maker in the amount of \$500. per month for 24 months that does not weigh as the requested \$1570.94 per month temporary spousal support equating to \$25,135.04 nor the \$100. per week permanent spousal support that equates to \$5200. per year or \$ 37,702.56 during the same period of life expectancy and \$ 145,600. as relief compensating for the gross negligence of the wife's duties and breach of duties That the Court awarded \$12000. to cover both needed requests. The Court award is ref in Sup Ind. 2-9 p 14 pr 36, p 15, in total of \$12000.

12. The Appellant argues that in Schuler v Schuler the standard of the trial court Acted in a unreasonable, arbitrary and unconscionable manner from the standard and Similarly in this case since the similar decisions were made citing Blakemore v Blakemore (1983).

13. The Appellant argues the Court must view the entire property decision being Considered as the totality of circumstances. Ref. Jelen v Jelen.

In summary, The Appellant argues that the thirteen paragraphs shows that alimony
For an indefinite or permanent award was warranted having the required criteria
supported by gross negligence and breach of duties facts, the Plaintiff agreeing for
payment, the amount of money requested documented and analyzed as to the Court 's
award being very limited, reduced beyond an acceptable amount to be equitable by
the standards and the standards of three cases presented. *Money owed \$100. PER
week forever.*

Issue 3. Money for reimbursable expenses of maintenance was documented with valid Receipts was entitled to but not reimbursed.

ARGUMENT IN SUPPORT OF ISSUE 3.

1; The Appellant argues that the Court had stated for the Defendant to keep track of the expenses, reimbursable by the Plaintiff to the Defendant, citing 12 references in the Supplement. The Court refers, Sup Ind. 3-4 Transcript of hearing Nov 8, 2006 ref p. 31 that Judge Galvin refers to a bill, an equivalent of a receipt such as gasoline, ref Sup 3-7 Transcript of trial p.181 non paid bills. Ref Sup. Ind 3-9, Defendant's Closing Arguments p.14. The Court ref Sup Ind 3-11 p 13, bills and debts, allowed The expenses to be paid but denied money as totaled \$ 459. 46 (ref Sup Ind. 3-12 p.13).

2. The Appellant argues that since no money was received but directed during the Civil divorce from her sole property that reimbursable maintenance costs were to be Paid. The documents show that money was paid by the Appellant for maintenance and filed with the Court as evidence during the civil proceeding and Order time until vacate. The money is owed to the Appellant and should be paid by the Plaintiff.

In Summary, The Appellant has shown 12 references relating to reimbursable Expenses during the separation of the divorce having valid claims of money paid By the Appellant agreed to be reimbursed by the Plaintiff.

Issue 4. Care Taking money earned for the out of marriage minor child having prior Mutually agreed arrangements and no opposing guardians, relatives, Interested parties nor bans of care taking pursuant to RC 3109 and any Other statutes.

ARGUMENT IN SUPPORT OF ISSUE 4

1; The Appellant argues, that citing the prior arrangement detail ref Sup Ind. 4-9, Memorandum In Support Temporary Orders/ Affidavit , p. 4, the Plaintiff and Husband/ Appellant had setup arrangements for care taking a requirement for Entitlement of money earned. This establishes that an agreement was made prior.

2. The Appellant argues that the wife neglected and continued to not be responsive To Jennifer Lynn, the out of marriage daughter being cared for after school by the Only care taker entirely devoted to her until she attempted to refinance her sole Property. The Appellant citing Sup Ind. 4-1 Motion to Terminate Dower, a legal Action to claim money that the Appellant had previously not been allowed to put his Name on the property from the initial purchase returning to Ohio from Florida waiving Dower rights by law until the Appellant realized that no money was being paid but agreed as described in paragraph 1 above.

3. The Appellant argues that a review of RC 3109, the pertinent care taking section Of the Ohio Revised Code, there were no filed legal documents to show opposing grandparents, relatives, interested parties or any other care taking parties during the same time period, no legal documents to show bans or any legal restrictions placed upon the Appellant that denied any entitlement to the prior arrangements.

4. The Court refers to Sup Ind. 4-15 p. 4 pr.3 establishing the minor child and residence, the Court acknowledges ref p.11 pr 30 the sole devotion of care taking for the minor child and the loss of income to perform that labor. The Appellant argues that the Court states that no evidence supports the claim. However, paragraph 1 above was filed in Judge Galvin's Court on October 30, 2006 Case record 06 Dr 03 1051 an Agreement was made not a voluntary choice due to the age of the child, a minor of elementary school age not having any other adult or caretaker during those periods of time and no other legal restrictions such as latches or filed affidavit of grandparent caretaker RC 3109.xx, having searched the Westlaw database for the grandparents relevant and having found no legal documents. A search pertinent to RC 3109.80 only one care taker affidavit per child in effect during the same period was researched ⁿ in the Westlaw database using the child's name and there were no cases filed relevant to that person during that time period relevant to this case. Therefore there exists no legal opposition as filed to be claimed.

5. The Appellant argues that the Motion to Terminate Dower is not frivolous, having Been denied by Judge Preisse, Tenth Appellate District Court and Judge Galvin the rights For claim to property by marriage of money owed is the large sum in excess of \$100,000. (102,528.00)

6. The Appellant argues that the motion for Termination of Dower was a proper remedy to cease the sole ownership of a married couple having a claimable right to property equal in value of money owed which can only be filed during a marriage.

7. The Appellant argues that the amount of money owed is documented in ref. Sup. Ind. 4-16 p. 13 (\$102,528.00).

In Summary, The Appellant argues that care taking labor was prior arranged, a Significant amount of income was lost during that time period, no opposing parties Nor legal documents precluded nor banned the Appellant from doing the needed care taking labor and there were no other adults performing the same care taking at the same time period. Therefore, the Appellant is entitled to the money owed as documented but denied by the trial Court and should be awarded. - \$102,528.00

Issue 5. Inaccuracies in the documenting of findings of fact and conclusion of law Generated and transcribed during the course of this divorce proceeding Have caused the judges decisions to be in agreement based upon invalid Information.

ARGUMENT IN SUPPORT OF ISSUE 5.

1. The Appellant argues that due to false and miss leading facts that Court decisions Have been made in error and documented as inaccuracies. The Appellant states that if the truth and honest facts were presented rather than the inaccuracies documented in this case relevant to the criteria for a proper, equitable and fair settlement and award. The large sum of money owed and still some not paid from the Order dating September 22, 2007 held by the Plaintiff in contempt is holding up the final settlement of this civil divorce proceedings.
2. The Appellant documents 6 Supplemental references as evidence to correct facts that the Court, specifically, Judge Galvin has documented that were facts used to determine the Court's decision. These facts also effect the issues 1-4 above.
3. The Appellant argues that ref Sup Ind. 5-1, p. 7 the defendant has not obtained a Degree in divinity. Ref Sup Ind 5-6 p. 220 ,221
4. The Appellant argues that he did not voluntarily become underemployed, having a Post collegiate degree in divinity and being ordained clergy ref Sup Ind 5-1 p. 8 pr 15. Sup Ind 5-6 220, 221.
5. The Appellant argues that he does not have two college degrees from which he chose not to utilize but rather he has only one BSEE from which he has earned money. Ref Sup Ind 5-6 p. 188, 189, 190.

6. The Appellant argues that he has become the care taker for Jennifer Howard and That the grandmother had no legal documents/ affidavits nor any evidence to support Her or the Plaintiff's claims that they were providing for the out of marriage but their (grandmother and grandfather) family sibling granddaughter.

7. The Appellant argues that having the prior agreement constitutes the legal right To be the care taker adult responsible for the out of marriage person having no Opposing parties, legal documents nor any parties acting as a care taker at the same Time.

8. The Appellant argues that the Plaintiff and daughter left voluntarily and during a Peaceful time not as documented ref Sup Ind 5-1 p. 11, 12 pr 32. The Appellant cites Sup Ind. 5-2 Supplemental Affidavit In Support of Temporary Orders p. 2 pr 5 that the Plaintiff and her daughter left an were residing with her mother. Further, Sup. Ind 5-4 Affidavit of Michael Juhola, p. 1 pr 3 one of the issues held in confidence here due to the person/ professional Attorney is relevant.

9. The Appellant argues that due to the Court denying the Plaintiff to pay for waste Removal caused the problems that were witnessed by the Plaintiff or at least documented as an issue upon return to the residence after the vacating by the Appellant. Ref Sup Ind 5-1 p 15, pr 39. The Appellant cites the Order p. 17, pr 52 And states that no waste was committed having witnesses when the Appellant left. However, the Plaintiff documented that waste was left behind and the Appellant Contends that due to this Order specific to the denial of paying the waste removal From the property The Court was in err and the cause of this fact. Ref Sup Ind 5-6 Transcript of trial Court p. 124, 125.

10. The Appellant argues that there was only one vehicle in the family and citing p.19, pr 56 that the appellant never had a vehicle as claimable. The Appellant cites Sup Ind 5-5 Memorandum of Agreement item 3, there was only one vehicle. Ref Sup Ind. 5-6 p. 52,53, 59 there was only one vehicle.

11. The Appellant argues that due to the non specific person, group or whom ref Sup Ind. 5-1 Exhibit B p. 2 , 4th paragraph the written receipt for the items removed by Order specified in Exhibit B relevant to the Appellant , the Appellant was right by leaving the property, retaining a copy of the items removed for future evidence and performed correct actions to satisfy the Order relevant to that paragraph.

In Summary, The Appellant argues that the 11 paragraphs present inaccurate information caused by having truthful facts presented before the Court during the civil divorce proceeding , transcribed for evidence of truthful fact but documented and entered by the same Court having errs that effect the decision of appealable issues presented case in point of the five issues presented on appeal by the Appellant that were affirmed correct by another Appeal Court based upon inaccuracies and false facts causing an unjust and no award settlement but presenting valid issues with valid reasons and good grounds for proper adjudication and justice.

CONCLUSION

In conclusion, The Appellant presents the five (5) issues on appeal having Summarized each issue after each section due to the length of the Statement of the Case and Facts relevant being sufficiently detailed to prove that all of the civil Motions and pleadings have been justified by civil procedure and proper for the Adjudication of justice and fair decision.

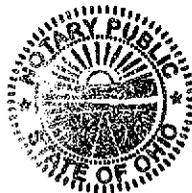
The Appellant requests that THIS COURT accept jurisdiction in this case so that the five disputed issues presented will be reviewed on the merits, proper decision of the issues presented based upon the supplemental evidentiary facts and just award of earned and entitled relief sought.

Respectfully submitted,

Norman H. Lawton
Norman H. Lawton *us Court*
Appellant pro se
P.O. Box 340673
Columbus, Ohio
43234-0673

Sworn and subscribe before me on the 11 day of Aug 2008. Notary.

Susanna Marlowe



SUSANNA MARLOWE
Notary Public, State of Ohio
My Commission Expires 04-04-2011

CERTIFICATE OF SERVICE

I certify that a copy of this Appellant's Merit Brief was sent by certified mail with proof of service to counsel of record for the Appellee, Katherine Ann Howard, and filed with the following :

Clerk
Supreme Court of Ohio
65 S. Front Street, 8th Floor
Columbus, Ohio
43215-3431

On the 11th day of August 2008

Norman H. Lawton
Norman H. Lawton *cc S. Marlowe*
Appellant pro se
P.O. Box 340673
Columbus, Ohio
43234-0673

Sworn and subscribe before me on the 11 day of Aug, 2008. Notary

Susanna Marlowe



SUSANNA MARLOWE
Notary Public, State of Ohio
My Commission Expires 04-04-2011

IN THE SUPREME COURT OF OHIO

Norman H. Lawton

Appellant,

v.

Case No. : 08 -0719

Katherine Ann Howard,

Appellee.

On Appeal from the Tenth Appellate District Court Franklin County, Ohio
Case No. 07 APF 0603

APPENDIX TO APPELLANT'S BRIEF NORMAN H. LAWTON

Norman H. Lawton
Appellant pro se
P.O. Box 340673
Columbus, Ohio
43234-0673

Robert B. Hawley II (S. Ct No.0066366)
Attorney of Record for Appellee
400 South Fifth Street
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43215
(614) 464-1877

Counsel For Appellee, Katherine Ann Howard

*Attached to
Motion for
Reconsideration*

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IN THE SUPREME COURT OF OHIO

Norman H. Lawton

Appellant,

v.

Case Number:

Katherine Ann Howard

08-0719

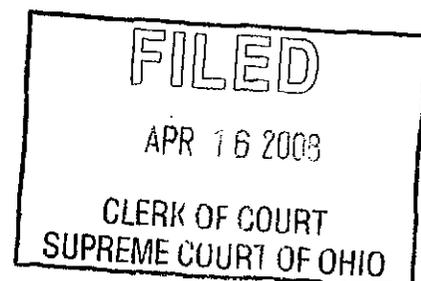
Appellee.

On Appeal from the Tenth Appellate District Court Franklin County Ohio

NOTICE OF APPEAL BY NORMAN H. LAWTON

Norman H. Lawton
Litigant Pro se
Appellant
P.O. Box 340673
Columbus, Ohio
43234-0673

Robert B. Hawley (SCt.no.0066366)
Attorney for Katherine Ann Howard
Appellee
400 South Fifth Street
Columbus, Ohio
43215



Notice of Appeal
Of Norman H. Lawton

1. Appellant Litigant pro se, Norman H. Lawton, hereby gives notice of appeal to the SUPREME COURT of OHIO from an Opinion/Judgment entry of the Court of Appeals Of Ohio Tenth Appellate District Franklin County, Ohio entered in Court of Appeals Case No. 07 AP 0603 on February 26, 2008 and Judgment entry on March 3, 2008.
2. The Appellant pursuant to S. Ct. Prac. R. III, requests this appeal to be discretionary, pursuant to S. Ct. Prac. R. II (A) (3), and invokes the appellant jurisdiction of this COURT as a case of public and great general interest to be accepted for civil adjudication for the purposes of a fair, just and proper decision.
3. The Appellant also files the memorandum in support of jurisdiction, pursuant to S. Ct. PRAC.R III to perfect this discretionary appeal.

Respectfully submitted,

Norman H. Lawton
Norman H. Lawton
Appellant
Litigant Pro se

Sworn and subscribe before me on the 15th day of APRIL 2008.
Notary.

Debra R. Buechner

DEBRA R. BUECHNER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES OCT. 5, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of this notice has been served upon the following parties by US Mail with proof of service;

Clerk
Supreme Court of Ohio
65 South Front Street, 8th floor
Columbus, Ohio
43215-3431

Clerk of Court
Court of Common Pleas
Domestic Relations
373 South High Street
Columbus, Ohio
43215
Attention: Honorable JUDGE Galvin

Clerk of Court
Court of Tenth Appellate District
Franklin County, Ohio
373 South High Street
Columbus, Ohio
43215

Robert B. Hawley II (S. Ct. No. 0066366)
Attorney of Plaintiff/ Appellee
Katherine Ann Howard
400 South Fifth Street
Columbus, Ohio
43215

on the 16th day of APRIL 2008

Norman H. Lawton
Norman H. Lawton
Appellant
Litigant Pro se
P.O. Box 340673
Columbus, Ohio
43234-0673

sworn and subscribe before me on this 15th day of APRIL, 2008
Notary.

2.

Demar Powell

DEBRA R. BUECHNER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES OCT. 5, 2009

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH**

KATHERINE S. HOWARD :
 : **Case No. 06DR-03-1051**
 :
 Plaintiff, :
 :
 :
 vs. : **Judge June Rose Galvin**
 : **Sitting by Special**
 : **Assignment of the Ohio**
 NORMAN H. LAWTON, et al., : **Supreme Court**
 : **Magistrate Bosques-Milliken**
 Defendants :

DECISION AND JUDGMENT ENTRY
DECREE OF DIVORCE

This matter came before the Court on January 11 and 12, 2007, pursuant to Plaintiff's Complaint filed on March 9, 2006, upon the defendant's Answer and Counterclaim filed on March 20, 2006, and his amended answer and counterclaim filed April 4, 2006. The defendant filed approximately thirty-five (35) motions and other requests all of which are scheduled for final adjudication at trial to the extent that any such motion and/or request had not been previously adjudicated.

The defendant was served with summons and a copy of the complaint for divorce, and the plaintiff with a copy of the counter-claim and amended counter-claim. No party objected to service.

The judges of the Common Pleas Court of Franklin County, Ohio, Division of Domestic Relations Division, recused themselves, and the case was assigned to this court on June 23, 2006.

The Clerk of Courts issued notice of trial not less than seven (7) days prior to trial. No party objected to the adequacy of notice of trial.

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
JUL 9 3:56
CLERK OF COURTS

Plaintiff, Katherine S. Howard, was present with counsel, Robert B. Hawley II, and Defendant, Norman H. Lawton, was present without counsel. During the pre-trials, the court notified Mr. Lawton, who is not an attorney, of his right to counsel at his own expense, and the inherent risks of proceeding to trial without counsel. Mr. Lawton informed the court that he intended to represent himself. The Court further informed Mr. Lawton that if he could not afford counsel, there were community legal services that may be available to him, including but not limited to, the local bar associations and law school clinics. Mr. Lawton continued to assert his right to represent himself.

Plaintiff testified on her own behalf. Her other witnesses were Gerritt Van Straten and Al Minor (retirement expert by deposition, Exhibit X). Plaintiff's exhibits A through and including X, and AA and BB, were admitted into evidence. Defendant testified on his own behalf, and called no further witnesses. Defendant's exhibits 1 through 3 were admitted into evidence. The Defendant filed a notebook indicating "Exhibits Y." The contents contain an index to his filings herein, a sequentially numbered listing of the pleadings and/or documents filed (thirty-five in all). Exhibit Z is an index to other pleadings, including but not limited to a "notice of appeal" and "motion for writ of prohibition." A total of thirteen (13) pleadings and/or documents are set forth in Exhibit Z.

The plaintiff on February 12, and defendant on February 27, 2007, filed written closing arguments. Until receipt of the last argument, the court could not issue a decision and judgment entry of divorce.

The Court had the opportunity to weigh the evidence and all reasonable inferences, observe the demeanor of the witnesses, and consider the credibility of

the witnesses and their interest in the outcome of the case. Based upon the testimony and the evidence presented, including the exhibits, the record, and the arguments of counsel, and after careful consideration of the applicable law and relevant statutory factors under R.C. §3105.171 (award of separate and marital property), R.C. 3105.18, (award of spousal support), and R.C. 3105.73 (award of reasonable attorney fees), it is the decision of the Court as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(The court endeavored through the pretrial process to become aware of all disputed issues, encouraged the parties to complete discovery timely, encouraged the parties to stipulate to facts, encouraged the parties to establish a valuation of each and every asset and debt of the marriage, and encouraged the parties to agree on a part or all of the issues they disputed. Prior to issuing the following findings of fact, the court considered all factors required by Ohio's statutes applicable to the facts and the issues raised by the parties. If a party failed to present evidence that Ohio statutes require the court to consider, then this court is not obligated to initiate testimony or admission of other evidence regarding the required statutory factors. To do so may give the other party the appearance of impropriety and/or to believe the judge is advocating for the other party. Further, in issuing its findings of facts, the court considered all the evidence admitted. The court is not required in issuing its findings of fact to state all the evidence. The failure of the court to recite all the evidence in its findings of fact is not an indication that the court failed to consider all of the evidence. The court has further required each party to notify the court in writing of the specific request of the court to enable the court to issue a decision which forever terminates any legal relationship between the parties other than that arising by operation of law.)

1. The plaintiff resided in Franklin County for ninety days, and in the state of Ohio, for at least six (6) months prior to the filing of the Complaint for divorce. The defendant resided in Franklin County for ninety days, and in the state of Ohio for at least six (6) months prior to filing a counterclaim for divorce.
2. The parties were married on September 27, 1997, at Winter Park, Florida.

3. There was no child born to the parties as issue of this marriage. The plaintiff is the biological parent of a minor child from a prior marriage, Jennifer Howard, who resided with her and the defendant during the marriage. No other child was born to the plaintiff after the date of this marriage. The defendant is the father of emancipated children from another relationship.
4. Plaintiff is not pregnant.
5. The parties entered into written stipulations on July 20, 2006. Those stipulations were set forth in plaintiff's Exhibit C, Memorandum of Agreement, and are as follows:
 - a. The value of the marital residence is agreed as \$185,000.00;
 - b. The plaintiff has a separate property interest in the marital residence from contribution of pre-marital funds of \$50,000.00;
 - c. The 1992 Dodge Spirit was a gift specifically to the plaintiff and is therefore plaintiff's separate property and not subject to division in this matter. Plaintiff shall retain said vehicle free of any claim of the defendant; and
 - d. The grounds for divorce shall be incompatibility.
6. The court finds that the stipulations were entered into voluntarily, without the threat of force, coercion, undue pressure or influence, or either party being under the effect of any substance that impairs judgment, without any private out-of-court agreement between the parties, and with the understanding that this was a final agreement to be part of the final judgment of divorce and a not subject for trial at this time or appeal. The

court determined that the parties were competent to enter into the stipulation after considering a review of the record, observing their demeanor during the course of their testimony, and consideration of their knowledge of the facts in this case. The court approved the stipulations and determined that the stipulations shall become the final order of the court.

7. The defendant requested the court issue a temporary order pursuant to Civ. R. 75(N) on May 1, 2006. On May 2, 2006, Magistrate Bosques-Milliken issued an order requiring the plaintiff to maintain all current levels of medical and hospitalization insurance benefit of the parties, passed on the defendant's request for temporary spousal support and attorney fees, ordered the plaintiff to pay and save the defendant harmless on the mortgage, taxes, insurance, utilities on the marital residence, and passed on the defendant's request to pay debts and obligations. The defendant filed a motion for temporary orders on October 25, 2006, and requested spousal support of \$1,570.94 monthly. On November 14, 2006, this court heard the motion "as a request for modification of temporary orders," and denied his request for temporary spousal support. However, it ordered the plaintiff to reimburse the defendant's expenses in repair of an air conditioner in the marital residence. The court found that the defendant billed the plaintiff for his time and labor when he repaired the air conditioner. The court found that he was not entitled to reimbursement for his time and labor to repair marital property as the parties never entered into any contract entitling the defendant to

compensation, and the defendant provided no proof of any legal remedy for compensating one spouse for his services for repair of marital property (exhibit A). The defendant again filed another motion for temporary support on December 4, 2006, requesting the plaintiff pay for the newspaper (exhibit BB) and garbage pick up bill. The court will address this motion at the conclusion hereof.

8. The defendant filed a motion to modify the temporary order on May 18, 2006, a mere two weeks after the Magistrate issued the temporary order, and a motion for relief Temporary Spousal Support on the same date. The Court will also address this motion herein.
9. The term of the marriage is from the date of the marriage, September 27, 1997, through the date of trial on January 11, 2007, a period of nine (9) years and four (4) months. Neither party disputed the term of the marriage. The plaintiff and her daughter moved out of the marital home, and the defendant continued to reside therein through the dates of trial.
10. The plaintiff received \$50,000.00 from the sale of a former residence in Florida and applied that sum as a down payment on the marital residence. Further, the 1992 Dodge is a gift solely to the plaintiff. The court finds that the \$50,000.00 proceeds from the sale of the former residence and the 1992 Dodge are the separate property of the plaintiff pursuant to the parties' pretrial stipulation. The plaintiff accrued retirement benefits from the Ohio Public Employees Retirement System prior to marriage, the value of which is not in evidence. However, all pre-marital contributions to her OPERS are her separate property. She also owned an ING Life Insurance

and Annuity prior to marriage with a balance of \$150,813.62 as of March 31, 2003. However, all accumulations prior to that date were prior to the marriage. Therefore, the plaintiff has separate property valued at \$150,813.62 in an annuity.

11. The plaintiff is aged fifty-three (53) and the defendant is fifty-five (55).
12. The plaintiff's physical, mental and emotional condition is good. The defendant claimed that he is also in good physical, mental, and emotional condition. However, a review of the contents of the motions and other pleadings the defendant filed, his demeanor, and particularly his claim to be an employee of the Central Intelligence Agency without compensation, all caused the court to be concerned about his credibility in these claims. However, the court had sufficient pre-trials and hearings with the defendant to determine that he was competent.
13. The highest level of education earned by the plaintiff is an undergraduate degree; and the defendant completed an undergraduate degree in electrical engineering prior to marriage. During the marriage, the defendant obtained a degree in divinity. However, since 2001, he utilized neither degree and has been voluntarily unemployed and/or underemployed.
14. The plaintiff is employed full time. She is a certified occupational therapist at Ohio State University. The plaintiff's annual earnings from employment currently are \$73,000.00 at trial. Past earnings are as follows : 2000 - (half year) \$23,899.93; 2001 - \$51,790.46; 2002 -

\$57,035.64; 2003 - \$59,186.00; 2004 - \$62,572.50; and 2005 - \$67,405.89 (Exhibit Q).

15. The defendant is employed as an independent contractor working between thirty-two (32) and forty (40) hours per week. He testified that he has income of \$1,500.00 monthly at the time of trial. The defendant's annual earnings from employment currently approximate \$18,000.00. He has no known fringe benefits from that employment. The totality of the evidence shows that the defendant is voluntarily underemployed given his undergraduate college degree, his years of employment and experience working as an engineer, and his post-collegiate degree from a divinity college (he is an ordained minister). Past earnings are as follows: 1997 - \$13,253; 1998 - \$13,909; 1999- \$14,652; 2000 - \$21,004; 2001 \$9,543.00 (exhibit E attached to exhibit Q). Since 2001, the defendant's income as depicted on exhibits I, J, K, and L, proved minimal income. There is no credible evidence indicating the reason for his lack of employment. In 2006, the defendant's bank deposits prove receipts of not less than \$8,592.50 (Exhibit M). Why he is underutilizing his education and no longer employed as an engineer is unknown.

16. The defendant further claimed that he has been an employee of the Central Intelligence Agency for many years. He received no income, retirement and/or other federal benefits ordinarily associated with employment by the federal government. He refused to reveal both his address and the nature of his work for the CIA. His credibility is impacted by his refusal to answer a lawful question.

17. The incomes of the parties as shown in the exhibits prove that the plaintiff was the primary supporter of the household.
18. The standard of living they enjoyed prior to separation was modest.
19. It is not necessary for either spouse asking for spousal support to obtain education, training or job experience to qualify for appropriate employment as the defendant does not intend to obtain additional education, training or job experience as he has two college degrees which he chose not to utilize for employment purposes.
20. As there are no children born of this marriage, it is moot to determine whether it would be inappropriate for either party due to the obligation of being a custodial parent of a minor child of the marriage, to seek employment outside the home.
21. The plaintiff has accrued retirement benefits in the Ohio Public Employees Retirement System (OPERS) (Exhibit Q). as of December 31, 2005, the OPERS "Personal statement of estimated benefits for Katherine S. Howard" states that the pension valuation was \$167,806.91. As of that date, the plaintiff had 24.250 credit years. The expert determined that her monthly benefit would be \$2,448.25 upon retirement, of which \$540.43 was accumulated during the marriage. The report included her service through August 31, 2006. (Exhibit Q, p. 10, L. 3-7). Based on the testimony of her expert on January 4, 2007 (which the defendant failed to attend), the marital portion of this retirement account is valued at **\$73,409.00** (Exhibit Q, p. 8, L 22).
22. The plaintiff has additional retirement from ING Life Insurance and

Annuity Company. As of July March 31, 2003, the account was valued at \$105,813.61 (exhibit T). The marital contributions to this annuity were \$2,000.00 in 2003, \$2,400 in 2004, \$2,400 in 2005, and \$1,400.00 in 2006, a total of \$8,200.00 during the marriage (exhibit R and S).

23. The defendant's retirement benefits are through the Social Security Administration. He was only employed for approximately four years during the marriage. The expert valued his Social Security benefits to the marital portion only, at \$7,409.00 as of 2001 (Exhibit X, p. 9, L 12). His accrued benefits under Social Security amount monthly to \$1,214.70 upon retirement (Exhibit B attached to Exhibit Q), or \$80.33 accrued during the marriage upon retirement. At age sixty-two (62), his income from Social Security would be \$870.00 monthly; at age sixty-six (66), his benefits would be \$1,154.00 monthly; and at age seventy (70), he would be entitled to \$1,524.00 monthly (exhibit AA).
24. The pension evaluator is an expert witness in pension evaluation (Exhibit A attached to Exhibit Q).
25. The assets and liabilities of the parties are as follows: the portion of the residence determined to be marital is \$26,245.46 (Appraised value is \$185,000.00, less \$50,000 separate property belonging to the plaintiff, less a mortgage balance of \$108,754.54 - Exhibit P); the marital portion of plaintiff's OPERS account is valued at \$73,409.00; the defendant having accumulated Social Security Benefits with a current present value of \$7,409.00; a marital portion of a ING Life Insurance and Annuity Account of \$8,200.00; and personal property, furniture, furnishings and

appliances set forth by list but with no valuation determined. The court cannot determine any value without evidence.

26. There are no joint debts.
27. The plaintiff has a National City Bank Credit Card solely in her name.
28. The defendant had credit card balances that predate the marriage that remain unpaid. The defendant's driver's license was suspended for non-payment of child support. The amount of his arrears is \$57,743.26 (exhibit 2, p. 12) and he is obligated to make monthly payments on said arrears of \$433.33. Despite being in arrears on his child support obligation, the defendant claimed his children by another marriage, Jeffrey and Jennifer Lawton, as dependency exemptions on federal tax returns.
29. There is no evidence of tax consequences of any award of spousal support.
30. Neither party lost income production that resulted from that party's marital responsibilities. The defendant claimed he ceased his employment to care for the plaintiff's minor daughter after school on weekdays and to be a full time househusband. The evidence does not support his claim. Prior to his cessation of employment, the maternal grandmother provided day care and transportation for the plaintiff's minor daughter without cost to the plaintiff and would have continued to do so. It was the defendant's voluntarily choice to cease employment and to assume the after school care of his stepdaughter.
31. Both parties testified in this matter.
32. The parties separated after the police were called to the home, with the

plaintiff and her minor daughter voluntarily leaving. Some division of household goods, furniture and furnishings occurred at separation, but the parties accumulated numerous items of personal property, furniture, furnishings and appliances that they have not yet divided.

33. The parties agreed and stipulated that the plaintiff applied \$50,000.00 at time of their purchase of the marital residence located at 2750 McVey Boulevard W., Columbus, Ohio. There is a balance due on said mortgage of \$108,754.54. There are no known other liens or mortgages on this property at time of trial. Therefore, the marital equity in the home is determined by subtracting from the stipulated value of \$185,000.00 the stipulated separate property interest to the plaintiff of \$50,000.00 (balance of \$135,000.00), and the first mortgage balance of \$108,754.54 leaving marital equity of \$26, 245.46.
34. Plaintiff wishes to remain in the marital home primarily for the benefit of her child. She is employed earning sufficient funds to pay the existing mortgage balance. She has a separate interest in said residence. The defendant owes significant child support which arrearages may be reduced to judgment and potentially placed as a lien upon said residence. He has failed and/or refused to become consistently employed throughout the latter half of the marriage. He does not have sufficient income to pay the mortgage. He has no minor child in need of a residence. Plaintiff has explored and inquired into refinancing the loans on the home so as to remove Defendant's name from the note and mortgage.
35. Plaintiff incurred attorney fees for the prosecution of her complaint for

divorce in the amount of \$11,500.00 as of January 11, 2007, including deposing Albert Minor, preparation for, but not attendance at trial. His hourly rate of \$200.00 is reasonable given his years of experience. Trial time of approximately eight (8) hours increases his fees by \$1,600.00, for a total fee of \$13,100.00 (exhibit W). These fees and costs were stipulated to be reasonable and necessary. A careful review of these fees indicate that the defendant's incessant filing of approximately thirty-five (35) motions were the direct cause of the plaintiff's accruing extraordinary attorney fees for a case lacking either factual or legal complication. Some motions were filed needlessly (motion to terminate dower, motion to show cause). Some appear to be frivolous in nature (repeated motions for temporary support). The defendant filed an action in the United States District Court against Katherine Ann Howard (exhibit N), which action was dismissed (exhibit O). Further, the defendant filed "Reply Memorandum of Defendant" on December 11, 2006, wherein he makes a number of additional claims, including, but not limited to, \$25,000.00 of a stipulation of \$50,000.00 separate property awarded to the plaintiff, spousal support of \$1,570.94 monthly, caretaker responsibilities of \$102,528, spousal support until either dies; bills and other debts, wants a distributive award, an award of the plaintiff's ING account, plaintiff to pay all debts, and a proposed division of household goods, furniture, furnishings and appliances (Exhibit V). It is equitable to award plaintiff costs of litigation.

36. The defendant is requesting spousal support from the plaintiff. He resided in the marital real estate since the parties separated through trial with all his housing expenses paid by the plaintiff. During this time period, he's made no serious effort to become self supporting. He has no illnesses, injuries, or disabilities that he made the court aware of that would be a consideration in determining the reasonableness of his request for spousal support for a lengthy period. This is not a long-term marriage. The defendant has not been limited by marital duties in any effort to become self-supporting. He is fully educated and was self-supporting. However, based on the length of the marriage, the consistent voluntary current minimal earning capacity of the defendant, and his need to find independent housing in a short time, the court finds that the defendant is entitled to spousal support. However, as the defendant has two college degrees and chooses not to utilize either degree to support himself or to find independent housing, the amount of and duration of spousal support shall be limited to \$500.00 per month for two years, and paid in a lump sum. Ordinarily the court would award spousal support to be paid periodically, but is making an exception in this case as there are no children born of this marriage to link the parties post divorce, and the parties clearly need to be divested one from the other to stop the needless litigation, the expenses of litigation, for the defendant to have funds to find independent housing, and to allow each of them to move on with their individual lives. Therefore, the plaintiff shall pay a lump sum to the

defendant of \$12,000.00 which sum is a reasonable and necessary award of spousal support. Said sum shall be paid as hereafter set forth.

37. The plaintiff is entitled to a divorce from the defendant. The defendant is entitled to a divorce from the plaintiff.
38. The court has jurisdiction over the plaintiff and over the defendant, and the subject matter of this action.
39. The defendant's motion/request for the plaintiff to pay for a newspaper and garbage removal is found not well-taken and is denied.
40. The Court finds that the defendant's motion/request to modify the temporary order is not well-taken, and is denied.
41. The Court finds that the defendant's motion for relief of the award of Temporary Spousal Support is not well-taken, and is denied.
42. The court further finds that the remainder of the defendant's motions filed prior to the dates of trial are not well-taken as being without legal and/or factual support, and each is hereby denied. The defendant was unable to find any law or prove facts in support of his requests.
43. The Court finds that the parties shall equally divide their marital assets, which is also equitable. The defendant's requests for an award of all or the majority of the marital and/or separate property is not merited in law of equity. Marriage is not defined by the Ohio Revised Code or companion case law as a business and/or contractual relationship whereby one spouse is entitled to compensation for services performed (whether or not requested) as if the spouse was an employee of the marriage.

44. The plaintiff's marital portion of her OPERS pension shall be awarded to her and the defendant's Social Security shall be offset, the court having considered the effect of the receipt of Social Security for the defendant.
45. The court further finds that the plaintiff incurred attorney fees and court costs which were unnecessary due the defendant's determination to represent himself, his filing of unnecessary motions, and motions lacking basis in law or fact. Therefore, the court finds it is equitable to award reasonable attorney fees to the plaintiff after consideration of his conduct, the parties' marital assets and income, and consideration of the temporary order of this court (R.C. 3105.73), and other statutory factors, the sum of \$6,500.00 or one-half of his total fee. The award is payable in gross and not installments, and shall be considered herein below as to the manner of payment.
46. The court further finds that the defendant is entitled to an award of lump sum spousal support of \$12,000.00.
47. Each party is awarded their clothing and jewelry.
48. It is **THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:
49. The marriage heretofore existing between the parties is hereby terminated and each party is granted a divorce from the other and each party is relieved of all obligations of their marriage except as otherwise indicated herein.
50. The parties' stipulations shall constitute the final order of the court (Exhibit C).

51. The residence at 2750 McVey Boulevard, Columbus, Ohio, is awarded to the plaintiff free and clear of any claim by Defendant. Defendant shall execute a Quit Claim Deed to transfer his interest in the real estate to Plaintiff on or before her refinancing of the residence but no later than thirty (30) days of date of this judgment. The defendant's failure to strictly comply with this provision shall be subject to the continuing jurisdiction of the court to issue a *nunc pro tunc* judgment entry of divorce containing the legal description of said real property so as to effectuate a termination of the defendant's right, title and interest to the plaintiff by filing a certified copy of the journal entry with the County Auditor and Recorder of Deeds, or any other remedy provided by law or equity. It is expressly understood that the only lien on said residence is the first mortgage. Should the plaintiff determine that any other liens have been placed upon the real estate as the result of the defendant's actions or omissions, then the defendant shall hold the plaintiff harmless from said liens, pay any and all attorney or other expenses of litigation incurred by the plaintiff in the release and/or payment in full of said lien.

52. **The defendant shall vacate the marital residence no later than September 22, 2007.** He shall maintain the property and utilities until vacating the property. He shall commit not waste, and shall leave the property in a clean condition, reasonable wear and tear being the only exception. He shall personally surrender to plaintiff's legal counsel at his office all keys, code numbers, and garage door openers during normal business days and hours (Monday-Friday, 9 a.m. to 5 p.m). Should the

defendant fail, refuse and/or neglect to comply with this order to vacate voluntarily under the conditions outlined hereinabove, in addition to any other available legal remedy, the court shall order him to pay reasonable rent for each month that he fails to vacate, viz, the mortgage payment, the taxes and insurance, totaling \$17,216.50 annually, at the rate of \$1,434.71 for each month or part thereof, that he fails to vacate and/or deliver the keys, codes and/or garage door openers to plaintiff's counsel, in addition to any other legal and/or equitable remedy. In addition, at the time he vacates the residence, the defendant shall leave in the marital residence in their normal position all furniture, furnishings, and appliances and household goods awarded to the plaintiff for herself and her daughter awarded herein below, and shall vacate and simultaneously remove from the residence all furniture, furnishings, appliances, household goods, clothing awarded to him herein below.

53. Plaintiff shall pay and hold Defendant harmless with respect to the first mortgage to Republic Bank with a principal balance of \$108,754.54 as of December 31, 2006. Plaintiff shall cause Defendant's name to be removed from the mortgage within forty-five (45) days of this judgment entry of divorce. Plaintiff shall forthwith take any and all action necessary to remove Defendant's name from any and all liability on the home, including, but not limited to, payment of the mortgage. Each party is entitled to one-half of the marital equity in said home, specifically **\$13,122.73.**

54. Plaintiff is awarded any and all interest she may have in her retirement accounts free and clear of any claim by Defendant, with defendant being entitled to one-half its value as more specifically set forth herein below. However, the defendant is entitled to a lump sum payment for one-half the marital portion.
55. Defendant is awarded his Social Security retirement accumulated during the marriage free and clear of any claim by Plaintiff, with plaintiff being entitled to one-half its value as more specifically set forth herein below.
56. Each party is awarded the vehicle each is currently driving, subject to paying the balance due and owing thereon and holding the other harmless. Each party shall deliver to the other a fully and accurately executed (Memorandum) certificate of title within thirty (30) days of day of this judgment. The plaintiff is awarded her 1992 Dodge Spirit as separate property, and not subject to division by this court.
57. Each party is awarded all right to any bank checking account(s) titled solely in her and/or his name free of any claim of the other.
58. The plaintiff is awarded possession of all household goods, furniture, and furnishings that was utilized exclusively by her daughter.
59. The plaintiff is awarded, free and clear of any claim of the defendant, the household goods, furniture, furnishings, and appliances set forth in Schedule A attached hereto and incorporated by reference herein. Said property shall remain in the marital home upon the defendant vacating the home, and shall not be removed by the defendant.

60. The defendant is awarded, free and clear of any claim of the plaintiff, the household goods, furniture, furnishings, and appliances contained in Schedule B attached hereto and incorporated by reference herein. The defendant shall remove all said property in Schedule B simultaneously with his vacating the marital home. Should he fail to remove said property awarded to him in Schedule B, the plaintiff is free to dispose of said property as she deems appropriate, and the defendant's failure, refusal and/or neglect to remove the property in Schedule B shall be deemed an abandonment of said property, and he shall lose all right to possession of and/or compensation for said property in Schedule B.
61. Plaintiff shall pay and hold Defendant harmless with respect to any and all liabilities in her sole name.
62. Defendant shall pay and hold Plaintiff harmless with respect to any and all liabilities in his sole name.
63. Defendant shall pay Plaintiff the sum of \$6,500.00 for attorney fees incurred in defending numerous frivolous motions as and for spousal support. This obligation shall be non-dischargeable in bankruptcy to the extent permitted by 11 U.S.C. §523(a)(15) or other bankruptcy laws. The payment shall be made as follows: it being unlikely that the defendant would pay said sum voluntarily, the amount of \$6,500.00 shall be deducted from an award of division of property due the defendant hereinabove.
64. The following is the order of final distribution providing for an equal division of assets which is also equitable (In order to terminate all legal

relationships between these parties with a minimal transfer of property, the court offsets the awards of each as more specifically set forth above, finding that there is no evidence supporting a distributive award to the defendant).

To Plaintiff

To Defendant

One-half equity in home	\$13,122.73	One-half equity in home	\$13,122.73
OPERS	73,409.00	Social Security	7,409.00
		(Defendant entitled to \$33,000.00)	
ING	8,200.00	(defendant entitled to \$4,100.00)	

Defendant is entitled to an equal division of marital assets in the amount of **\$50,222.73**. Defendant is also entitled to **\$12,000.00** lump sum spousal support (**\$62,222.73**). Plaintiff is entitled to an award of attorney fees of **\$6,500.00**. Therefore, the plaintiff owes the defendant after an award of spousal support and deduction for her fees the sum of **\$55,722.73**. **The plaintiff shall pay the defendant \$15,000.00 of this award no later than August 24, 2007.** The plaintiff shall pay the defendant the balance of said award in the amount of **\$40,722.73** within ten (10) days of his permanently vacating the residence. However, if the defendant fails, refuses or neglects to vacate the residence as ordered hereinabove, the plaintiff shall deduct from this award of property the monthly rental as determined hereinabove until he voluntarily or involuntarily permanently vacates said residence. Payment from plaintiff to defendant of the balance due as determined herein shall be made by certified check, mailed to the defendant at the address he provides to

plaintiff, by certified mail, return receipt requested, or by personal delivery through the plaintiff's attorney office, with receipt signed by the defendant, whichever the defendant notifies the plaintiff in writing is his choice within ten (10) days of this judgment. If he fails to notify her, then payment shall be deposited in certified U.S. mail, return receipt requested.

65. All temporary orders issued are terminated.
66. All temporary restraining orders are terminated.
67. Each party is permanently enjoined from harassing the other or any member of their family, and each shall remain more than one thousand feet from the residence, and/or employment of the other and any member of their family, with the exception being this injunction shall not apply to court hearings and to the division of furniture, furnishings, appliances, clothing and jewelry as is set forth in Exhibits A and B, which are incorporated by reference herein.
68. The parties shall equally divide the court costs associated with this action.

IT IS SO ORDERED.

THIS IS A FINAL ORDER.



JUDGE

July 18, 2007

Pursuant to Civil Rule 58(B), you are here by instructed to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal in the manner prescribed by the attached instructions for service.

22

THE STATE OF OHIO Franklin County, ss	} I, JOHN O'GRADY, CLERK OF THE COURT OF COMMON PLEAS DOMESTIC RELATIONS
WITHIN AND FOR SAID COUNTY, HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL	
NO. ON FILE IN MY OFFICE. WITNESS MY HAND AND SEAL OF SAID COUNTY THIS 20 DAY OF July, A.D. 2007	
JOHN O'GRADY, Clerk	
BY	DEPUTY

25

Attachment: Schedule A
Schedule B

EXHIBIT A

This exhibit is attached to and incorporated by reference in the final judgment of divorce.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Katherine S. Howard, be, and she hereby is awarded, free of any interest of the defendant, Norman H. Lawton, her personal property, furniture, furnishings, and appliances hereinafter set forth as follows as her separate property and as her equitable division of marital property:

1. Her wearing apparel including, but not limited to, her jewelry;
2. Thelma Penrod photo;
3. Ruth Mead heirloom items (set forth in Exhibit 2: a grandfather clock; bed frame, mattress, a box spring, Queen Anne style chair, a foot stool; three layer table, end tables; two living room floor lamps; a straight-backed chair, television, home maintenance box, kitchen items, dinnerware, equipment; curio cabinet including items therein).
4. Piano;
5. Furniture in the master bedroom including the mattress and box springs;
6. Living room furniture - couch, love seat, mirror, floor lamp and rocking chair;
7. Dell Computer and Epson C40 printer, cables, hookups, wires, personal and blank PC disks;
8. DVD's, CD's, and VHS tapes
9. Trampoline;
10. Hoses, bird bath, desk baskets, copper oil, bamboo oil lamps;
11. Garden tools - shovel, flower cutters, scissors;
12. Outdoor Christmas lights and star;
13. Two full spectrum lamps (floor and table);
14. Christmas village churches and one out of four figurines and one out of four sceneries;
15. Birds, cats, and items related to housing, feeding, grooming, etc.
16. Flower Scissors and Pruning Shears;
17. Bird baths, deck flower baskets, copper deck torches;
18. Silver picture frame and cross wall plaque;
19. Jennifer's and David's belongings, including the olive wood bell;
20. Any and all appliances in the kitchen and laundry areas; and
21. All pre-marital property.

EXHIBIT B

This exhibit is attached to and incorporated by reference in the final judgment of divorce.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Norman H. Lawton, be, and he hereby is awarded, free of any interest of the plaintiff, Katherine S. Howard, his personal property, furniture, furnishings, and appliances hereinafter set forth as follows as his separate property and as his equitable division of marital property:

1. The bedroom furniture in the third bedroom, brown/blue comforter, and full sized sheets sets (2) and full sized flannel sheets sets;
2. Green bath towel sets "new" and Yellow bath towel sets "new";
3. Family room furniture - suede couch, love seat, chair ottoman, and floor lamp;
4. Coffee maker and toaster oven;
5. Outdoor Christmas lights and storage bins;
6. Globe tricolor lighted ornament;
7. Christmas village buildings excluding churches, three out of four, including figurines, scenery (Mr. Lawton and Ms. Howard shall divide by lot, with Mr. Lawton to have the first choice, Ms. Howard the second, and continuing in this fashion until Ms. Howard has obtained by lot one out of four items. The remaining items shall be the property of Mr. Lawton);
8. Inlaid Wooden Sailboat Picture;
9. German 12,000 piece puzzle;
10. African teak storage lamp;
11. Cantilever wooden clock;
12. Crystal salad bowl, covered pie plate, two sets of "island" stemware;
13. Aunt Thelma's television, oven mitts, pizza cutter, knife block with knives, one-half of plastic food storage containers, one-half kitchen towels and cloths, personal PC disks, one leaf rake and one snow shovel;
14. Maul, axe, electric lawn edger, tree pruning tool with extension handle, and sledge hammer;
15. Circular saw, leather tool belt, level, black tool box, framing hammer, volt meter, float, paint tray and roller, combination screwdriver, boxes of roofing nails, metal square/angle;
16. Family outdoor games excluding trampoline;
17. All aquariums, pumps and related equipment;
18. Round boat raft and oars;
19. Epson 6800 printer, cables, VHS player;
20. Olive wood cross and olive wood praying hands;
21. Silverware with unique knives;
22. All the fish, and rabbits, cages and supplies for same; and
23. His wearing apparel, including but not limited to, his jewelry.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Norman H. Lawton, shall continue to care for, feed and water all pets currently

living in the residence, including but not limited to, the fish, birds, and cats at all times until he vacates the property provided that he gives notice of his the time and date that he is no longer caring, feeding, and watering said animals. If any of the animals are in need of medical attention, he shall immediately notify the plaintiff by telephone, and cooperate with her in the removal of the animal(s) for attention by a veterinarian.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if any property remains to be divided which is not included in the judgment entry, including Exhibits A and Exhibit B, the court finds that the defendant waived an equal division of said property and waived any interest in an award of said property pursuant to his request set forth in his closing argument filed February 27, 2007, for specific property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff shall provide a written receipt for the items removed and/or maintained in the marital residence to the defendant at the time of the exchange of said property but said exchange shall take place in the presence of a peace officer. That exchange shall take place the earlier of the date that the defendant vacates the residence or **September 22, 2007, at 2 p.m. at the marital residence.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant shall provide a written receipt for the items he retained at the time of the exchange but said exchange shall take place in the presence of a peace officer. That exchange shall take place the earlier of the date that the defendant vacates the residence or **September 22, 2007, at 2 p.m. at the marital residence.**

While this method of division of personal property, furniture, furnishings and appliances may not be equal as either party put no current values in evidence, it is equitable.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the court shall retain jurisdiction over the division of property set forth hereinabove.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that neither party shall abandon, dispose of, damage, destroy, hide, give, sell, assign nor lend to another, any property set forth hereinabove except as specifically set forth in this judgment entry including Exhibit A and Exhibit B.

Prepared by the Court

Copies to:

Robert Hawley (0066366)
Attorney for Plaintiff
400 South Fourth Street, Ste. 101
Columbus, Ohio 43215

Norman Lawton, Defendant Pro Se
P.O. Box 340673
Columbus, Ohio 43234

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Katherine S. Howard, :
Plaintiff-Appellee, :
v. : No. 07AP-603
(C.P.C. No. 06DR03-1051)
Norman H. Lawton, : (REGULAR CALENDAR)
Defendant-Appellant. :

O P I N I O N

Rendered on February 26, 2008

*Sowald Sowald & Clouse, and Robert B. Hawley, II, for
appellee.*

Norman H. Lawton, pro se.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations.

FILED
COURT OF APPEALS,
FRANKLIN CO., OHIO
2008 FEB 26 PM 3:37
CLERK OF COURTS

KLATT, J.

{¶1} Defendant-appellant, Norman H. Lawton, appeals from a judgment and decree of divorce entered by the Franklin County Court of Common Pleas, Division of Domestic Relations. For the following reasons, we affirm.

{¶2} On March 6, 2006, plaintiff-appellee, Katherine S. Howard, filed a complaint for divorce from Lawton. At the time Howard filed the complaint, she, Lawton, and Howard's daughter lived together in the marital residence. However, in early April 2006, Howard and her daughter moved out after Lawton behaved in a threatening manner.

{¶3} Lawton answered Howard's complaint, filed an affidavit of indigency, and moved for temporary spousal support. On May 2, 2006, the magistrate ordered Howard to maintain medical insurance for Lawton and to pay the mortgage, taxes, insurance, and utilities for the marital residence.

{¶4} Lawton again moved for temporary spousal support on October 25, 2006. Lawton claimed that Howard owed him \$102,528 for caring for Howard's daughter, \$50 for repair of a broken light fixture, \$1,160.41 for repair of the air conditioning unit, and \$9.61 for gasoline used to power the lawn mower. After a hearing, the trial court ordered only that Howard reimburse Lawton for the expenses related to the repair of the air conditioner.

{¶5} On December 4, 2006, Lawton moved for temporary spousal support for a third time. In this motion, Lawton claimed that Howard owed him for trash collection and newspaper delivery.

{¶6} The trial court conducted a trial on January 11 and 12, 2007, during which Lawton and Howard testified. On July 13, 2007, the trial court issued a judgment and decree of divorce, as well as a decision supporting the judgment. In relevant part, the trial court granted Lawton spousal support in the amount of \$500 per month for two years, payable in a lump sum of \$12,000. Further, the trial court awarded the marital residence to Howard. The trial court ordered Lawton to vacate the marital residence by September 22, 2007 and to maintain the residence and utilities until vacating the residence. Finally, the trial court denied Lawton's request that Howard pay for trash collection and newspaper delivery.

{¶7} Lawton now appeals and assigns the following errors:

[1.] THE TRIAL COURT FAILED TO AWARD THE DEFENDANT APPELLANT ANY SPOUSAL SUPPORT MONEY BASED UPON THE "A THRU N" OR 14 FACTORS USED IN DETERMINING A FAIR AMOUNT OF AS DEFINED [sic] SPOUSAL SUPPORT TO BE AWARDED DURING THE ADJUDICATION OF THIS CIVIL PROCEEDING.

[2.] THE TRIAL COURT FAILED TO AWARD THE DEFENDANT APPELLANT ANY ALIMONY RELIEF DEMANDED BY THE DEFENDANT APPELLANT TO COMPENSATE FOR THE GROSS NEGLIGENCE OF DUTIES OF THE WIFE/SPOUSE BASED UPON THE SAME FACTORS FOR SPOUSAL SUPPORT EMPHASIZING THE PHYSICAL CONFRONTATIONS, ORAL ABUSE, STRESS INDUCED GRIEF AND THE DEFENDANT APPELLANT'S CLOSING ARGUMENTS SPECIFIC 26 ALLEGATIONS AS GROUNDS FOR ALIMONY SUBSTANTIATING AND SATISFYING THE "ONLY" CONDITION PLACED UPON THE UPON THE [sic] OHIO LAW CAUSED BY THE PLAINTIFF APPELLEE WIFE DURING THE MATURE MARRIAGE AND NEVER COMPENSATED WITH MONEY.

[3.] THE TRIAL COURT FAILED TO AWARD THE DEFENDANT APPELLANT THE STIPULATED MONEY FOR MAINTAINENCE OF THE SHARED RESIDENCE DOCUMENTED WITH RECEIPTS, TECHNICAL ESTIMATES FOR COMPLETED REPAIR, REPLACEMENT PARTS AND NEW ITEMS SINCE THE FILING OF THE CLOSING ARGUMENTS IN FEBUARY 2007 NOTING THE SEVEN MONTHS LAPSE IN TIME INCLUDING GASOLINE FOR LAWN MOWING, TORSION SPRINGS BROKEN ON THE GARAGE DOOR, GARAGE DOOR OPENER DRIVE GEAR KIT, AND DRIVEWAY SEALER FOR ANNUAL APPLICATION.

[4.] THE TRIAL COURT FAILED TO AWARD THE DEFENDANT APPELLANT MONEY FOR PRIOR MUTUALLY AGREED UPON CARE TAKING RESPONSIBILITIES FOR THE MINOR CHILD OF THE CUSTODIAL PARENT BY PRIOR MARRIAGE WHO WAS THE FAMILY SUPPORTING PARENT.

[5.] THE FINDINGS OF FACT AND CONCLUSION OF LAW PERTINENT TO CASE TRIAL TRANSCRIPTS OF TRIAL PROCEEDINGS AND RECORD INCLUDING DOCUMENTED CLOSING ARGUMENTS ARE NOT

CONSISTENT WITH FACTS AS DOCUMENTED IN THE
TRIAL JUDGE DECISION JUDGMENT ENTRY DECREE OF
DIVORCE.

{¶8} By his first assignment of error, Lawton argues that the trial court erred in denying him spousal support. Apparently, Lawton also intends this first assignment of error to incorporate a challenge to the trial court's supposed denial of temporary spousal support. We find both arguments unavailing because they attack nonexistent rulings. In the final judgment of divorce, the trial court *granted* Lawton spousal support in the amount of \$12,000. Moreover, the trial court *granted* Lawton temporary spousal support when it ordered Howard to pay for Lawton's medical insurance, the mortgage, taxes, insurance, and utilities for the marital residence, and the air conditioner repairs. To the extent that the trial court did not award Lawton every dollar he sought in temporary spousal support, we conclude that the trial court acted well within its discretion. *Dunham v. Dunham*, 171 Ohio App.3d 147, 2007-Ohio-1167, at ¶75 ("Appellate review of an award of spousal support is whether the trial court abused its discretion."). Accordingly, we overrule Lawton's first assignment of error.

{¶9} By his second assignment of error, Lawton again argues that the trial court erred in denying him spousal support. Lawton contends that he is entitled to spousal support to compensate him for Howard's gross negligence in the performance of her wifely duties. Because the trial court granted Lawton spousal support, he has no basis for complaint. Additionally, "[a]ny gross neglect of duty" is a ground upon which a trial court may grant a divorce, not a factor that the trial court must consider when awarding spousal support. Compare R.C. 3105.01(F) with 3105.18(C)(1). Accordingly, we overrule Lawton's second assignment of error.

{¶10} By his third assignment of error, Lawton argues that the trial court erred in denying him reimbursement for certain household maintenance expenses that he incurred after the closing arguments. Lawton, however, never requested that the trial court order Howard to pay for repairs and maintenance performed after February 27, 2007—the date Lawton submitted his written closing argument. The trial court, therefore, never made a ruling regarding those expenses. Without a ruling denying Lawton reimbursement for the disputed repairs and maintenance, he has no basis on which to assert error. Accordingly, we overrule Lawton's third assignment of error.

{¶11} By his fourth assignment of error, Lawton argues that the trial court erred in denying him compensation for taking care of Howard's daughter in the years before Howard filed for divorce. Contrary to Lawton's argument, nothing in R.C. 3105.18 entitles him to recover wages for childcare he rendered during the marriage. Accordingly, we overrule Lawton's fourth assignment of error.

{¶12} By his fifth assignment of error, Lawton argues that the trial court erred in finding that he is an ordained minister and that he has two college degrees. Lawton's testimony establishes that he has one degree (in engineering), not two. Although Lawton attended South Florida Seminary for Theological Studies for two years, he did not receive a degree in divinity and he is not an ordained minister. Consequently, we conclude that the trial court erred in its recitation of Lawton's educational history and employment credentials. However, we find that this error is harmless.

{¶13} According to Civ.R. 61 and R.C. 2309.59, courts ignore error that does not affect the substantial rights of the parties. *Motorists Mut. Ins. v. Hall*, Franklin App. No. 04AP-1256, 2005-Ohio-3811, at ¶18. An error does not affect the substantial rights of the

parties if avoidance of the error would not have changed the outcome of the proceedings. *Brothers v. Morrone-O'Keefe Dev. Co.*, Franklin App. No. 05AP-161, 2006-Ohio-1160, at ¶26.

{¶14} In the case at bar, the trial court set the amount of spousal support at only \$12,000 because Lawton "has two college degrees and chooses not to utilize either degree to support himself or to find independent housing." (Judgment, at 14.) In essence, the trial court limited the amount of spousal support because it found that Lawton has the education necessary to support himself, but he voluntarily chooses not to utilize that education. Whether Lawton received a divinity degree or ordination is irrelevant to the trial court's reasoning. Regardless of Lawton's lack of a religious degree and qualifications, he has an engineering degree that he is underutilizing. Therefore, the trial court had a sufficient factual basis on which to limit the amount of Lawton's spousal support to \$12,000. As avoidance of the error would not have changed the outcome of the judgment, we find that the error is harmless. Accordingly, we overrule Lawton's fifth assignment of error.

{¶15} For the foregoing reasons, we overrule all of Lawton's assignments of error and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

BRYANT and BROWN, JJ., concur.

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

58041117

KATHERINE HOWARD
PLAINTIFF
S.S. NO. _____
DATE OF BIRTH _____

CASE 06DR 3 1051

VS

JUDGE PREISSE

NORMAN LAWTON
DEFENDANT
S.S. NO. _____
DATE OF BIRTH _____

MAGISTRATE BOSQUES MILLIKEN

MAGISTRATE'S ORDER

Upon the request of the (Plaintiff/Defendant) for temporary orders pursuant to Civil Rule 75 (N) by motion or in the complaint, answer or counterclaim and proper service by:

Certified Mail 3-14 Or on Δ Personal Publication On opposing counsel Answer & etc Other

Upon consideration of the affidavits of the parties, the magistrate enters the following ORDERS:

1. ~~Plaintiff/Defendant is designated the temporary residential parent and legal custodian of the~~ minor child(ren) of the parties. N/A

2. ~~Plaintiff/Defendant is granted parenting time as follows:~~ N/A

Pursuant to the Local/Long Distance Model Parenting Time Schedule as adopted by Local Rule 27, which is incorporated herein by reference.

~~Other:~~

CLERK OF COURTS
2006 MAR -2 PM 2:04
MAGISTRATE'S ORDER

ON COMPUTER 13

3. ~~Plaintiff/Defendant shall attend the parenting seminar within~~ days. N/A

4. ~~Plaintiff/Defendant shall pay temporary child support of \$~~ per month, plus 2% processing charge, for the support of the ~~child(ren) of the parties.~~ N/A

5. Plaintiff/Defendant shall maintain all current levels of medical and hospitalization insurance for the benefit of the child(ren) and the Plaintiff/Defendant.

6. ~~Plaintiff and Defendant shall pay any extraordinary uncovered medical, dental and other health care expenses of the child(ren) as follows:~~

CASE NAME: LAWTON

CASE NO: 06DR-3-1051

06DR-3-1051

- 7. Plaintiff/Defendant shall pay temporary spousal support of \$ PASS per month. The obligation to pay temporary spousal support shall terminate upon the death of either the Plaintiff or the Defendant.
- 8. Plaintiff/Defendant shall pay \$ PASS for attorney fees and expenses of this action. Payment shall be made within days.
- 9. The debts and other obligations of the parties shall be paid as follows:

a.) Plaintiff shall pay and save Defendant harmless on the following debts and obligations:
Mortgage, taxes, insurance, utilities on marital residence

b.) Defendant shall pay and save Plaintiff harmless on the following debts and obligations:
PASS

DEPARTMENT OF
 2006 MAY -2 PM 2:04
 COURT CLERK

10. Additional temporary orders are entered as follows:

(This section is crossed out with a diagonal line)

11. Check applicable provision.

- All payments of temporary child support and spousal support pursuant to this order shall include 2% processing charge and shall be made to Ohio Child Support Payment Central, P.O. Box 182372, Columbus, Ohio 43218-2373.
- Temporary spousal support shall be paid directly to the recipient spouse and shall be made by check, money order, or in another form that establishes a clear record of payment.

500-1119

CASE NAME LAWTON

CASE NO. 06DR-3-1051

* EACH PARTY TO THIS SUPPORT ORDER MUST NOTIFY THE CHILD SUPPORT ENFORCEMENT AGENCY IN WRITING OF HIS OR HER CURRENT MAILING ADDRESS, CURRENT RESIDENCE ADDRESS, CURRENT RESIDENCE TELEPHONE NUMBER, CURRENT DRIVER'S LICENSE NUMBER, AND OF ANY CHANGES IN THAT INFORMATION. EACH PARTY MUST NOTIFY THE AGENCY OF ALL CHANGES UNTIL FURTHER NOTICE FROM THE COURT OR AGENCY, WHICHEVER ISSUED THE SUPPORT ORDER. IF YOU ARE THE OBLIGOR UNDER A CHILD SUPPORT ORDER AND YOU FAIL TO MAKE THE REQUIRED NOTIFICATIONS, YOU MAY BE FINED UP TO \$50 FOR A FIRST OFFENSE, \$100 FOR A SECOND OFFENSE, AND \$500 FOR EACH SUBSEQUENT OFFENSE. IF YOU ARE AN OBLIGOR OR OBLIGEE UNDER ANY SUPPORT ORDER ISSUED BY A COURT AND YOU WILL FULLY FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY BE FOUND IN CONTEMPT OF COURT AND BE SUBJECT TO FINES UP TO \$1000 AND IMPRISONMENT FOR NOT MORE THAN 90 DAYS.

IF YOU ARE AN OBLIGOR AND YOU FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY NOT RECEIVE NOTICE OF THE FOLLOWING ENFORCEMENT ACTIONS AGAINST YOU: IMPOSITION OF LIENS AGAINST YOUR PROPERTY; LOSS OF YOUR PROFESSIONAL OR OCCUPATIONAL LICENSE, DRIVER'S LICENSE, OR RECREATIONAL LICENSE; WITHHOLDING FROM YOUR INCOME; ACCESS RESTRICTION AND DEDUCTION FROM YOUR ACCOUNTS IN FINANCIAL INSTITUTIONS; AND ANY OTHER ACTION PERMITTED BY LAW TO OBTAIN MONEY FROM YOU TO SATISFY YOUR SUPPORT OBLIGATION.

The residential parent or the person who otherwise has custody of a child for whom a support order is issued is also ordered to immediately notify, and the obligor under a support order may notify, the Franklin County Child Support Enforcement Agency of any reason for which the support order should terminate, including but not limited to, the child's attainment of the age of majority if the child no longer attends an accredited high school on a full-time basis and the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age; the child ceasing to attend an accredited high school on a full-time basis after attaining the age of majority, if the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age; or the death, marriage, emancipation, enlistment in the armed services, deportation, or change of legal custody of the child.

All support under this order shall be withheld or deducted from the income or assets of the obligor pursuant to a withholding or deduction notice or appropriate order issued in accordance with chapters 3119., 3121., 3123., and 3125 of the Revised Code or a withdrawal directive issued pursuant to sections 3123.24 to 3123.38 of the Revised Code and shall be forwarded to the obligee in accordance with chapters 3119., 3121., 3123., and 3125 of the Revised Code.

Regardless of the frequency or amount of support payments to be made under the order, the Franklin County Child Support Enforcement Agency shall administer it on a monthly basis in accordance with sections 3121.51 to 3121.54 of the Revised Code.

Payments under the order are to be made in a manner ordered by the court or agency, and if the payments are to be made other than on a monthly basis, the required monthly administration by the agency does not affect the frequency or the amount of the support payments to be made under the order.

The temporary order shall commence forthwith and be in effect until the final hearing of this action or until modified by Journal Entry or Magistrate's Order.

PLAINTIFF
ROBERT HAWLEY, II, 66366

DEFENDANT
NORMAN LAWTON

COUNSEL FOR PLAINTIFF

COUNSEL FOR DEFENDANT

EFFECTIVE DATE: 3-17-06

DATE PREPARED: 5-1-06

[Signature]
MAGISTRATE BOSQUES MILLIKEN TB

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

Katherine S. Howard :
Plaintiff, :
vs. : Case No. 06DR-03-1051
Norman H. Lawton : JUDGE PREISSE
Defendant. : Magistrate Bosques-Milliken

JUDGMENT ENTRY

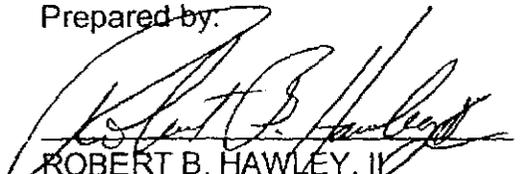
This matter came before the court on June 12, 2006, upon the Defendant's Objections to Magistrate's Decision, and his Motion for Hearing of Complaint, both filed June 5, 2006, and his Motion for Termination of Dower, filed May 30, 2006. Based upon the evidence and testimony presented by the parties, the Defendant's Objections are overruled and his Motion for Hearing of Complaint and his Motion for Termination of Dower are denied.

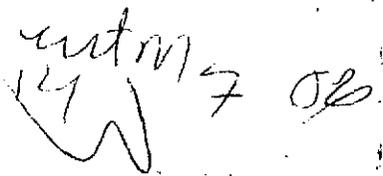
IT IS SO ORDERED.



Judge Preisse

Prepared by:


ROBERT B. HAWLEY, II
Sup. Ct. Reg. No. 0066366
Attorney for Plaintiff
400 South Fifth Street, S-101
Columbus, Ohio 43215
(614) 464-1877; fax (614) 464-2035
rhawley@sowaldclouse.com



**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS**

Katherine S. Howard

Case No. 06DR-03-1051

Plaintiff

**Judge June Rose Galvin
Sitting by Special Assignment
Of the Ohio Supreme Court**

-vs-

Norman H. Lawton

Defendant

JOURNAL ENTRY ON MOTION FOR TEMPORARY ORDERS

This 8th day of November, 2006, this cause came on for hearing on the Motion of the Defendant for Temporary Orders Pursuant to Civil Rule 75(N), and upon the evidence.

Each party was present, plaintiff being represented by Robert B. Hawley.

The plaintiff acknowledged receipt of service and a copy of the motion, and notice of hearing not less than seven days in advance.

The court heard sworn testimony from the plaintiff, Katherine S. Howard, and the defendant Norman H. Lawton.

The court over the objection of plaintiff, considered the above motion to be a request for modification of the temporary order issued by the Magistrate.

The defendant incurred expense in the repair of the air conditioner in the marital residence.

The defendant has incurred expenses for himself personally. He has income that he used to pay his expenses. He wants to be reimbursed for the air conditioner, gasoline for the mower, expenses for relocation, and other claims set forth in his motion.

The court finds that the motion for modification should be granted, in part, and denied, in part.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff shall reimburse the defendant in full within thirty (30) days all the expenses related to repair of the air conditioner in the marital residence upon

presentation to her through the U.S. mail of the receipt for payment for the air conditioner.

2. There being no further change of circumstances significantly affecting the income or expenses of the parties, no award of spousal support is ordered at this time (emphasis added).
3. All other issues raised in the motion filed by the defendant not addressed herein are continued for trial on the merits.

IT IS SO ORDERED.

November 9, 2006



Judge

To the Clerk of Courts:

Please mail a copy to the parties herein, and counsel, within three business days of receipt.

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

MAR 10

Katherine S. Howard :
Plaintiff, :
vs. : Case No. 06DR-03-1051
Norman H. Lawton : JUDGE JUNE ROSE GALVIN
Defendant. : Sitting by Special Assignment
of the Ohio Supreme Court.

JUDGMENT ENTRY

This matter came on for hearing on the 11th day of January, 2007, on the Defendant's ~~Complaint~~^{MOTION} for Contempt filed on December 4, 2006 and his Amend to ~~Complaint~~^{MOTION} for Contempt filed December 18, 2006. Plaintiff appeared with counsel Robert B. Hawley II, and Defendant appeared Pro Se. The court heard sworn testimony from both parties and considered evidence presented by both parties.

Based upon the testimony and evidence presented at hearing the Court

Finds:

1. That Defendant incurred expenses for the repair of the furnace/air conditioner in the marital residence in the amount of \$310.41, which consisted of \$79.00 for a service call and \$231.41 for parts;
2. That the Defendant installed the parts himself and incurred no expenses for the labor to do so;
3. That Defendant provided adequate documentation of the expenses he incurred to the Plaintiff;

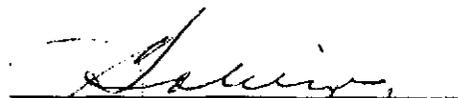
4. That Defendant was entitled to payment from the Plaintiff only for the cost of the service call and the parts in the amount of \$310.41 and that Defendant is not entitled to be paid by the Plaintiff for the labor he performed to install and/or repair the furnace/air conditioner;
5. That on December 7, 2006, which was within the thirty (30) day period in which the Plaintiff was ordered to reimburse the Defendant, and which was prior to Defendant's filing contempt, the Plaintiff offered payment to the Defendant in the correct amount that was due, and Defendant refused to accept said payment;
6. That based upon the findings set forth above, that Plaintiff has not violated the order of this court;
7. That Defendant wrongfully refused to accept the payment offered by the Plaintiff and that Defendant's Motion for Contempt is a frivolous and baseless filing.

Further, the court takes notice of the fact that at the close of the hearing on this matter Plaintiff, at the direction of the Court, Plaintiff re-tendered payment to Defendant by her check in the amount of \$310.41 and that Defendant received said payment, which constitutes payment in full of all amounts due to the Defendant from the Plaintiff, pursuant to this court's previous order, for the expenses incurred for the repair of the furnace/air conditioner at the marital residence.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That Defendant's Motion for Contempt is denied and dismissed with prejudice;
2. That disposition of Plaintiff's request for sanctions pursuant to Civ. R. 11 shall be passed to the parties' final divorce hearing and will be considered at that time.

IT IS SO ORDERED.


Judge Galvin 3/5/07.

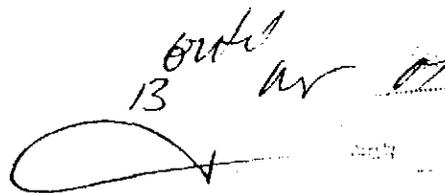
Prepared by:



Robert B. Hawley II
Sup. Ct. Reg. No. 0066366
Attorney for Plaintiff
400 S. Fifth Street, Suite 101
Columbus, Ohio 43215
(614) 464-1877; fax: (614) 464-2035
rhawley@sowaldclouse.com

To The Clerk Of Courts:

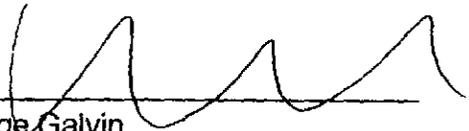
Please mail a copy to the parties, herein, and counsel within three business days of receipt.


13 NW 07

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

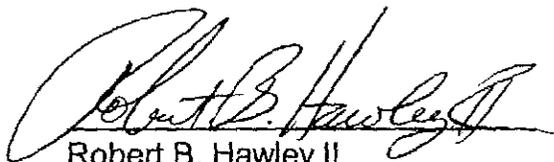
1. That Defendant's Motion for Contempt is denied and dismissed with prejudice;
2. That disposition of Plaintiff's request for sanctions pursuant to Civ. R. 11 shall be passed to the parties' final divorce hearing and will be considered at that time.

IT IS SO ORDERED.



Judge Galvin

Prepared by:



Robert B. Hawley II
Sup. Ct. Reg. No. 0066366
Attorney for Plaintiff
400 S. Fifth Street, Suite 101
Columbus, Ohio 43215
(614) 464-1877; fax: (614) 464-2035
rhawley@sowaldclouse.com

To The Clerk Of Courts:

Please mail a copy to the parties, herein, and counsel within three business days of receipt.

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

FILED
COURT OF APPEALS
CANTON, OHIO

JUN 24 PM 12:57

CLERK OF COURTS

Katherine A. Howard, :

Plaintiff-Appellee, :

v. :

Norman H. Lawton, :

Defendant-Appellant. :

No. 06AP-754

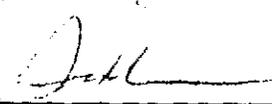
(REGULAR CALENDAR)

JOURNAL ENTRY OF DISMISSAL

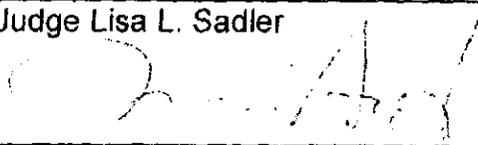
Appellant has appealed from the June 19, 2006 judgment entry of the trial court which denied appellant's objections to the May 30, 2006 order of the magistrate and denied appellant's "Motion for Hearing of Complaint" and "Motion for Termination of Dower." A review of the court files indicates that a complaint for divorce and counterclaim remain pending in the trial court, and a pretrial is scheduled to be held on September 21, 2006. The June 19, 2006 judgment entry appealed from does not constitute a final appealable order as defined by R.C. 2505.02. Accordingly, this appeal is hereby sua sponte dismissed for lack of a final, appealable order. Appellant's August 10, 2006 motion for a writ of prohibition is therefore denied as moot.



Judge Peggy Bryant



Judge Lisa L. Sadler



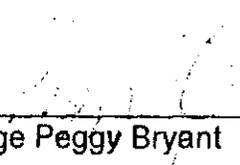
Judge Patrick M. McGrath

TENTH APPELLATE DISTRICT

Katherine A. Howard,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 06AP-754
	:	
Norman H. Lawton,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY

Appellant's July 20, 2006 motion for a stay of the temporary spousal support order is denied, appellant not having provided any financial information, by affidavit, to enable the court to ascertain whether appellant is unable to comply with the order of the trial court.



 Judge Peggy Bryant

 Judge Lisa L. Sadler

 Judge Alan C. Travis

Slip Copy, 2006 WL 1479633 (Ohio App. 9 Dist.), 2006 -Ohio- 2694
(Cite as: Slip Copy)

C

Saluppo v. Saluppo
Ohio App. 9 Dist., 2006.

CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio, Ninth District, Summit
County.

Steve SALUPPO Appellee/Cross Appellant
v.

Randee SALUPPO Appellant/Cross-Appellee.
No. 22680.

Decided May 31, 2006.

Background: In action for divorce, the Court of
Common Pleas, No. 2002-05-2152, designated wife
as primary residential parent and legal custodian,
subject to husband's right of continuous contact,
distributed property, and ordered husband to pay
wife child support. Wife appealed and husband
cross-appealed.

Holdings: The Court of Appeals, Moore, J., held
that:

(1) property distribution that resulted in
\$159,994.00 of marital estate awarded to husband
and \$137,920.00 to wife was unequal and
inequitable;

(2) denial of wife's request for spousal support was
abuse of discretion;

(3) record did not support husband's claim that trial
court erred in rejecting parties shared parenting
agreement by designating wife residential custodian;

(4) any error in allowing Family Court Services
representative to testify regarding 12 police reports
filed against husband and that wife had obtained
two civil protection orders against husband did not

prejudice husband;

(5) trial court's finding that wife was more likely to
facilitate parenting time was supported by evidence;

(6) finding that husband had failed to pay child
support as ordered was supported by evidence; and

(7) trial court overstated value of husband's
business, for purposes of determining wife's marital
share of business.

Affirmed in part; reversed in part; remanded.
West Headnotes

[1] Divorce 134 ↪ 252.2

134 Divorce

134V Alimony, Allowances, and Disposition of
Property

134k248 Disposition of Property

134k252.2 k. Proportion or Share Given

on Division. Most Cited Cases

Property distribution that resulted in \$159,994.00 of
marital estate awarded to husband and \$137,920.00
to wife was unequal and inequitable, insofar as trial
court failed to account for negative property award
to wife of \$10,927.00 when it determined
distributive award amount of \$148,847.00. R.C. §
3105.171(C)(1).

[2] Divorce 134 ↪ 252.3(5)

134 Divorce

134V Alimony, Allowances, and Disposition of
Property

134k248 Disposition of Property

134k252.3 Particular Property or Interests
and Mode of Allocation

134k252.3(5) k. Sale or Distribution in
Kind; Joint Interests and Compensating Payments.

Most Cited Cases

Property distribution that awarded nearly all marital

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assets to husband, which resulted in wife's marital assets having negative value, together with contradictory provisions requiring husband to make equalization payment to wife within 30 days but allowing husband to make equalization payments of \$2,000 per month, was inequitable; provision allowing husband to make payments over time did not account for interest and permitted husband to make monthly payments which would ultimately cost him less than making lump-sum payment, and there was no showing that husband did not have financial means to make lump-sum payment. R.C. § 3105.171(C)(1).

[3] Divorce 134 ⇌ 237

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k230 Permanent Alimony

134k237 k. Grounds. Most Cited Cases

Order denying wife's request for spousal support was abuse of discretion, although marriage was of short duration; prior to and throughout marriage, husband was able to cultivate and grow his business while wife remained at home after birth of first child, wife earned slightly more than minimum wage while husband had annual income of \$79,800, and wife was responsible for getting children to school in morning and caring for them after school, which precluded her from obtaining full-time employment that would enable her to be home with children immediately after school. R.C. § 3105.18(C)(1).

[4] Child Custody 76D ⇌ 907

76D Child Custody

76DXIII Appeal or Judicial Review

76Dk907 k. Record. Most Cited Cases

Record did not support former husband's claim on appeal that trial court erred in rejecting parties shared parenting agreement by designating wife residential custodian; husband had submitted revised, proposed shared parenting plan, and there was no evidence that wife acquiesced to proposed plan.

[5] Child Custody 76D ⇌ 920

76D Child Custody

76DXIII Appeal or Judicial Review

76Dk913 Review

76Dk920 k. Presumptions. Most Cited Cases

Former husband's failure to include in record on appeal reports of guardian ad litem and Family Court Services representative regarding recommendations as to custody precluded meaningful appellate review of claim that trial court impermissibly relied on facts not in record with respect to alleged testimony of counselor who did not testify at trial and that guardian ad litem and representative revised their opinions during course of proceedings, thereby warranting presumption of regularity of proceedings. Rules App.Proc., Rule 9(B).

[6] Child Custody 76D ⇌ 923(1)

76D Child Custody

76DXIII Appeal or Judicial Review

76Dk913 Review

76Dk923 Harmless Error

76Dk923(1) k. In General. Most Cited

Cases

Any error in allowing Family Court Services representative to testify regarding 12 police reports filed against husband and that wife had obtained two civil protection orders against husband did not prejudice husband with respect to child custody determination; police reports were not admitted into evidence, and order naming wife primary residential custodian of children with continuous visitation for husband was supported by trial court's consideration of independent relevant factors, including guardian ad litem's recommendation that shared parenting was not in best interests of children because parties could not get along, and that wife had been primary caregiver of children.

[7] Child Custody 76D ⇌ 424

76D Child Custody

76DVIII Proceedings

76DVIII(A) In General

76Dk422 Discovery

76Dk424 k. Physical Examination of Persons. Most Cited Cases

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Trial court was not precluded from considering husband's request for paternity testing in considering award of custody in context of divorce.

[8] Child Custody 76D ↪469

76D Child Custody

76DVIII Proceedings

76DVIII(B) Evidence

76Dk466 Weight and Sufficiency

76Dk469 k. Fitness or Conduct of Parent. Most Cited Cases

Trial court's finding that husband had propensity to cause conflict with regard to parenting time, and therefore, that wife was more likely than husband to facilitate parenting time, as justification for designating wife primary residential parent, was supported by evidence that husband had threatened to have police go to children's school to make sure that wife had no contact with children.

[9] Child Custody 76D ↪469

76D Child Custody

76DVIII Proceedings

76DVIII(B) Evidence

76Dk466 Weight and Sufficiency

76Dk469 k. Fitness or Conduct of Parent. Most Cited Cases

Trial court's finding, in reaching its custody decision designating wife primary residential parent and legal custodian, that husband had failed to pay child support as ordered was supported by evidence that, although husband was current on child support at time of trial, he had failed to make timely payments on several occasions, which caused wife to fall behind on her monthly obligations.

[10] Divorce 134 ↪253(3)

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k248 Disposition of Property

134k253 Proceedings for Division or Assignment

134k253(3) k. Valuation of Assets.

Most Cited Cases

Trial court's consideration of \$52,698 in business

debt that existed at time of marriage in calculating value of husband's business at time of divorce amounted to overstatement of business' value by that amount, for purposes of determining wife's marital share of business, where \$52,698 had been deducted from business assets in determining value of business at time of marriage.

[11] Divorce 134 ↪253(3)

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k248 Disposition of Property

134k253 Proceedings for Division or Assignment

134k253(3) k. Valuation of Assets.

Most Cited Cases

Trial court's reliance on valuation husband's business by wife's expert, who adjusted total equipment value of \$53,232.00 to \$233,049.00, rather than on husband's expert who adjusted total equipment value to \$157,878.00, was adequately supported by wife's expert's testimony that asset approach to valuation, while relevant, did not take into consideration increase in gross sales, increase in equity of assets, or increase in net earnings.

Appeal from Judgment Entered in the Court of Common Pleas County of Summit, Ohio, Case No.2002-05-2152.

David H. Ferguson, Attorney at Law, Akron, for Appellant.

Randal A. Lowry, Attorney at Law, Cuyahoga Falls, for Appellee.

DECISION AND JOURNAL ENTRY

MOORE, Judge.

*1 This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

{¶ 1} Appellant/Cross-Appellee, Randee Saluppo, and Appellee/Cross-Appellant, Steve Saluppo, appeal from the decision of the Summit County Domestic Relations Court. This Court affirms in part and reverses in part.

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I.

{¶ 2} Appellant/Cross-Appellee, Randee Saluppo ("Wife"), and Appellee/Cross-Appellant, Steve Saluppo ("Husband"), were married on October 8, 1994. Thereafter, the parties had two children: I.S., born 5/24/97 and S.S., born 5/19/99. On May 31, 2002, Husband filed for divorce. On July 11, 2002, Wife filed an answer and counterclaim, also requesting a divorce. The trial court issued a temporary order on September 13, 2002, requiring, among other things, that Husband pay temporary child support to Wife. Thereafter, Husband filed a motion requesting that the parties undergo genetic testing regarding the parentage of the children. The trial court granted Husband's motion on February 5, 2003. Test results revealed that Husband is the father of the minor children.

{¶ 3} On November 14, 2003, the trial court issued an order granting temporary physical possession of the parties' minor children to the paternal grandparents. The trial court modified this order on September 14, 2004, granting the parties companionship time with the children on alternating weeks. This matter was tried before the trial court on July 31, 2003, December 2, 2004 and December 30, 2004.

{¶ 4} The trial court entered the parties' decree of divorce on January 24, 2005. Pursuant to the decree, (1) Wife was designated as the residential parent and legal custodian, (2) Husband was granted continuous contact with the children, (3) Husband was required to pay child support and (4) Wife was required to quitclaim her interest in the marital property to Husband. The decree also divided the parties' marital property and allocated the parties' marital debt.

{¶ 5} On February 7, 2005, Wife filed a motion for new trial, for relief from judgment and for reconsideration, arguing that the divorce decree should have set a date certain for the payment of a lump sum property settlement. On February 15, 2005, Husband filed a motion for new trial, for relief from judgment and for reconsideration. On February 23, 2005, Wife filed a notice of appeal from the divorce decree. Both appeals were

dismissed on March 25, 2005 for lack of a final appealable order. On April 13, 2005, the trial court issued an order overruling each of the parties' motions for new trial, for relief from judgment and for reconsideration. Wife then timely filed her notice of appeal on May 12, 2005, raising two assignments of error. Husband filed a notice of cross-appeal on May 19, 2005, raising three assignments of error.

II.

APPELLANT'S ASSIGNMENT OF ERROR I

"THE TRIAL COURT ERRED IN MAKING A PROPERTY DIVISION THAT IS BOTH UNEQUAL AND INEQUITABLE."

*2. {¶ 6} In Wife's first assignment of error, she contends that the trial court erred in making an unequal and inequitable property division. We agree.

{¶ 7} The distribution of marital property is governed by R.C. 3105.171. In divorce proceedings, the trial court must divide marital property in an equitable manner. R.C. 3105.171(C)(1). A trial court is vested with broad discretion when fashioning this division of property. *Bisker v. Bisker* (1994), 69 Ohio St.3d 608, 609, 635 N.E.2d 308. Accordingly, absent an abuse of discretion, a trial court's division of marital property will be upheld by a reviewing court. *West v. West* (Mar. 13, 2002), 9th Dist. No. 01CA0045, at *6. A trial court's decision relative to the distribution of property at the time of divorce does not constitute an abuse of discretion when such decision is supported by some competent, credible evidence. *Sterbenz v. Sterbenz*, 9th Dist. No. 21865, 2004-Ohio-4577, at ¶ 9, citing *Middendorf v. Middendorf* (1998), 82 Ohio St.3d 397, 401, 696 N.E.2d 575.

{¶ 8} Wife's argument that the trial court erred in making an unequal and inequitable property division is two-fold: (1) the property division was unequal in that it provided Husband with

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\$22,000.00 more marital property than Wife and the trial court made no findings of fact to support this unequal division and (2) even if Wife was awarded an equal share of the marital property, the award would still be inequitable because the trial court permitted Husband to make payments over time.

Unequal Division

{¶ 9} The trial court examined the parties' marital debt and assets and determined that the parties had \$350,450.00 in marital assets and \$52,536.00 in marital debt. Consequently, the court found that the net marital estate subject to division was \$297,914.00. The trial court awarded Husband \$349,177.00 in marital assets. The trial court allocated \$40,336.00 of the marital debt to Husband which left him with \$308,841.00 in net marital assets. The court awarded Wife \$1,273.00 in marital assets (Wife was awarded the 2002 Mercedes which had negative equity of \$5,127.00). Wife was ordered to pay \$12,200.00 of marital debt, which left her with net marital assets of negative \$10,927.00. The trial court then made a distributive award by ordering "Husband [to] pay to Wife \$148,847 within thirty (30) days of this order." Under our calculations, Husband was then left with \$159,994.00 and Wife with \$137,920.00 (after subtracting her negative \$10,927.00 in marital assets).

{¶ 10} Upon examination of the record, we find that Wife correctly asserts that the trial court made an unequal division of property without making findings of fact to support such a division. The distributive award amount of \$148,847.00 equals one-half of the net marital estate ($\$297,914.00 / 2 = \$148,847.00$). The trial court's unequal division appears to be a mistake. After making the distributive award, the trial court stated:

*3 "The property award to Wife is reduced in the amount of \$2,931.43 representing the net arrearages under the temporary order, for a net of \$145,915.57."
FN1

FN1. The trial court determined that Wife

owed Husband \$2,931.43 after reconciling the parties' payments under the temporary orders. Under these orders, Husband was required to pay Wife child support of \$1,284.80 per month and spousal support of \$2,000.00 per month. Per the Child Support Enforcement Agency records, there was an arrearage of \$3,350.00 as of October 2004. However, Husband had paid \$880.00 in preschool expenses and \$8,401.51 on the first mortgage which were Wife's responsibilities. But, Wife had paid \$2,999.58 for auto repairs which were Husband's responsibilities. Wife, therefore, owed Husband \$2,931.43 per the temporary orders.

{¶ 11} Although we presume that the trial court intended to award Wife a net \$148,847.00 (which amounts to \$145,915.57 after subtracting the amount Wife owed Husband under the temporary orders) and mistakenly failed to account for Wife's negative award of property and debt, the court made no findings of fact regarding this division. Consequently, we do not know whether the court intended to make such an unequal division.

{¶ 12} When dividing marital property, "the trial court must indicate the basis for its award in sufficient detail to enable a reviewing court to determine that the award is fair, equitable and in accordance with the law." *Quigley v. Quigley*, 6th Dist. No. L-03-1115, 2004-Ohio-2464, at ¶ 97, quoting *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 518 N.E.2d 1197, paragraph two of the syllabus. This requirement is particularly important in a case such as this one involving an unequal division of marital assets. *Green v. Shall*, 6th Dist. No. L-03-1123, 2004-Ohio-1653, at ¶ 30, citing *Szerlip v. Szerlip* (1998), 129 Ohio App.3d 506, 512, 718 N.E.2d 473.

{¶ 13} Here, the trial court made an unequal and inequitable division of property without making findings of fact to support such a division. It appears that the trial court failed to account for Wife's negative property award of \$10,927.00. Under our calculations, Wife was actually awarded \$137,920.00, FN2 which amounts to \$22,000 less

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than the \$159,994.00 awarded to Husband. We find error in this division.

FN2. This amount does not account for the \$2,931.43 Wife owed Husband under the temporary orders.

Inequitable Division

{2} {¶ 14} Wife contends that even if the trial court awarded her an equal share of the marital property, the award would nonetheless be inequitable because it was not awarded as a lump sum payment and/or ordered to be paid within a reasonable time. After ordering Husband to pay Wife \$148,847.00 within thirty days of the trial court's order, the court stated:

"If Husband is unable to secure the funds to pay the property award within thirty (30) days, he shall secure payment with a Promissory Note.

and "Wife shall quitclaim to Husband her interest in the marital home. Husband shall indemnify and hold Wife harmless on the mortgage, taxes, and insurance. Wife may remain in the marital residence until thirty (30) days after the property award is paid. While in the residence, Wife shall pay the first mortgage, taxes, insurance, and utilities. Husband shall pay the equity loan."

{¶ 15} Moreover, in its decision not to award spousal support, the trial court recognized that Wife cannot pay her living expenses until she receives her lump sum property award and then ordered:

"[E]ffective February 1, 2005, Husband shall pay to Wife the sum of \$2,000.00 per month as payment on the property award. Payments made to Wife pursuant to this provision shall be deducted from the total amount awarded to Wife."

*4 {¶ 16} Wife argues that these payment provisions, when read together, produce an inequitable result. We find merit in this contention. Here, the trial court awarded nearly all the marital assets to Husband. As a result, Wife's marital assets had a negative value. The trial court attempted to

equalize this award by making a distributive award. However, these provisions are inherently contradictory as one requires Husband to pay this amount in a lump sum while another provision permits Husband to pay \$2,000.00/month. Notably, the latter provision does not reference any of the other provisions. The provision that addresses the promissory note does not indicate when this award is due. In addition, the provision that allows Husband to make payments over time does not account for interest. Husband has no incentive to make this payment in lump sum if he is permitted to make payments over time, without accounting for interest.

{¶ 17} While there is no requirement that a trial court award interest on monetary obligations which arise from property divisions, the court is statutorily obligated to make an equitable division of the parties' marital property. R.C. 3105.171(C)(1); *Koegel v. Koegel* (1982), 69 Ohio St.2d 355, 357, 432 N.E.2d 206. Here, the trial court (1) failed to account for interest on the monthly payments and (2) provided no reason for permitting Husband to make monthly payments which will ultimately cost him less than making a lump sum payment.

{¶ 18} In its decision denying the parties' motions for new trial, the trial court addressed these payment provisions, stating:

"The decision of the Court to permit payments on the judgment rather than requiring a lump sum payment was an attempt by the Court to balance an equitable division of the parties' assets and liabilities against Plaintiff's financial circumstances which make it difficult or impossible for him to borrow sufficient funds to pay the judgment."

However, the trial court cited no evidence in support of its assertion that Husband's financial circumstances hindered or precluded him from borrowing sufficient funds. To the contrary, Husband testified at the December 2, 2004 hearing that he had the means to buy out Wife's half-equity interest in the house. Husband's testimony reflects that he asked the court to allow him to buy out Wife's interest in the house. The parties stipulated that the equity in the house at the time the marital property was divided was approximately

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\$193,343.00. It follows, therefore, that Husband had the means to borrow nearly \$100,000.00.

{¶ 19} There was no dispute regarding Husband's testimony that he could make a lump sum payment of at least \$100,000.00. Had the court awarded the lump sum to Wife, she could have made a down-payment on a house or condominium for herself and the children. Without such a lump sum award, Wife will be unable to purchase a home for her and the children whereas Husband now resides in the marital home, making monthly payments to Wife over the next several years. Such a result clearly provides a windfall for Husband. We therefore find that the trial court abused its discretion by permitting Husband to make payments over time.

*5 {¶ 20} Reviewing the totality of the property division effectuated by the trial court, we find that such a division is inequitable. We therefore remand this case to the trial court for proceedings consistent with this opinion. *Babcock v. Babcock*, 8th Dist. No. 82805, 2004-Ohio-2859, at ¶ 58; App. R. 27. Wife's first assignment of error is sustained.

APPELLANT'S ASSIGNMENT OF ERROR II

"THE TRIAL COURT ERRED IN FAILING TO AWARD SPOUSAL SUPPORT TO THE WIFE."

[3] {¶ 21} In her second assignment of error, Appellant argues that the trial court erred in failing to award her spousal support. This Court agrees.

{¶ 22} A trial court may award reasonable spousal support in a divorce action after a property division is effectuated. R.C. 3105.18(B). An award of spousal support is within the broad discretion of the trial court. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. This court will not reverse the trial court's decision absent an abuse of discretion. Id. Abuse of discretion requires more than simply an error in judgment; it implies unreasonable, arbitrary, or unconscionable conduct by the court. Id. The burden is on the party challenging the award to establish an abuse of discretion. *Shuler v. Shuler* (Oct. 27, 1999), 9th

Dist. No. 98CA007093, at *2.

{¶ 23} R.C. 3105.18(C)(1) requires the trial court to consider fourteen factors in determining whether to award spousal support; however, the amount of support remains within the discretion of the court. *Moore v. Moore* (1992), 83 Ohio App.3d 75, 78, 613 N.E.2d 1097, citing *Holcomb v. Holcomb* (1989), 44 Ohio St.3d 128, 130-31, 541 N.E.2d 597. Those factors include:

"(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;

*6 "(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."

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{¶ 24} The trial court indicated in its judgment entry that it considered all of the statutory factors contained in R.C. 3105.18. The court also made the following findings: (1) Husband earns substantially more than Wife, (2) Husband has greater earning ability than Wife, (3) both parties are in good physical, mental and emotional health, (4) the parties have equivalent education, (5) the court divided the assets and liabilities equally, (6) Wife was out of the work force while she cared for the children but has since returned to her field and (7) the income and earning ability of Husband supports an award of spousal support but the remaining factors support the court's determination that spousal support is not reasonable or appropriate.

{¶ 25} In addition, the court found that the marriage was short and that if spousal support was reasonable and appropriate, then the term would have been thirty-five months in length. The court found that Husband had been paying temporary spousal support for thirty-two months. The court also recognized that Wife would not be able to pay her living expenses until she received the property award. In conjunction therewith, the court stated: "[E]ffective February 1, 2005, Husband shall pay to Wife the sum of \$2,000.00 per month as payment on the property award. Payments made to Wife pursuant to this provision shall be deducted from the total amount awarded to Wife."

{¶ 26} Wife asserts that several of the factors contained in R.C. 3105.18(C)(1) support an award of spousal support, including (a) income of the parties, (b) relative earning abilities, (f) responsibilities of Wife as custodian of the children, (g) the standard of living established during the marriage, (i) the relative assets and liabilities of the parties, (k) the time and expense necessary to acquire education, training and job experience to be self-supporting and (m) the lost income production capacity resulting from Wife's marital responsibilities.

{¶ 27} Under R.C. 3105.18(C)(1), the trial court is required to consider "all of the following factors." Upon review of these factors, we find that the trial court erroneously placed great significance on one

factor-length of the marriage-and failed to adequately consider the remaining factors.

{¶ 28} In our disposition of Wife's first assignment of error, we determined that the trial court did not equally distribute the parties' assets and liabilities. R.C. 3105.18(C)(1)(i). Prior to and throughout the marriage, Husband was able to cultivate and grow his business. In contrast, Wife stopped working when the parties had their first child and did not work outside the home again until the parties' separation several years later. R.C. 3105.18(C)(1)(m). Wife testified at trial that she earns slightly more than minimum wage and is able to work approximately thirty hours/week. For purposes of calculating child support, the trial court found that Husband's income is \$79,800.00. Despite the parties' similar education experience, Husband has a significantly higher income and earning ability at the present time. R.C. 3105.18(C)(1)(a)/(b).

*7 {¶ 29} Moreover, the parties' children are young and, although they are both in school during the day, Wife is responsible for getting them to school in the morning and caring for them after school. Consequently, it would be difficult for her to obtain full-time employment that would enable her to be at home with the children immediately after school. R.C. 3105.18(C)(1)(f).

{¶ 30} The totality of the factors in the present case do not support the court's decision not to award spousal support. Under the court's award, Wife will not be able to purchase a house or condominium, she is left with a car that has negative equity and she has training and experience to earn only minimum wage. Equity requires that a party receive at least sufficient spousal support to bring him or her to a "reasonable standard of living, comparable to the standard maintained during the marriage." *Berthelot v. Berthelot*, 154 Ohio App.3d 101, 114, 796 N.E.2d 541, 2003-Ohio-4519, at ¶ 47, quoting *Addy v. Addy* (1994), 97 Ohio App.3d 204, 208, 646 N.E.2d 513. We find that the court's award will not place Wife in such a position. Therefore, we find that the trial court abused its discretion in failing to award Wife spousal support. Wife's second assignment of error is sustained.

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CROSS-APPELLANT'S ASSIGNMENT OF ERROR
I

"THE TRIAL COURT ERRED IN CONSIDERING FACTS OUTSIDE OF THE RECORD [] AND IN PERMITTING TESTIMONY OVER OBJECTION ABOUT POLICE REPORTS AND A DISMISSED CIVIL PROTECTION ORDER REQUEST AND FURTHER ERRED BY RELYING ON THIS INADMISSIBLE EVIDENCE AS A BASIS FOR REJECTING CONNECTION WITH HIS DECISION TO REJECT THE AGREEMENT OF THE PARTIES THAT SHARED PARENTING WAS APPROPRIATE." [SIC]

{¶ 31} In his first assignment of error, Husband contends that the trial court erred in relying on inadmissible evidence as a basis for rejecting a shared parenting plan and designating Wife as the residential parent. Specifically, Husband contends that the trial court erred in considering (1) facts outside the record and (2) testimony regarding the parties' involvement with the police.

{¶ 32} A trial court is vested with broad discretion to decide matters regarding the allocation of parental rights and responsibilities for the care of minor children. *Donovan v. Donovan* (1996), 110 Ohio App.3d 615, 618, 674 N.E.2d 1252. Therefore, a trial court's decision regarding child custody is subject to reversal only upon a showing of an abuse of discretion. *Id.*; *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (stating that the abuse of discretion standard applies to child custody cases). This is so because a trial court must have the discretion to do what is equitable based upon the particular facts and circumstances of each case. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144, 541 N.E.2d 1028, citing *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 355, 421 N.E.2d 1293.

Shared Parenting Plan

[4] {¶ 33} Husband essentially argues that the trial court erred in rejecting the parties' shared parenting agreement and instead awarding him continuous

parenting time. Husband's argument is premised on an alleged agreed shared parenting plan. However, the record reflects that Husband submitted a revised *proposed* shared parenting plan on November 23, 2004. While Wife testified that she approved portions of this plan, there is no evidence in the record that Wife acquiesced to this plan.

Facts Outside the Record

*8 {¶ 34} Pursuant to R.C. 3109.04(C), in any action pertaining to the allocation of parental rights and responsibilities,

"Prior to trial, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of each parent and may order the parents and their minor children to submit to medical, psychological, and psychiatric examinations. The report of the investigation and examinations shall be made available to either parent or the parent's counsel of record not less than five days before trial, upon written request. The report shall be signed by the investigator, and the investigator shall be subject to cross-examination by either parent concerning the contents of the report. * * *"

{¶ 35} Here, the trial court referred the matter to Family Court Services for an evaluation and later appointed a guardian ad litem. Summit Co. D.R. Loc. R. 22.02 governs the report and recommendation of the Family Court Services Representative and provides:

"When referred for an evaluation, the Family Court Services Evaluator will produce a report which may include a summary of the collateral information received, a summary of each parent's concerns and strengths and a recommendation as to the allocation of parental rights and responsibilities."

Summit Co. D.R. Loc. R. 26.04 provides the responsibilities of guardian ad litem and states in part: "Guardian *ad litem* reports will be in the Family Court Services file. It is expected that the guardian *ad litem* will attend all Court hearings, as required and/or have a report available. * * *"

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{¶ 36} Both the guardian ad litem, Michelle Edwards, and the Family Court Services' representative, Susanne Davis, testified and submitted written reports to the trial court. The trial court reviewed these documents in reaching its decision regarding the parenting arrangement for the children. Ms. Edwards testified that shared parenting was not in the children's best interest because of the conflict between the parents. Ms. Davis recommended that the children should be placed in Wife's custody and that Husband should have continuous visitation. She also testified that she did not believe a shared parenting plan would be feasible, either "realistically or practically" in light of the parents' communication problems. She felt that the parties could not effectively implement such a plan because they currently disagreed over many decisions and a plan that increased their responsibility to communicate would create more controversy. She elaborated on this opinion, explaining that she anticipated that such a plan would cause major disagreements between the parents regarding school and medical issues. She felt that these disagreements would ultimately have a negative impact on the children. Both Ms. Edwards and Ms. Davis recommended that Wife be the residential parent and legal custodian and that Husband receive standard parenting time.

*9 {¶ 37} In this case, the record indicates that the trial court reviewed the factors set forth in R.C. 3109.04(F)(1)/(2), the parties' respective motions, the testimony presented at trial, the exhibits presented at trial and Ms. Edwards' and Ms. Davis' reports. Based upon this evidence, the trial court found that granting legal custody in favor of Wife was in the best interest of the children. We note that the record on appeal is incomplete; specifically, Husband has failed to include Ms. Edwards' and Ms. Davis' reports, as required by App.R. 9 and Summit Co. D.R. Loc. R. 22.03. Summit Co. D.R. Loc. R. 22.03 states that the Family Court Services file will not be transmitted on appeal except as requested by one of the parties or the trial court, and provides:

"(B) Upon the request of either party or order of the Court, the documents and exhibits contained within this file shall be considered as part of the 'original papers and exhibits filed with the trial Court' for

purposes of Appellate Rule 9(A)."

{¶ 38} An appellant bears the burden of ensuring that the record necessary to determine the appeal is filed with the appellate court. App.R. 9(B). See *State v. Williams* (1995), 73 Ohio St.3d 153, 160, 652 N.E.2d 721. Here, Husband does not claim that he was not informed of the filing of either report nor does he claim that he requested that the reports be transmitted on appeal. Pursuant to App.R. 12(A)(1)(b), this Court is limited to determining the appeal on the record as provided in App.R. 9. If the record is incomplete, the reviewing court must presume the regularity of the trial court's proceedings and affirm its decision. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384. See, also, *Wozniak v. Wozniak* (1993), 90 Ohio App.3d 400, 409, 629 N.E.2d 500 (declaring where portions of the record are omitted, which are necessary for effective review, the appellate court must affirm).

[5] {¶ 39} Husband first argues that the trial court erroneously stated that it relied upon *testimony* of Jeff Durr, who was Husband's counselor and who had assisted the parties in attempting to mediate a shared parenting plan, in reaching its decision. Husband additionally contends that there are no facts in the record to support the finding that Ms. Edwards and Ms. Davis revised their opinions during the course of the court proceedings to be more supportive of the shared parenting plan. He further argues that there are no facts to support the court's finding that criminal charges brought against Wife were resolved.

{¶ 40} The trial court based its finding, in part, on Ms. Edwards' and Ms. Davis' reports. In the absence of the complete record, we cannot say that the trial court's findings of fact are unsupported by evidence in the record. Therefore, while we find that Mr. Durr did not testify at trial, we are unable to determine where the trial court obtained this information. Had Ms. Edwards' and Ms. Davis' reports been made a part of the record before us, we could determine whether Ms. Davis or Ms. Edwards interviewed him and included this in her report.^{FN3} As these reports are necessary for a determination

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of appellant's assignments of error, this Court must presume regularity in the trial court's proceedings and affirm the judgment of the trial court. See *Knapp*, 61 Ohio St.2d at 199, 400 N.E.2d 384; *Wozniak*, 90 Ohio App.3d at 409, 629 N.E.2d 500.

FN3. Appellate courts in Ohio have held that trial courts may consider the report of a court-appointed investigator despite the hearsay inherent in the report. See *Webb v. Lane* (Mar. 15, 2000), 4th Dist. No. 99CA12, at *3. As long as the investigator is made available for cross examination, the parties' due process rights are protected, and a court may consider the report, even without oral testimony by the investigator, and despite any hearsay that may be contained in the report. *Id.* In this case, the representative from Family Court Services and the guardian ad litem both testified at the hearing and were subject to cross examination by opposing counsel. Therefore, if Mr. Durr's statements were included in one of these reports, the trial court could consider such statements despite the fact that the statements are hearsay.

Police Report and Civil Protection Order

*10 [6] {¶ 41} Husband additionally contends that the trial court erred in permitting testimony regarding the filing of police reports by the Bath Police and civil protection orders ("CPO") by Wife. Husband contends that the fact that a filing has been made without a hearing or disposition is neither admissible nor probative. He argues that the trial court erred in considering these filings as evidence.

{¶ 42} Evid.R. 403(A) provides: "Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." A trial court has broad discretion in determining whether to admit or exclude evidence, and this Court will not reverse an evidentiary ruling unless the trial court has abused its discretion and a party has suffered material

prejudice thereby. *Weiner, Orkin, Abbate & Suit Co., L.P.A. v. Nutter* (1992), 84 Ohio App.3d 582, 589, 617 N.E.2d 756. This court must limit its review of the trial court's admission of evidence to whether or not the trial court abused its discretion. *Rigby v. Lake Cty.* (1991), 58 Ohio St.3d 269, 271, 569 N.E.2d 1056.

{¶ 43} Here, the trial court permitted Ms. Davis to testify, over Husband's objection, regarding the twelve police reports filed by the Bath Police against Husband since 1998. She testified that not all of these police reports were domestic disputes and proceeded to explain the substance of some of the complaints. She also testified that Wife had obtained two civil protection orders against Husband.

{¶ 44} Husband cites *State v. Leonard*, 104 Ohio St.3d 54, 818 N.E.2d 229, 2004-Ohio-6235, for the proposition that police reports are inadmissible hearsay. This case is distinguishable on two grounds. First, the within matter involves a civil matter while *Leonard* involved a criminal matter. Secondly, no police reports were introduced herein. Moreover, although the court noted in its findings of fact that Wife filed domestic violence petitions against Husband and that the police were called out to the marital residence on twelve occasions, the conclusions of law reflect that the court relied on several factors in rejecting the shared parenting plan. In its conclusions of law, the court was persuaded by Ms. Edwards' recommendation that shared parenting would not work and by evidence that Wife had been the primary caregiver for the children. The court additionally recognized that neither party had been convicted of or pled guilty to any criminal case of endangering a child. This conclusion reflects the court's concern over the children's best interest and further demonstrates that the court was not heavily relying on the police reports or the civil protection orders in reaching this decision. Consequently, we find that even if the trial court erred in admitting this evidence, Husband was not prejudiced thereby.

Genetic Testing

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[7] {¶ 45} Husband also contends that the trial court erred in punishing him for requesting genetic testing of the children to determine parentage. He argues that he was simply asserting his right to know their parentage with certainty.

*11 {¶ 46} The trial court has broad discretion in allocating parental rights and responsibilities. *Donovan*, 110 Ohio App.3d at 618, 674 N.E.2d 1252. Consequently, the trial court was free to consider all evidence presented including Husband's request for genetic testing. Husband has cited no authority for his contention that the trial court erred in considering this evidence. Moreover, even if the trial court erred in considering this evidence, the record reflects that the trial court did not rely heavily upon this factor in reaching its custody decision. The record demonstrates that the court was heavily persuaded by Ms. Edwards' recommendation that shared parenting would not work and by evidence that Wife had been the primary caregiver for the children. We therefore find no abuse of discretion in the court's consideration of this evidence. Husband's first assignment of error is overruled.

CROSS-APPELLANT'S ASSIGNMENT OF ERROR
II

"THE TRIAL COURT'S FINDINGS THAT WIFE IS MORE LIKELY TO FACILITATE HUSBAND'S PARENTING TIME AND THAT HUSBAND HAS FAILED TO PAY CHILD SUPPORT AS ORDERED ARE NOT SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE IN THE RECORD."

{¶ 47} In his second assignment of error, Husband contends that the trial court's finding that Wife is more likely to facilitate Husband's parenting time and that Husband failed to pay child support as ordered was not supported by the record. We find no merit in this contention.

[8] {¶ 48} Husband contends that, in contrast to the trial court's findings, the record reflects that Wife is the one that has cancelled parenting times and originally wanted to move the children out of

the State. Husband argues that this evidence demonstrates that Wife is less likely than he to facilitate parenting time. However, the record reflects that the trial court was persuaded by evidence that "when an Emergency *Ex Parte* Order was signed granting Husband's parents temporary possession of the children, Husband threatened to have the police go to the school to make sure that Wife had no contact with the children." We find that such evidence supports a finding that Husband had a propensity to cause conflicts with regard to parenting times. As the trial court's finding was supported by facts in the record, we find no merit in Husband's contention that the trial court's finding was unsupported by the record.

[9] {¶ 49} Husband also argues that there is no evidence in the record that Husband failed to pay child support as ordered. While we acknowledge that the parties stipulated that Husband was current with his child support payments as of the first day of trial, there was also evidence presented that Husband had failed to timely make payments on several occasions. Wife testified that Husband had paid his support as much as a month late, which caused her to fall behind in her monthly obligations. Although Husband may have been current by the time of trial, this does not mean that Husband had made timely payments before trial. We, therefore, find no merit in this contention. Husband's second assignment of error is overruled.

CROSS-APPELLANT'S ASSIGNMENT OF ERROR
III

*12 "THE TRIAL COURT ERRED IN ITS VALUATION OF THE MARITAL EQUITY IN THE HUSBAND'S PREMARITAL BUSINESS, SALUPPO LANDSCAPING."

{¶ 50} In his third assignment of error, Husband argues that the trial court erred in its valuation of the marital equity in his business, Saluppo Landscaping. Appellant's argument is two-fold. First, he contends that the trial court erred in deducting the same debt twice in its calculations and thereby overstating the marital equity in the business. Secondly, he argues that the trial court

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erred in finding that the value of Husband's business as of December 31, 2002 was \$167,914.00.

Business Debt

[10] {¶ 51} Appellant first contends that the trial court erred in deducting the same debt twice in its calculations thereby overstating the marital equity in his business. We agree.

{¶ 52} The valuation of assets is for the trier of fact. *Hirt v. Hirt*, 9th Dist. No. 03CA0110-M, 2004-Ohio-4318, at ¶ 16; *Martinez v. Martinez* (Sept. 16, 1987), 9th Dist. No. 2256, at *2. We have previously held that a trial court is not required to choose one particular method of valuation over another in valuing marital assets. *Focke v. Focke* (1992), 83 Ohio App.3d 552, 556, 615 N.E.2d 327. Upon review, we must determine whether, based on all the facts and circumstances before it, the court abused its discretion in arriving at the value determined. *Id.*

{¶ 53} The trial court found that at the time of the parties' marriage in 1994 Saluppo Landscaping had a net equity of \$82,278.00. The trial court reached this figure by subtracting the debt (\$52,698.00) from the assets (\$134,976.00). The parties stipulated that the fair market value of the business as of December 2001 was \$167,914.00. The trial court then determined the marital portion of the equity in the business by subtracting Husband's net equity in the business as of 1994 and then adding the business' debt as of 1994 (\$52,698.00). The court stated that it added this \$52,698.00 because this amount had been repaid during the period of the marriage. The trial court failed to recognize that this amount was already accounted for because it had been considered in determining the net equity of the business as of 1994. We agree with Appellant and find that the trial court erred in deducting this \$52,698.00 twice. In doing so, the trial court overstated the marital equity in the business by \$52,698.00.

Valuation of Business

[11] {¶ 54} Appellant next contends that the trial court erred in relying on Wife's expert instead of his expert in determining the value of Husband's business. Husband contends that the main difference between the parties' experts' valuations is that Wife's expert, Robert Schlabig, adjusted the total equipment value from the Net Book Value of \$53,232.00 to \$233,049.00, whereas Husband's expert, Lou Maglione, adjusted the total equipment value from \$53,232.00 to \$157,878.00. Husband contends that the trial court erred in not giving credence to Mr. Maglione's valuation of the business-which was largely based on Husband's testimony. Husband argues that he is qualified to express an opinion of value as the owner of the business.

*13 {¶ 55} "It is well established that the trier of fact is to determine the weight to be given to expert testimony." *Jensen v. Jensen* (Mar. 8, 1995), 9th Dist. No. 94CA005808, at *2, citing, *Vetter v. Hampton* (1978), 54 Ohio St.2d 227, 230, 375 N.E.2d 804. The trial court was particularly concerned with Mr. Maglione's testimony that the business was worth \$103,452.00 in 1994 and was worth only \$102,725.00 as of December 31, 2002. Mr. Maglione testified that an asset approach to valuation was the most relevant for Husband's business. However, as Wife's expert pointed out, the asset approach did not take into consideration (1) the increase in gross sales from \$189,343.00 (1994) to \$273,936.00 (2002), or (2) the increase in equity of the assets from \$82,343.00 (1994) to \$98,424.00 (2002) or (3) the increase in net earnings from \$34,857.00 (1994) to \$46,447.00 (2002). Mr. Maglione opined that the value of the business had actually declined slightly from 1994 to 2002.

{¶ 56} Upon review, we find no error in the trial court's decision to believe Wife's expert over Husband's. In turn, we find no error in the trial court's decision not to believe Husband's testimony. Even if Husband was qualified to express an opinion as to the value of the business, it is well established that "the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus. In light of the

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increase in equity, assets, gross sales and profits, we find that it was unreasonable to believe Mr. Maglione and Husband's testimony that there had been no increase in the value of the company during the marriage.

{¶ 57} In reaching its determination, the trial court reviewed the testimony of both experts and the exhibits including (1) the tax returns, (2) financial statements and (3) an adjusted balance sheet for the business as of December 31, 2002. Consequently, we find that the trial court's decision is supported by competent, credible evidence and that the trial court did not err in its valuation of Husband's business.

{¶ 58} In sum, we find (1) the trial court erred in deducting the \$52,698.00 twice in its calculations of the marital equity in the business and (2) no error in the trial court's decision to rely on Wife's expert in determining the value of the business as of December 31, 2002.

{¶ 59} Husband's third assignment of error is sustained in part and overruled in part.

III.

{¶ 60} Wife's first and second assignments of error are sustained. Husband's first and second assignments of error are overruled and his third assignment of error is sustained in part and overruled in part. The judgment of the Summit County Domestic Relations Court is affirmed in part and reversed in part.

Judgment affirmed in part, reversed in part, and cause remanded.

The Court finds that there were reasonable grounds for this appeal.

*14 We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to both parties equally.

WHITMORE, P.J., CARR, J., concur.
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H

Schaaf v. Schaaf
Ohio App. 9 Dist., 2006.

**CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.**

Court of Appeals of Ohio, Ninth District, Medina
County.

Elizabeth **SCHAAF** Appellee

v.

Robert **SCHAAF** Appellant.

No. **05CA0060-M**.

Decided June 14, 2006.

Background: After the parties divorced, former husband filed a motion to modify spousal support. The Court of Common Pleas, Medina County, No. 95DR0173, found a change in circumstances had occurred and reduced former husband's monthly spousal support to \$800 per month. Former husband appealed.

Holdings: The Court of Appeals, Whitmore, P.J., held that:

(1) trial court possessed jurisdiction to modify the amount and terms of former wife's spousal support award;

(2) evidence supported finding that a change in circumstances had occurred, warranting modification of former husband's spousal support obligation;

(3) indefinite spousal support award was warranted; and

(4) evidence supported finding that former husband engaged in financial mismanagement.

Affirmed.
West Headnotes
[1] Divorce 134 ⇨ 245(1)

134 Divorce
134V Alimony, Allowances, and Disposition of
Property
134k230 Permanent Alimony
134k245 Modification of Judgment or
Decree
134k245(1) k. Power and Authority.

Most Cited Cases
Trial court possessed jurisdiction to modify the amount and terms of former wife's spousal support award, where the parties' divorce decree stated that former husband's spousal support obligation was "subject to the continuing jurisdiction of the Court," and that it "may modify the amount or terms of this spousal support order upon the change of circumstances of a party." R.C. § 3105.18(E).

[2] Divorce 134 ⇨ 245(2)

134 Divorce
134V Alimony, Allowances, and Disposition of
Property
134k230 Permanent Alimony
134k245 Modification of Judgment or
Decree
134k245(2) k. Grounds and Rights of
Parties. **Most Cited Cases**

Evidence supported finding that a change in circumstances had occurred, warranting modification of former husband's spousal support obligation; former husband's salary involuntarily decreased from \$72,000 at the time of the divorce to \$66,500, prior to losing his employment former husband's average gross income, including bonuses, was \$107,199, and the year that former husband lost his job his combined income, including unemployment, his income from his new employer, and accumulated sick and vacation time from his former employer was \$87,090.31, and former wife's income had increased from \$10,192 at the time of

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the divorce, which was imputed income, to \$24,481.60. R.C. § 3105.18(E).

[3] Divorce 134 ↻287

134 Divorce
134V Alimony, Allowances, and Disposition of Property
134k278 Appeal
134k287 k. Determination and Disposition of Questions. Most Cited Cases
The law of the case doctrine did not preclude the trial court from modifying former husband's spousal support obligation; the trial court reserved the right to modify the amount and terms of spousal support, and former husband's change in circumstances occurred after the Court of Appeals had affirmed the initial divorce decree.

[4] Divorce 134 ↻247

134 Divorce
134V Alimony, Allowances, and Disposition of Property
134k230 Permanent Alimony
134k247 k. Commencement and Termination. Most Cited Cases
Indefinite spousal support award was warranted, where the parties had been married for 26 years, former wife was 55 years old at the time of the divorce, and former wife had a limited earning potential because she had devoted most of her time during the marriage to caring for the family. R.C. § 3105.18(C, F).

[5] Divorce 134 ↻245(3)

134 Divorce
134V Alimony, Allowances, and Disposition of Property
134k230 Permanent Alimony
134k245 Modification of Judgment or Decree
134k245(3) k. Application, Bill, or Petition, and Hearing Thereof. Most Cited Cases
Trial court finding that the magistrate's error in calculating former wife's monthly expenses was harmless was not an abuse of discretion, in spousal support modification proceeding, where former

wife's monthly expenditures were not dispositive of the issue. R.C. § 3105.18(C)(1).

[6] Divorce 134 ↻245(2)

134 Divorce
134V Alimony, Allowances, and Disposition of Property
134k230 Permanent Alimony
134k245 Modification of Judgment or Decree
134k245(2) k. Grounds and Rights of Parties. Most Cited Cases
Evidence supported finding that former husband engaged in financial mismanagement, in proceeding to modify former husband's spousal support obligation; former husband earned over \$100,000 for six years, he had no assets and a poor credit rating, he owed over \$9,000 in spousal support arrearages and had only paid off his child support arrearages after the parties' youngest child's emancipation.

[7] Divorce 134 ↻245(.5)

134 Divorce
134V Alimony, Allowances, and Disposition of Property
134k230 Permanent Alimony
134k245 Modification of Judgment or Decree
134k245(.5) k. In General. Most Cited Cases

Divorce 134 ↻247

134 Divorce
134V Alimony, Allowances, and Disposition of Property
134k230 Permanent Alimony
134k247 k. Commencement and Termination. Most Cited Cases
Trial court modification of former husband's spousal support obligation to \$800 per month, rather than terminating former husband's obligation completely, was not an abuse of discretion; former husband earned \$66,500 per year, former wife earned approximately \$25,000 per year, and the court cut former husband's spousal support

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obligation nearly in half.

Appeal from Judgment Entered in the Court of
Common Pleas County of Medina, Ohio, Case No.
95DR0173.

Joseph F. Salzgeber, Attorney at Law, Medina, for
Appellant.

Elizabeth A. Schaaf, Hinckley, Appellee, pro se.

DECISION AND JOURNAL ENTRY

WHITMORE, Presiding Judge.

*1 This cause was heard upon the record in the trial
court. Each error assigned has been reviewed and
the following disposition is made:

{¶ 1} Defendant-Appellant Robert A. Schaaf ("Robert") has appealed from the judgment of the Medina County Court of Common Pleas, Domestic Relations Division, which modified the amount but not the duration of his spousal support obligation. This Court affirms.

I

{¶ 2} The instant matter presents a long and convoluted procedural history. As such, we will only discuss the procedural aspects relevant to the instant appeal.

{¶ 3} Robert and Plaintiff-Appellee Elizabeth A. Schaaf ("Elizabeth") were married on June 20, 1970 and three children resulted from the marriage. On April 7, 1995, Elizabeth filed for divorce in the Medina County Court of Common Pleas, Domestic Relations Division. A hearing was held regarding the matter on September 25, 1996. The trial court entered its final judgment order granting the parties a divorce on November 18, 1996 (the "divorce decree"). The court's order specifically found that: Robert's annual income was \$72,000, not including bonuses. Elizabeth's income was \$10,192 and she was the primary caregiver for the children. Robert earned in excess of \$100,000 in 1995 and would most likely do the same in 1996. Robert was a college graduate, and had been successful in sales and marketing for the communication industry.

Elizabeth had worked prior to the marriage and while Robert was in college, but had not worked since 1979. Elizabeth did not complete college, and had limited employable skills.

{¶ 4} The trial court made the following conclusions of law relevant to this appeal. Robert and Elizabeth were granted the divorce and Elizabeth was designated as the residential parent and legal custodian of the three children. Robert was ordered to pay Elizabeth \$1,200 per month in spousal support to be increased by \$200 per month upon emancipation of each child, until the last child emancipated at which time the child support obligation would terminate. At that time, the spousal support award was to decrease back down to \$1,200 per month for life, or until Elizabeth's remarriage or cohabitation. The trial court specifically reserved continuing jurisdiction over the spousal support.

{¶ 5} On December 17, 1997, Robert appealed the divorce decree. This Court issued its decision on December 24, 1997, and relevant to this appeal, affirmed the divorce decree with regard to the amount and duration of the spousal support.

{¶ 6} On May 19, 2004, Robert filed a motion to modify spousal support, alleging that a substantial change of circumstances had occurred since the date of the divorce decree.^{FNI} A hearing on the motion was conducted on September 2, 2004. On October 12, 2004, the magistrate issued her decision, in which she found a change in circumstances and reduced Robert's monthly spousal support to \$800 per month until the first of: either party's death, Elizabeth's marriage or cohabitation, or January 30, 2014. Robert subsequently filed objections to the magistrate's decision on October 26, 2004 and filed supplemental objections on January 31, 2005. A hearing was conducted concerning Robert's objections on February 11, 2005. On May 31, 2005, the trial court filed a judgment order in which it reversed the magistrate's decision with regard to the spousal support termination date of January 30, 2014, but affirmed the propriety of the modified award of \$800.

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FN1. On June 2, 2002, Elizabeth and Robert's youngest child was emancipated. Accordingly, Robert's spousal support award returned to \$1,200 pursuant to the divorce decree.

*2 {¶ 7} Robert has timely appealed, asserting two assignments of error.

II

Assignment of Error Number One

"THE TRIAL COURT ERRED, AS A MATTER OF LAW, IN RULING THAT IT LACKED AUTHORITY TO MODIFY THE TERM, OR DURATION, OF THE INDEFINITE LIFETIME SPOUSAL SUPPORT AWARD, WHICH HAD PREVIOUSLY BEEN AFFIRMED BY THE COURT OF APPEALS ON DIRECT APPEAL, WHERE THE TRIAL COURT HAD EXPRESSLY RESERVED JURISDICTION TO MODIFY THE AMOUNT OR TERMS OF THE SPOUSAL SUPPORT ORDER UPON A CHANGE OF CIRCUMSTANCES OF A PARTY."

[1] {¶ 8} In his first assignment of error, Robert has argued that the trial court erred when it reversed the magistrate's finding that Robert's spousal support obligation should terminate on January 30, 2014. Specifically, Robert has argued that the court incorrectly found that it was precluded from modifying a spousal support award which this Court had previously affirmed. Robert has further argued that the trial court had reserved jurisdiction to modify the award in the event of a change of circumstances.

{¶ 9} This Court reviews a trial court's decision modifying spousal support under an abuse of discretion standard. *Barrows v. Barrows*, 9th Dist. No. 21904, 2004-Ohio-4878, at ¶ 4. An abuse of discretion connotes more than a mere error in judgment; it signifies an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. Absent an

abuse of discretion, a spousal support award will not be disturbed on appeal. *Barrows* at ¶ 4. Finally, "when applying the [abuse of discretion] standard, an appellate court is not free to substitute its judgment for that of the trial judge." *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169, 559 N.E.2d 1301.

{¶ 10} It is well established that a trial court may modify the amount or terms of a spousal support award. *Eckstein v. Eckstein*, 9th Dist. No. 03CA0048-M, 2004-Ohio-724, at ¶ 21. "R.C. 3105.18(E) provides that the trial court may modify the amount or terms of a spousal support order upon a determination that the circumstances of either party have changed, provided that the trial court retained jurisdiction with respect to the spousal support." *Id.*

{¶ 11} In the instant matter, the trial court explicitly reserved jurisdiction to modify the amount and terms of the spousal support. In paragraph 24 of the divorce decree, the court stated that Robert's spousal support obligation was "subject to the continuing jurisdiction of this Court[.]" In paragraph 25 of the divorce decree, the court stated that it "may modify the amount or terms of this spousal support order upon the change of circumstances of a party" pursuant to R.C. 3105.18(E). We think it is clear that the trial court reserved jurisdiction.

[2] {¶ 12} We also find that a change in circumstances occurred. "[A] change in circumstances includes, but is not limited to, any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses." *Malizia v. Malizia*, 9th Dist. No. 22565, 2005-Ohio-5186, at ¶ 11, citing R.C. 3105.18(F). Further, this Court has held that "any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses[]" constitutes a change in circumstances. (Quotation omitted). *Kingsolver v. Kingsolver*, 9th Dist. No. 21773, 2004-Ohio-3844, at ¶ 24.

*3 {¶ 13} In the present case, Robert's salary has involuntarily decreased from \$72,000 at the time of the divorce to \$66,500. Additionally, prior to him

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losing his employment in January 2003, Robert's average gross income (including bonuses) was \$107,199. In 2003, Robert's combined income, including unemployment, pro-rated salary from his new employer, and accumulated vacation and sick time from his previous employer, was \$87,090.31. The record indicates that Robert currently makes \$66,500 per year in salary and has not earned any bonuses.

{¶ 14} With regard to Elizabeth, at the time of divorce, the court imputed to her an income of \$10,192 solely for child support calculation purposes. Currently, the record indicates that Elizabeth has increased her income to \$24,481.60. According to her 2003 W2 form, Elizabeth's 2003 income was \$22,415.

{¶ 15} It is clear to this Court that the trial court reserved jurisdiction to modify the amount and term of the spousal support upon a change in circumstances and it is equally clear that a change in circumstances did occur. Accordingly, the trial court had the authority to modify the spousal support order regardless of this Court's opinion in *Schaaf v. Schaaf* (Dec. 24, 1997), 9th Dist. No. 2652-M.

[3] {¶ 16} This result is logical. The fact that this Court affirmed the amount and term of the original spousal support order does not bar a trial court from reevaluating the order upon a showing of a change in circumstances. The law of the case doctrine provides that the "decision of a reviewing court remains the law of the case in all subsequent proceedings. However, the law of the case doctrine is limited to decisions by the trial court which involve substantially the same facts and issues as were involved in the prior appeal [.]" (Quotations and citations omitted). *Schrader v. Schrader* (Sept. 29, 1999), 9th Dist. No. 2899-M, at 2.

{¶ 17} In the present case, because the change in circumstances occurred after the original appeal, the trial court's decision did not involve the same facts and issues as the original appeal. See *Id.* (finding that the law of the case doctrine did not apply where the increase in income occurred after the original appeal). To preclude a trial court from reevaluating

a spousal support award upon a showing of a change in circumstances would entirely contradict R.C. 3105.18(E) and this Court's precedents.

{¶ 18} Therefore, we find that the trial court did err when it misapplied the law of the case doctrine. However, the fact that the trial court erred in relying on the law of the case doctrine does not justify a reversal by this Court.

{¶ 19} It is well established in Ohio that "a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as a basis thereof." *State ex rel. Carter v. Schotten* (1994), 70 Ohio St.3d 89, 92, 637 N.E.2d 306. Further, this Court has held that "an appellate court shall affirm a trial court's judgment that is legally correct on other grounds, that is, one that achieves the right result for the wrong reason, because such an error is not prejudicial." (Citation omitted). *Cook Family Invests. v. Billings*, 9th Dist. Nos. 05CA008689 & 05CA008691, 2006-Ohio-764, at ¶ 19.

*4 [4] {¶ 20} While the trial court mistakenly believed it was precluded from modifying the spousal support award by the law of the case doctrine, that belief was not the sole reason for reversing the magistrate's decision regarding the duration of the spousal support. It is well recognized that Ohio courts have validated open ended or lifetime spousal support awards in cases "involving a marriage of long duration, parties of advanced age, or where a homemaker-spouse has little opportunity to develop meaningful employment outside the home." *Schieve v. Schieve*, 9th Dist. No. 05CA0037-M, 2005-Ohio-5190, at ¶ 14, citing *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 554 N.E.2d 83, paragraph one of the syllabus. In *Bowen v. Bowen* (Feb. 9, 1999), 132 Ohio App.3d 616, 725 N.E.2d 1165, this Court held that a marriage of twenty years constituted a marriage of long duration and the trial court did not abuse its discretion in granting an indefinite award. *Id.* at 627, 725 N.E.2d 1165.

{¶ 21} In the present case, the trial court considered the above principles and precedents in addition to its conclusion that law of the case

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doctrine was controlling. The court concluded that Robert and Elizabeth's 26 year marriage was of long duration, that Elizabeth was fifty five years old and that Elizabeth had limited earning potential because of she had devoted most of her time during the marriage to caring for the family. These facts are sufficient by themselves to warrant an indefinite spousal support award under our precedents. In addition, the trial court also took into consideration the factors enumerated in R.C. 3105.18(C) and (F), all of which were appropriate to consider when examining the duration of spousal support.

{¶ 22} Accordingly, this Court cannot conclude that the trial court abused its discretion when it reversed the magistrate's decision to impose a termination date and reinstated the indefinite award.
FN2

FN2. The trial court retained the termination clauses regarding Elizabeth's remarriage, cohabitation or death.

{¶ 23} Robert's first assignment of error lacks merit.

Assignment of Error Number Two

"THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO EITHER TERMINATE THE INDEFINITE LIFETIME SPOUSAL SUPPORT AWARD, OR TO DRASTICALLY REDUCE BOTH THE DURATION AND AMOUNT OF APPELLANT EX-HUSBAND'S MONTHLY SPOUSAL SUPPORT OBLIGATION, WHERE IT CORRECTLY FOUND THAT A SUBSTANTIAL CHANGE IN CIRCUMSTANCES HAD OCCURRED SINCE THE PARTIES' DIVORCE."

{¶ 24} In his second assignment of error, Robert has argued that the trial court erred when it failed to terminate or "drastically reduce" his spousal support obligation in response to his change in circumstances. Robert has specifically argued that the court abused its discretion when it modified his spousal support obligation to \$800 per month

instead of terminating or significantly reducing both amount and duration of the spousal support. Robert has further argued that the trial court erred when it deemed the magistrate's miscalculation of Elizabeth's monthly expenses as harmless and when it found that Robert's financial mismanagement was supported by the evidence.

*5 {¶ 25} As discussed above, this Court reviews a trial court's decision regarding the modification of spousal support under an abuse of discretion standard. *Barrows* at ¶ 4. An abuse of discretion connotes more than a mere error in judgment; it signifies an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. It is well established that before a trial court may modify the amount or terms of spousal support, it must conduct a two-step analysis. *Leighner v. Leighner* (1986), 33 Ohio App.3d 214, 215, 515 N.E.2d 625. First, the court must determine whether the original divorce decree specifically authorized the trial court to modify the spousal support, and if so, whether either party's circumstances have changed. *Kingsolver* at ¶ 11, citing *Leighner*, 33 Ohio App.3d at 215, 515 N.E.2d 625; See R.C. 3105.18(E). Second, the trial court must evaluate the appropriateness and reasonableness of the award. *Barrows* at ¶ 7, citing R.C. 3105.18(C)(1).

{¶ 26} As discussed in Robert's first assignment of error, we find that the trial court maintained jurisdiction to modify the spousal support and that a change in circumstances occurred. Therefore, the first step of our analysis is satisfied. Accordingly, we will address whether the modification at issue was appropriate and reasonable.

{¶ 27} When determining whether spousal support is reasonable, a trial court must consider the factors enumerated in R.C. 3105.18(C)(1). See *Kingsolver* at ¶ 12. It is apparent from the record, that the magistrate and the trial court considered the factors. Pertinent to this appeal are the following:

- "(a) The income of the parties * * *
- "(b) The relative earning abilities of the parties;
- "(c) The ages and the physical, mental, and emotional conditions of the parties;

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- “(d) The retirement benefits of the parties;
- “(e) The duration of the marriage;
- ***
- “(h) The relative extent of education of the parties;
- “(i) The relative assets and liabilities of the parties *
- ***
- ***
- “(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.” R.C. 3105.18(C)(1).

{¶ 28} The record indicates the following regarding the above factors: Robert has a current income of \$66,500 not including potential bonuses. Elizabeth's income is approximately \$24,000. While Robert is an experienced, successful, college educated business man, Elizabeth was a stay at home wife and mother with no appreciable skills who has secured a job as a patient service representative at the Cleveland Clinic earning \$11.77 per hour. Robert has significantly more earning potential than Elizabeth. Elizabeth is 55 years old and suffers from a form of lupus. She has been diagnosed with Grave's disease and participated in radiation therapy. Robert is by all accounts in good health.

*6 {¶ 29} The record indicates that while Robert's retirement accounts have decreased in value, they are still valued at approximately \$242,000. Additionally, Robert had maintained a 401k plan through his new employer valued at \$15,466.66. Conversely, Elizabeth pays \$96.52 per payday into her 401k which is valued at \$13,431. As noted above, the marriage lasted 26 years and is considered to be of long duration. Additionally, the record reflects that Robert earns \$66,500 per year and has monthly expenditures of \$2,000. Elizabeth earns approximately \$24,000 and has monthly expenses of \$2,275.

{5} {¶ 30} Robert has argued that the trial court erred when it held that if the magistrate's finding that Elizabeth's expenses equaled approximately \$2,100 was error, it was harmless. Robert has based this argument upon Elizabeth's answers to

interrogatories and hearing testimony, that her actual expenses were \$1,159. Effectively, Robert has argued that taking into consideration the magistrate's miscalculation, Elizabeth retains an additional \$1,000 per month. In light of those extra funds, it is Robert's implied contention that Elizabeth no longer needs spousal support.

{¶ 31} However, need is not the basis for a spousal support award. *Bowen*, 132 Ohio App.3d at 626, 725 N.E.2d 1165. As such, “spousal support can be reasonable even if it exceeds the payee's need.” (Quotation omitted). *Lewis v. Lewis*, 7th Dist. No. 04 JE 8, 2005-Ohio-1444, at ¶ 30. Because Elizabeth's monthly expenditures are not dispositive of the issue, we cannot say, based upon the evidence in the record, that the trial court abused its discretion when it found that the magistrate's error, if any, was harmless.

{6} {¶ 32} Robert has also argued that the trial court erred when it found that Robert's financial mismanagement was supported by the evidence. We disagree. Robert is likely correct in his assertion that his devalued retirement investments were largely due to market forces as opposed to financial mismanagement. However there is evidence in the record to substantiate that Robert has poorly managed his earnings and general finances since the divorce. Most glaring were the substantial arrearages in his child support payments and the continued arrearages in spousal support. As of July 31, 2004, records indicate that Robert owed \$9,025.10 in spousal support arrearages and had only paid off his child support arrearages since his youngest child's emancipation in 2002.

{¶ 33} Additionally, there is the fact that Robert earned on average over \$100,000 per year from 1997-2003, yet has absolutely nothing to show for it. He has no assets to speak of and has a poor credit rating. While this Court recognizes that Robert was out of work for six months, this relatively short period of unemployment does not explain his alleged poor financial condition. The record has established that since the divorce, Robert has earned approximately five times more income per year than Elizabeth and yet, has done less with more.

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*7 [7] {¶ 34} Given the fact that Robert currently earns \$66,500 per year irrespective of bonuses, and has monthly expenses of \$2,000, this Court is hard pressed to see how, outside of his poor credit and indebtedness due largely to his own failure to pay support payments, Robert is in such dire financial straits to warrant termination of his support obligation. Despite Robert's protestations, the decision of the trial court to reduce the monthly spousal support obligation does in fact reflect the change in his circumstances.

{¶ 35} While Robert's income and assets have decreased, they have not decreased to a level that would warrant termination or "drastic reduction" of spousal support. There exists still an incredible disparity between the two parties' earning potential and the amount of money each respective household is taking in. We find that cutting Robert's spousal support obligation nearly in half adequately reflects Robert's decreased financial position and Elizabeth's increased financial position, and therefore, the modification was reasonable and appropriate.

{¶ 36} Accordingly, this Court finds that the trial court did not abuse its discretion when it modified Robert's spousal support obligation downward to \$800 per month instead of terminating it entirely or drastically reducing both the amount and duration.

{¶ 37} Robert's second assignment of error lacks merit.

III

{¶ 38} Based on the foregoing, Robert's first and second assignments of error are overruled. The judgment of the trial court is affirmed.
 Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this

judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARR, J., BOYLE, J., concur.
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Only the Westlaw citation is currently available.
CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio, Ninth District, Lorain
County.

Truman L. SHULER, Appellant,
v.
Retta Jo SHULER, Appellee.
No. 98CA007093.

Oct. 27, 1999.

David J. Berta, Norcross, Georgia, for Appellant.
Charles F. Adams, Lorain, OH, for Appellee.

DECISION AND JOURNAL ENTRY
WHITMORE, J.

*1 Plaintiff-Appellant Truman Shuler has appealed from a judgment of the Lorain County Court of Common Pleas, Domestic Relations Division, that ordered a property division and spousal support when it granted a divorce between Mr. Shuler and Retta Jo Shuler, Defendant-Appellee. This Court affirms.

I.

Mr. Shuler and Ms. Shuler were married on May 13, 1967, and have two children, now emancipated. On March 16, 1998, the parties were granted a divorce. In its divorce decree, the trial court divided the marital property and ordered Mr. Shuler to pay spousal support to Ms. Shuler for her lifetime. According to the trial court's calculations, the marital property was divided almost equally: \$214,257.00 to Mr. Shuler and \$214,227 to Ms. Shuler. Mr. Shuler has appealed asserting three assignments of error.

II.

A.

THE TRIAL COURT ABUSED THE
DISCRETION AFFORDED IT BY LAW WHEN
IT DECLARED [MR.

In his first assignment of error, Mr. Shuler has argued that the trial court incorrectly awarded him one-hundred percent of his pension plan, only to turn around in the following paragraph and order that fifty percent of the plan's benefits be paid to Ms. Shuler. This argument was waived by counsel at oral arguments, and thus, will not be addressed.

Mr. Shuler further asserted in his first assignment of error that the trial court erred when it reached its final distribution by counting \$3,313.00 in tax refunds and then again counted that amount in its award to Mr. Shuler of Account No. 9247729-08 at Lormet Allied Credit Union, Inc. It appears from the record that the parties stipulated that they were the owners of federal and state income tax returns for 1996 totaling \$3,313.00 which were being held in Account No. 9247729-08. Likewise, the record below indicates the parties stipulated to the existence and ownership of two accounts, Nos. 9247729-08 and 9347729-07 at Lormet Allied Credit Union. The trial court awarded Mr. Shuler the tax refunds and the money in Account 9247729-08, counting both towards Mr. Shuler's \$214,257.00 total. However, these facts alone do not amount to reversible error.

Courts may not examine the valuation and division of particular assets in isolation, but must instead view the entire property division considering the totality of the circumstances. *Jelen v. Jelen* (1993), 86 Ohio App.3d 199, 203, 620 N.E.2d 224. In fact, a trial court enjoys broad discretion in fashioning an equitable division of the parties' marital property. *Middendorf v. Middendorf* (1998), 82 Ohio St.3d 397, 401, 696 N.E.2d 575, citing *Berish v. Berish* (1982), 69 Ohio St.2d 318, 432 N.E.2d 183. On appeal, a trial court's decision will not be disturbed absent an abuse of discretion. *Id.* "Abuse of discretion" is defined as more than an error of

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law or judgment; it implies that the trial court acted in an unreasonable, arbitrary, or unconscionable fashion. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

*2 In the present case, the trial court's minor miscalculation will not impact the payment to Mr. Shuler. The bank will not pay him twice and as a result, Ms. Shuler will suffer no prejudice. Moreover, even if the trial court's distribution had not included the \$3,313.00, it was still almost equal, to wit: \$214,227.00 for Ms. Shuler and \$210,994.00 for Mr. Shuler. Indeed, the trial court's distribution arguably favored Mr. Shuler as he received a greater share of the liquid marital assets and will not be forced to share the larger of the two pensions upon retirement. This Court concludes that the trial court's decision fulfilled the goal of disentangling the economic partnership to the extent possible while preserving a sense of equality overall. In this instance, the trial court's mistake does not disturb the entire distribution's equality. As such, Mr. Shuler's first assignment of error is overruled.

B.

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT MADE AN AWARD OF SPOUSAL SUPPORT IN FAVOR OF [MS.]

In his second assignment of error, Mr. Shuler has argued that the trial court's spousal support was awarded without full consideration of all the relevant circumstances presented in this case. This Court disagrees.

R.C. 3105.18(C)(1) sets forth the factors a court must consider in evaluating whether an award of spousal support is appropriate and reasonable in a given case. *Berthelot v. Berthelot* (Apr. 15, 1998), Summit App. No. 18331, unreported, at 8. Among the factors to consider for spousal support are "the relative education and earning abilities of the parties, the duration of the marriage, the standard of living established during the marriage, and the lost income production capacity of either spouse resulting from that party's marital

id.

Ultimately, domestic relations awards must be fair, equitable and in accordance with the law. *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 94, 518 N.E.2d 1197. An appellate court will reverse a trial court's award of spousal support only when the lower court has abused its discretion. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218, 450 N.E.2d 1140. The burden is upon the challenger to prove that the award was unreasonable, arbitrary or unconscionable. *Kahn v. Kahn* (1987), 42 Ohio App.3d 61, 66, 536 N.E.2d 678. In the instant case, this Court discerns no such abuse.

The trial court found that Ms. Shuler faces special economic problems. She has an eighth grade education and throughout three decades of marriage, she remained a homemaker never seeking employment. According to the record, she is 60 years of age and has significant medical expenses. Ms. Shuler's age, lack of marketable skills and medical problems make it virtually impossible for her to establish a career now.

*3 Nevertheless, Mr. Shuler has attacked the trial court's award of spousal support claiming Ms. Shuler's \$51,500.00 inheritance from her mother was not considered in the court's deliberations. Again, this Court disagrees. In its findings, the trial court specifically addressed Ms. Shuler's inheritance and further noted that such would provide her with an income of approximately \$6,000.00 annually. In light of Ms. Shuler's apparent inability to gain employment and her medical expenses, this Court concludes the trial court considered the both the relevant circumstances and statutory factors, and, in the end, reached a just result. Mr. Shuler's second assignment of error is not well taken.

C.

THE TRIAL COURT ERRED TO THE PREJUDICE OF [MR.]

In his third assignment of error, Mr. Shuler has complained that the trial court's award of all the

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marital personal property was in error. Nevertheless, courts may not examine the division of particular assets in isolation, but must instead view the entire property distribution considering the totality of the circumstances. *Jelen*, 86 Ohio App.3d at 203, 620 N.E.2d 224. Ergo, it does not matter if particular assets are divided unevenly as long as the entire property distribution is equitable. *Addy v. Addy* (1994), 97 Ohio App.3d 204, 211, 646 N.E.2d 513. Under certain circumstances, an award of all or nearly all the personal property to one party may even be acceptable. *Id.* at 211-12, 646 N.E.2d 513.

In the case at bar, the trial court's division was equitable. The personal property awarded to Ms. Shuler was delineated in the parties' stipulations as marital property. In turn, the trial court awarded Ms. Shuler all of the marital personal property. As the court in *Addy* observed, such action is entirely within the trial court's discretion. Moreover, as determined in the first assignment of error, the trial court's entire distribution was equitable. Thus, in light of the whole distribution, the award of personal property to Ms. Shuler was fair and equitable. Accordingly, this Court holds that that the trial court did not abuse its discretion. Mr. Shuler's third assignment of error is without merit.

III.

Mr. Shuler's assignments of error are overruled. The judgment of the trial court is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of

Appeals at which time the period for review shall begin to run. App.R. 22(E).

*4 Costs taxed to Appellant.

Exceptions.

BAIRD, P.J., and SLABY, J., concur.

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CHAPTER 3105: DIVORCE, ALIMONY, ANNULMENT, DISSOLUTION OF MARRIAGE

3105.01 Divorce causes.

The court of common pleas may grant divorces for the following causes:

- (A) Either party had a husband or wife living at the time of the marriage from which the divorce is sought;
- (B) Willful absence of the adverse party for one year;
- (C) Adultery;
- (D) Extreme cruelty;
- (E) Fraudulent contract;
- (F) Any gross neglect of duty;
- (G) Habitual drunkenness;
- (H) Imprisonment of the adverse party in a state or federal correctional institution at the time of filing the complaint;
- (I) Procurement of a divorce outside this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while those obligations remain binding upon the other party;
- (J) On the application of either party, when husband and wife have, without interruption for one year, lived separate and apart without cohabitation;
- (K) Incompatibility, unless denied by either party.

A plea of res judicata or of recrimination with respect to any provision of this section does not bar either party from obtaining a divorce on this ground.

Effective Date: 10-06-1994

3105.011 Jurisdiction over domestic relations matters.

The court of common pleas including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters. This section is not a determination by the general assembly that such equitable powers and jurisdiction do not exist with respect to any such matter.

October 10, 1991.

(3) Common law marriages that satisfy all of the following remain valid on and after October 10, 1991:

(a) They came into existence prior to October 10, 1991, or come into existence on or after that date, in another state or nation that recognizes the validity of common law marriages in accordance with all relevant aspects of the law of that state or nation.

(b) They have not been terminated by death, divorce, dissolution of marriage, annulment, or other judicial determination in this or another state or in another nation.

(c) They are not otherwise deemed invalid under section 3101.01 of the Revised Code.

(4) On and after October 10, 1991, all references in the Revised Code to common law marriages or common law marital relationships, including the references in sections 2919.25, 3113.31, and 3113.33 of the Revised Code, shall be construed to mean only common law marriages as described in divisions (B)(2) and (3) of this section.

Effective Date: 05-07-2004

3105.13 Repealed.

Effective Date: 06-29-1982

3105.14, 3105.15 Repealed.

Effective Date: 07-01-1971

3105.16 Restoring name before marriage.

When a divorce is granted the court of common pleas shall, if the person so desires, restore any name that the person had before the marriage.

Effective Date: 10-25-1978

3105.17 Complaint for divorce or legal separation.

(A) Either party to the marriage may file a complaint for divorce or for legal separation, and when filed the other may file a counterclaim for divorce or for legal separation. The court of common pleas may grant divorces for the causes set forth in section 3105.01 of the Revised Code. The court of common pleas may grant legal separation on a complaint or counterclaim, regardless of whether the parties are living separately at the time the complaint or counterclaim is filed, for the following causes:

(1) Either party had a husband or wife living at the time of the marriage from which legal separation is sought;

- (2) Willful absence of the adverse party for one year;
- (3) Adultery;
- (4) Extreme cruelty;
- (5) Fraudulent contract;
- (6) Any gross neglect of duty;
- (7) Habitual drunkenness;
- (8) Imprisonment of the adverse party in a state or federal correctional institution at the time of filing the complaint;
- (9) On the application of either party, when husband and wife have, without interruption for one year, lived separate and apart without cohabitation;
- (10) Incompatibility, unless denied by either party.

(B) The filing of a complaint or counterclaim for legal separation or the granting of a decree of legal separation under this section does not bar either party from filing a complaint or counterclaim for a divorce or annulment or obtaining a divorce or annulment.

Effective Date: 10-06-1994

3105.171 Equitable division of marital and separate property - distributive award.

(A) As used in this section:

(1) "Distributive award" means 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, as defined in section 3105.18 of the Revised Code.

(2) "During the marriage" means whichever of the following is applicable:

(a) Except as provided in division (A)(2)(b) of this section, the period of time from the date of the marriage through the date of the final hearing in an action for divorce or in an action for legal separation;

(b) If the court determines that the use of either or both of the dates specified in division (A)(2)(a) of this section would be inequitable, the court may select dates that it considers equitable in determining marital property. If the court selects dates that it considers equitable in determining marital property, "during the marriage" means the period of time between those dates selected and specified by the court.

(3)(a) "Marital property" means, subject to division (A)(3)(b) of this section, all of the following:

(i) All real and personal property that currently is owned by either or both of the spouses, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(ii) All interest that either or both of the spouses currently has in any real or personal property, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(iii) Except as otherwise provided in this section, all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage;

(iv) A participant account, as defined in section 148.01 of the Revised Code, of either of the spouses, to the extent of the following: the moneys that have been deferred by a continuing member or participating employee, as defined in that section, and that have been transmitted to the Ohio public employees deferred compensation board during the marriage and any income that is derived from the investment of those moneys during the marriage; the moneys that have been deferred by an officer or employee of a municipal corporation and that have been transmitted to the governing board, administrator, depository, or trustee of the deferred compensation program of the municipal corporation during the marriage and any income that is derived from the investment of those moneys during the marriage; or the moneys that have been deferred by an officer or employee of a government unit, as defined in section 148.06 of the Revised Code, and that have been transmitted to the governing board, as defined in that section, during the marriage and any income that is derived from the investment of those moneys during the marriage.

(b) "Marital property" does not include any separate property.

(4) "Passive income" means income acquired other than as a result of the labor, monetary, or in-kind contribution of either spouse.

(5) "Personal property" includes both tangible and intangible personal property.

(6)(a) "Separate property" means all real and personal property and any interest in real or personal property that is found by the court to be any of the following:

(i) An inheritance by one spouse by bequest, devise, or descent during the course of the marriage;

(ii) Any real or personal property or interest in real or personal property that was acquired by one spouse prior to the date of the marriage;

(iii) Passive income and appreciation acquired from separate property by one spouse during the marriage;

(iv) Any real or personal property or interest in real or personal property acquired by one spouse after a decree of legal separation issued under section 3105.17 of the Revised Code;

(v) Any real or personal property or interest in real or personal property that is excluded by a valid antenuptial agreement;

(vi) Compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets;

(vii) Any gift of any real or personal property or of an interest in real or personal property that is made after the date of the marriage and that is proven by clear and convincing evidence to have been given to only one spouse.

(b) The commingling of separate property with other property of any type does not destroy the identity of the separate property as separate property, except when the separate property is not traceable.

(B) In divorce proceedings, the court shall, and in legal separation proceedings upon the request of either spouse, the court may, determine what constitutes marital property and what constitutes separate property. In either case, upon making such a determination, the court shall divide the marital and separate property equitably between the spouses, in accordance with this section. For purposes of this section, the court has jurisdiction over all property in which one or both spouses have an interest.

(C)(1) Except as provided in this division or division (E) of this section, the division of marital property shall be equal. If an equal division of marital property would be inequitable, the court shall not divide the marital property equally but instead shall divide it between the spouses in the manner the court determines equitable. In making a division of marital property, the court shall consider all relevant factors, including those set forth in division (F) of this section.

(2) Each spouse shall be considered to have contributed equally to the production and acquisition of marital property.

(3) The court shall provide for an equitable division of marital property under this section prior to making any award of spousal support to either spouse under section 3105.18 of the Revised Code and without regard to any spousal support so awarded.

(4) If the marital property includes a participant account, as defined in section 148.01 of the Revised Code, the court shall not order the division or disbursement of the moneys and income described in division (A)(3)(a)(iv) of this section to occur in a manner that is inconsistent with the law, rules, or plan governing the deferred compensation program involved or prior to the time that the spouse in whose name the participant account is maintained commences receipt of the moneys and income credited to the account in accordance with that law, rules, and plan.

(D) Except as otherwise provided in division (E) of this section or by another provision of this section, the court shall disburse a spouse's separate property to that spouse. If a court does not disburse a spouse's separate property to that spouse, the court shall make written findings of fact that explain the factors that it considered in making its determination that the spouse's separate property should not be disbursed to that spouse.

(E)(1) The court may make a distributive award to facilitate, effectuate, or supplement a division of marital property. The court may require any distributive award to be secured by a lien on the payor's

specific marital property or separate property.

(2) The court may make a distributive award in lieu of a division of marital property in order to achieve equity between the spouses, if the court determines that a division of the marital property in kind or in money would be impractical or burdensome.

(3) If a spouse has engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets, the court may compensate the offended spouse with a distributive award or with a greater award of marital property.

(F) In making a division of marital property and in determining whether to make and the amount of any distributive award under this section, the court shall consider all of the following factors:

(1) The duration of the marriage;

(2) The assets and liabilities of the spouses;

(3) The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage;

(4) The liquidity of the property to be distributed;

(5) The economic desirability of retaining intact an asset or an interest in an asset;

(6) The tax consequences of the property division upon the respective awards to be made to each spouse;

(7) The costs of sale, if it is necessary that an asset be sold to effectuate an equitable distribution of property;

(8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses;

(9) Any other factor that the court expressly finds to be relevant and equitable.

(G) In any order for the division or disbursement of property or a distributive award made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided and shall specify the dates it used in determining the meaning of "during the marriage."

(H) Except as otherwise provided in this section, the holding of title to property by one spouse individually or by both spouses in a form of co-ownership does not determine whether the property is marital property or separate property.

(I) A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court.

(J) The court may issue any orders under this section that it determines equitable, including, but not limited to, either of the following types of orders:

(1) An order granting a spouse the right to use the marital dwelling or any other marital property or separate property for any reasonable period of time;

(2) An order requiring the sale or encumbrancing of any real or personal property, with the proceeds from the sale and the funds from any loan secured by the encumbrance to be applied as determined by the court.

Effective Date: 09-21-2000

3105.18 Awarding spousal support - modification of spousal support.

(A) As used in this section, "spousal support" means any payment or payments to be made to a spouse or former spouse, or to a third party for the benefit of a spouse or a former spouse, that is both for sustenance and for support of the spouse or former spouse. "Spousal support" does not include any payment made to a spouse or former spouse, or to a third party for the benefit of a spouse or former spouse, that is made as part of a division or distribution of property or a distributive award under section 3105.171 of the Revised Code.

(B) In divorce and legal separation proceedings, upon the request of either party and after the court determines the division or disbursement of property under section 3105.171 of the Revised Code, the court of common pleas may award reasonable spousal support to either party. During the pendency of any divorce, or legal separation proceeding, the court may award reasonable temporary spousal support to either party.

An award of spousal support may be allowed in real or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, from future income or otherwise, as the court considers equitable.

Any award of spousal support made under this section shall terminate upon the death of either party, unless the order containing the award expressly provides otherwise.

(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.
- (2) In determining whether spousal support is reasonable and in determining the amount and terms of payment of spousal support, each party shall be considered to have contributed equally to the production of marital income.
- (D) In an action brought solely for an order for legal separation under section 3105.17 of the Revised Code, any continuing order for periodic payments of money entered pursuant to this section is subject to further order of the court upon changed circumstances of either party.
- (E) If a continuing order for periodic payments of money as alimony is entered in a divorce or dissolution of marriage action that is determined on or after May 2, 1986, and before January 1, 1991, or if a continuing order for periodic payments of money as spousal support is entered in a divorce or dissolution of marriage action that is determined on or after January 1, 1991, the court that enters the decree of divorce or dissolution of marriage does not have jurisdiction to modify the amount or terms of the alimony or spousal support unless the court determines that the circumstances of either party have changed and unless one of the following applies:
- (1) In the case of a divorce, the decree or a separation agreement of the parties to the divorce that is incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support.

(2) In the case of a dissolution of marriage, the separation agreement that is approved by the court and incorporated into the decree contains a provision specifically authorizing the court to modify the amount or terms of alimony or spousal support.

(F) For purposes of divisions (D) and (E) of this section, a change in the circumstances of a party includes, but is not limited to, any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses.

(G) If any person required to pay alimony under an order made or modified by a court on or after December 1, 1986, and before January 1, 1991, or any person required to pay spousal support under an order made or modified by a court on or after January 1, 1991, is found in contempt of court for failure to make alimony or spousal support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and shall require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

Effective Date: 03-22-2001; 04-27-2005

3105.19, 3105.20 Repealed.

Effective Date: 07-01-1971

3105.21 Order for disposition, care and maintenance of children.

(A) Upon satisfactory proof of the causes in the complaint for divorce, annulment, or legal separation, the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with section 3109.04 of the Revised Code.

(B) Upon the failure of proof of the causes in the complaint, the court may make the order for the disposition, care, and maintenance of any dependent child of the marriage as is in the child's best interest, and in accordance with section 3109.04 of the Revised Code.

(C) Any court of common pleas that makes or modifies an order for child support under this section shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code. If any person required to pay child support under an order made under this section on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

Effective Date: 03-22-2001

3105.31 Causes for annulment.

information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. The power of attorney may not grant authority to consent to the marriage or adoption of the child. The power of attorney does not affect the rights of the parent, guardian, or custodian of the child in any future proceeding concerning custody of the child or the allocation of parental rights and responsibilities for the care of the child and does not grant legal custody to the attorney in fact.

Effective Date: 07-20-2004

3109.53 Form of power of attorney for residential grandparent.

To create a power of attorney under section 3109.52 of the Revised Code, a parent, guardian, or custodian shall use a form that is identical in form and content to the following:

I, the undersigned, residing at, in the county of, state of, hereby appoint the child's grandparent,, residing at, in the county of, in the state of Ohio, with whom the child of whom I am the parent, guardian, or custodian is residing, my attorney in fact to exercise any and all of my rights and responsibilities regarding the care, physical custody, and control of the child,, born, having social security number (optional), except my authority to consent to marriage or adoption of the child, and to perform all acts necessary in the execution of the rights and responsibilities hereby granted, as fully as I might do if personally present. The rights I am transferring under this power of attorney include the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. This transfer does not affect my rights in any future proceedings concerning the custody of the child or the allocation of the parental rights and responsibilities for the care of the child and does not give the attorney in fact legal custody of the child. This transfer does not terminate my right to have regular contact with the child.

I hereby certify that I am transferring the rights and responsibilities designated in this power of attorney because one of the following circumstances exists:

(1) I am: (a) Seriously ill, incarcerated or about to be incarcerated, (b) Temporarily unable to provide financial support or parental guidance to the child, (c) Temporarily unable to provide adequate care and supervision of the child because of my physical or mental condition, (d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable, or (e) In or about to enter a residential treatment program for substance abuse;

(2) I am a parent of the child, the child's other parent is deceased, and I have authority to execute the power of attorney; or

(3) I have a well-founded belief that the power of attorney is in the child's best interest.

I hereby certify that I am not transferring my rights and responsibilities regarding the child for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by that school or district.

I understand that this document does not authorize a child support enforcement agency to redirect child support payments to the grandparent designated as attorney in fact. I further understand that to have an existing child support order modified or a new child support order issued administrative or judicial proceedings must be initiated.

If there is a court order naming me the residential parent and legal custodian of the child who is the subject of this power of attorney and I am the sole parent signing this document, I hereby certify that one of the following is the case:

- (1) I have made reasonable efforts to locate and provide notice of the creation of this power of attorney to the other parent and have been unable to locate that parent;
- (2) The other parent is prohibited from receiving a notice of relocation; or
- (3) The parental rights of the other parent have been terminated by order of a juvenile court.

This POWER OF ATTORNEY is valid until the occurrence of whichever of the following events occurs first: (1) one year elapses following the date this POWER OF ATTORNEY is notarized; (2) I revoke this POWER OF ATTORNEY in writing; (3) the child ceases to reside with the grandparent designated as attorney in fact; (4) this POWER OF ATTORNEY is terminated by court order; (5) the death of the child who is the subject of the power of attorney; or (6) the death of the grandparent designated as the attorney in fact.

WARNING: DO NOT EXECUTE THIS POWER OF ATTORNEY IF ANY STATEMENT MADE IN THIS INSTRUMENT IS UNTRUE. FALSIFICATION IS A CRIME UNDER SECTION 2921.13 OF THE REVISED CODE, PUNISHABLE BY THE SANCTIONS UNDER CHAPTER 2929. OF THE REVISED CODE, INCLUDING A TERM OF IMPRISONMENT OF UP TO 6 MONTHS, A FINE OF UP TO \$1,000, OR BOTH.

Witness my hand this day of,

State of Ohio)

) ss:

County of

Subscribed, sworn to, and acknowledged before me this day of,

Notices:

1. A power of attorney may be executed only if one of the following circumstances exists: (1) The parent, guardian, or custodian of the child is: (a) Seriously ill, incarcerated or about to be incarcerated; (b) Temporarily unable to provide financial support or parental guidance to the child; (c) Temporarily unable to provide adequate care and supervision of the child because of the parent's, guardian's, or custodian's physical or mental condition; (d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable; or (e) In or about to enter a residential treatment program for substance abuse; (2) One of the child's parents is deceased and the other

Effective Date: 07-20-2004

3109.65 Caretaker authorization affidavit.

(A) Except as provided in division (B) of this section, if a child is living with a grandparent who has made reasonable attempts to locate and contact both of the child's parents, or the child's guardian or custodian, but has been unable to do so, the grandparent may obtain authority to exercise care, physical custody, and control of the child including authority to enroll the child in school, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child by executing a caretaker authorization affidavit in accordance with section 3109.67 of the Revised Code.

(B) The grandparent may execute a caretaker authorization affidavit without attempting to locate the following parent:

(1) If paternity has not been established with regard to the child, the child's father.

(2) If the child is the subject of a custody order, the following parent:

(a) A parent who is prohibited from receiving a notice of relocation in accordance with section 3109.051 of the Revised Code;

(b) A parent whose parental rights have been terminated by order of a juvenile court pursuant to Chapter 2151. of the Revised Code.

Effective Date: 07-20-2004

3109.66 Form of caretaker authorization affidavit.

The caretaker authorization affidavit that a grandparent described in section 3109.65 of the Revised Code may execute shall be identical in form and content to the following:

CARETAKER AUTHORIZTION AFFIDAVIT

Use of this affidavit is authorized by sections 3109.65 to 3109.73 of the Ohio Revised Code.

Completion of items 1-7 and the signing and notarization of this affidavit is sufficient to authorize the grandparent signing to exercise care, physical custody, and control of the child who is its subject, including authority to enroll the child in school, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child.

The child named below lives in my home, I am 18 years of age or older, and I am the child's grandparent.

1. Name of child:

otherwise be incurred or imposed solely as a result of the reliance or action. The person is not subject to any disciplinary action from an entity that licenses or certifies the person. Any medical, psychological, or dental treatment provided to a child in reliance on an affidavit with respect to the child shall be considered to have been provided in good faith if the the person providing the treatment had no actual knowledge of opposition by the parent, guardian, or custodian.

This section does not provide immunity from civil or criminal liability to any person for actions that are wanton, reckless, or inconsistent with the ordinary standard of care required to be exercised by anyone acting in the same capacity as the person.

Effective Date: 07-20-2004

3109.74 Filing with court.

(A) A person who creates a power of attorney under section 3109.52 of the Revised Code or executes a caretaker authorization affidavit under section 3109.67 of the Revised Code shall file the power of attorney or affidavit with the juvenile court of the county in which the grandparent designated as attorney in fact or grandparent who executed the affidavit resides or any other court that has jurisdiction over the child under a previously filed motion or proceeding. The power of attorney or affidavit shall be filed not later than five days after the date it is created or executed and may be sent to the court by certified mail.

(B) A power of attorney filed under this section shall be accompanied by a receipt showing that the notice of creation of the power of attorney was sent to the parent who is not the residential parent and legal custodian by certified mail under section 3109.55 of the Revised Code.

(C)(1) The grandparent designated as attorney in fact or the grandparent who executed the affidavit shall include with the power of attorney or the caretaker authorization affidavit the information described in section 3109.27 of the Revised Code.

(2) If the grandparent provides information that the grandparent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child or previously has been determined, in a case in which a child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication, the court may report that information to the public children services agency pursuant to section 2151.421 of the Revised Code. Upon the receipt of that information, the public children services agency shall initiate an investigation pursuant to section 2151.421 of the Revised Code.

(3) If the court has reason to believe that a power of attorney or caretaker authorization affidavit is not in the best interest of the child, the court may report that information to the public children services agency pursuant to section 2151.421 of the Revised Code. Upon receipt of that information, the public children services agency shall initiate an investigation pursuant to section 2151.421 of the Revised Code. The public children services agency shall submit a report of its investigation to the court not later than thirty days after the court reports the information to the public children services agency or not later than forty-five days after the court reports the information to the public children services agency when information that is needed to determine the case disposition cannot be compiled within

thirty days and the reasons are documented in the case record.

(D) The court shall waive any filing fee imposed for the filing of the power of attorney or caretaker authorization affidavit.

Effective Date: 07-20-2004

3109.75 Verification of filing.

On the request of the person in charge of admissions of a school or a person described under division (A)(1)(b) of section 2151.421 of the Revised Code, the court in which the power of attorney or caretaker authorization affidavit was filed shall verify whether a power of attorney or caretaker authorization affidavit has been filed under section 3109.74 of the Revised Code with respect to a child.

Effective Date: 07-20-2004

3109.76 Second or subsequent power of attorney or affidavit.

If a second or subsequent power of attorney is created under section 3109.52 of the Revised Code regarding a child who is the subject of a prior power of attorney or a second or subsequent caretaker authorization affidavit is executed under section 3109.67 of the Revised Code regarding a child who is the subject of a prior affidavit, the person who creates the power of attorney or executes the affidavit must file it with the juvenile court of the county in which the grandparent designated as attorney in fact or the grandparent who executed the affidavit resides or with any other court that has jurisdiction over the child under a previously filed motion or proceeding.

Effective Date: 07-20-2004

3109.77 Hearing on second or subsequent filing.

(A) On the filing of a power of attorney or caretaker authorization affidavit under section 3109.76 of the Revised Code, the court in which the power of attorney or caretaker authorization affidavit was filed shall schedule a hearing to determine whether the power of attorney or affidavit is in the child's best interest. The court shall provide notice of the date, time, and location of the hearing to the parties and to the parent who is not the residential parent and legal custodian unless one of the following circumstances applies:

- (1) In accordance with section 3109.051 of the Revised Code, that parent is not to be given a notice of relocation.
- (2) The parent's parental rights have been terminated by order of a juvenile court pursuant to Chapter 2151. of the Revised Code.
- (3) The parent cannot be located with reasonable efforts.

Effective Date: 07-20-2004

3109.79 Child support order unaffected by power or affidavit.

As used in this section, "administrative child support order" and "court child support order" have the same meanings as in section 3119.01 of the Revised Code.

A power of attorney created under section 3109.52 of the Revised Code or a caretaker authorization affidavit executed under section 3109.67 of the Revised Code shall not affect the enforcement of an administrative child support order or court child support order, unless a child support enforcement agency, with respect to an administrative child support order, or a court, with respect to either order, issues an order providing otherwise.

Effective Date: 07-20-2004

3109.80 Only one power or affidavit may be in effect at a time.

Only one power of attorney created under section 3109.52 of the Revised Code or one caretaker authorization executed under section 3109.67 of the Revised Code may be in effect for a child at one time.

Effective Date: 07-20-2004

RULE 75. Divorce, Annulment, and Legal Separation Actions

(A) Applicability. The Rules of Civil Procedure shall apply in actions for divorce, annulment, legal separation, and related proceedings, with the modifications or exceptions set forth in this rule.

(B) Joinder of parties. Civ. R. 14, 19, 19.1, and 24 shall not apply in divorce, annulment, or legal separation actions, however:

(1) A person or corporation having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support, may be made a party defendant;

(2) When it is essential to protect the interests of a child, the court may join the child of the parties as a party defendant and appoint a guardian ad litem and legal counsel, if necessary, for the child and tax the costs;

(3) When child support is ordered, the court, on its own motion or that of an interested person, after notice to the party ordered to pay child support and to his or her employer, may make the employer a party defendant.

(C) Trial by court or magistrate. In proceedings under this rule there shall be no right to trial by jury. All issues may be heard either by the court or by a magistrate as the court on the request of any party or on its own motion, may direct. Civ. R. 53 shall apply to all cases or issues directed to be heard by a magistrate.

(D) Investigation. On the filing of a complaint for divorce, annulment, or legal separation, where minor children are involved, or on the filing of a motion for the modification of a decree allocating parental rights and responsibilities for the care of children, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of the parties to the action. The report of the investigation shall be made available to either party or their counsel of record upon written request not less than seven days before trial. The report shall be signed by the investigator and the investigator shall be subject to cross-examination by either party concerning the contents of the report. The court may tax as costs all or any part of the expenses for each investigation.

(E) Subpoena where custody involved. In any case involving the allocation of parental rights and responsibilities for the care of children, the court, on its own motion, may cite a party to the action from any point within the state to appear in court and testify.

(F) Judgment. The provisions of Civ.R. 55 shall not apply in actions for divorce, annulment, legal separation, or civil protection orders. For purposes of Civ.R. 54(B), the court shall not enter final judgment as to a claim for divorce, dissolution of marriage, annulment, or legal separation unless one of the following applies:

(1) The judgment also divides the property of the parties, determines the appropriateness of an order of spousal support, and, where applicable, either allocates parental rights and responsibilities, including payment of child support, between the parties or orders shared parenting of minor children;

(2) Issues of property division, spousal support, and allocation of parental rights and responsibilities or shared parenting have been finally determined in orders, previously entered by the court, that are incorporated into the judgment;

(3) The court includes in the judgment the express determination required by Civ.R. 54(B) and a final determination that either of the following applies:

(a) The court lacks jurisdiction to determine such issues;

(b) In a legal separation action, the division of the property of the parties would be inappropriate at that time.

(G) Civil protection order. A claim for a civil protection order based upon an allegation of domestic violence shall be a separate claim from a claim for divorce, dissolution of marriage, annulment, or legal separation.

(H) Relief pending appeal. A motion to modify, pending appeal, either a decree allocating parental rights and responsibilities for the care of children, a spousal or other support order, shall be made to the trial court in the first instance, whether made before or after a notice of appeal is filed. The trial court may grant relief upon terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party and in the best interests of the children involved. Civ. R. 62(B) does not apply to orders allocating parental rights and responsibilities for the care of children or a spousal or other support order. An order entered upon motion under this rule may be vacated or modified by the appellate court. The appellate court has authority to enter like orders pending appeal, but an application to the appellate court for relief shall disclose what has occurred in the trial court regarding the relief.

(I) Temporary restraining orders.

(1) Restraining order: exclusion. The provisions of Civ. R. 65(A) shall not apply in divorce, annulment, or legal separation actions.

(2) Restraining order: grounds, procedure. When it is made to appear to the court by affidavit of a party sworn to absolutely that a party is about to dispose of or encumber property, or any part thereof of property, so as to defeat another party in obtaining an equitable division of marital property, a distributive award, or spousal or other support, or that a party to the action or a child of any party is about to suffer physical abuse, annoyance, or bodily injury by the other party, the court may allow a temporary restraining order, with or without bond, to prevent that action. A temporary restraining order may be issued without notice and shall remain in force during the pendency of the action unless the court or magistrate otherwise orders.

(J) Continuing jurisdiction. The continuing jurisdiction of the court shall be invoked by motion filed in the original action, notice of which shall be served in the manner provided for the service of process under Civ. R. 4 to 4.6. When the continuing jurisdiction of the court is invoked pursuant to this division, the discovery procedures set forth in Civ. R. 26 to 37 shall apply.

(K) Hearing. No action for divorce, annulment, or legal separation may be heard and decided until the expiration of forty-two days after the service of process or twenty-eight days after the last publication of notice of the complaint, and no action for divorce, annulment, or legal separation shall be heard and decided earlier than twenty-eight days after the service of a counterclaim, which under this rule may be designated a cross-complaint, unless the plaintiff files a written waiver of the twenty-eight day period.

(L) Notice of trial. In all cases where there is no counsel of record for the adverse party, the court shall give the adverse party notice of the trial upon the merits. The notice shall be made by regular mail to the party's last known address, and shall be mailed at least seven days prior to the commencement of trial.

(M) Testimony. Judgment for divorce, annulment, or legal separation shall not be granted upon the testimony or admission of a party not supported by other credible evidence. No admission shall be received that the court has reason to believe was obtained by fraud, connivance, coercion, or other improper means. The parties, notwithstanding their marital relations, shall be competent to testify in the proceeding to the same extent as other witnesses.

(N) Allowance of spousal support, child support, and custody pendente lite.

(1) When requested in the complaint, answer, or counterclaim, or by motion served with the pleading, upon satisfactory proof by affidavit duly filed with the clerk of the court, the court or magistrate, without oral hearing and for good cause shown, may grant spousal support pendente lite to either of the parties for the party's sustenance and expenses during the suit and may make a temporary order regarding the support, maintenance, and allocation of parental rights and responsibilities for the care of children of the marriage, whether natural or adopted, during the pendency of the action for divorce, annulment, or legal separation.

(2) Counter affidavits may be filed by the other party within fourteen days from the service of the complaint, answer, counterclaim, or motion, all affidavits to be used by the court or magistrate in making a temporary spousal support order, child support order, and order allocating parental rights and responsibilities for the care of children. Upon request, in writing, after any temporary spousal support, child support, or order allocating parental rights and responsibilities for the care of children is journalized, the court shall grant the party so requesting an oral hearing within twenty-eight days to modify the temporary order. A request for oral hearing shall not suspend or delay the commencement of spousal support or other support payments previously ordered or change the allocation of parental rights and responsibilities until the order is modified by journal entry after the oral hearing.