

ORIGINAL

IN THE SUPREME COURT OF OHIO

NYATI GUPTA)
)
 Appellee)
)
 v.)
)
 VIVEK R. GUPTA, et al)
)
 Appellants)

On Appeal from the Cuyahoga County
Court of Appeals,
Eighth Appellate District
Court of Appeals Case No. 99005

13-1093

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT VIVEK R. GUPTA

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TABLE OF CONTENTS

	Page
EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.....	1
STATEMENT OF THE CASE AND FACTS.....	2
ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW.....	
<u>PROPOSITION OF LAW NO. I</u>	
Where there are divorce actions filed in two different countries, the action must proceed in the country in which service was first perfected and all judicial orders made by that country must be afforded full faith and credit or comity by the other country.	5
<u>PROPOSITION OF LAW NO. II.</u>	
A litigant is denied due process of law where, in obedience to an order of a court of competent jurisdiction , he does not participate in divorce proceedings in another country, resulting in his being divested of virtually all of the assets acquired during the marriage by the fruits of his labor, ordered to pay all of the debts of the marriage, and ordered to pay indefinite spousal support in an amount which exceeds his annual income.	7
<u>PROPOSITION OF LAW NO. III</u>	
Property must be divided before a determination can be made as to whether it is reasonable and appropriate that spousal support be awarded, and it is plain error for a court to offset alleged arrearages in spousal support against property division and thus alter the taxability of spousal support pursuant to I.R.C. Section 71 and non-taxability of property division pursuant to I.R.C. Section 1041, and to further exacerbate its error by ordering the pre-decree spousal award to continue for an indefinite period post-decree.	10
CONCLUSION.....	15
CERTIFICATE OF SERVICE.....	15
APPENDIX.....	15

**EXPLANATION OF WHY THIS CASE IS OF GREAT PUBLIC OR
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case is of great public or general interest and involves a substantial constitutional question. The application of the jurisdictional priority rule to international divorce actions must be clearly established. Litigants must know that if there are divorce actions filed in two countries, the country in which service is first perfected will be the forum. There must also be clear guidance as to trial courts that a judicial order made by a country of competent jurisdiction must be given full faith and credit or comity by the other country. The general public must be assured that there is a remedy for a divorce litigant who has been deprived of his property without due process of law because he obeyed an order from a court of competent jurisdiction not to participate in the divorce proceedings in another country.

This case will further afford the opportunity to clarify that, whether or not there are two participants in a divorce trial or only one (because the other is following an order by a court of competent jurisdiction not to participate), the application of the statutes applying to division of property and spousal support do not change. Property must first be divided before there can be a determination of whether or not spousal support is reasonable and appropriate. Whether or not there is opposition during the trial, a court may not offset alleged arrearages in spousal support against property division and thus alter the taxability of spousal support and the non-taxability of property division.

The public must also be reassured that a temporary spousal support order made in pre-decree proceedings is an interim order, and if incorrect, will be corrected by the trial court in the final decree of divorce.

STATEMENT OF THE CASE AND FACTS

Appellant and appellee were married on February 15, 1983 in India. Two children were born as issue of the marriage, both of whom were emancipated at the time of trial.

In 2004, the appellant was offered a position with A. T. Kearney (ATK) in India. He accepted the position and moved to India. His paychecks were directed-deposited into appellant and appellee's joint account at Fidelity Investments in Ohio and appellee had control of all these funds.

In October of 2008, the appellant filed in India for a divorce from the appellee. Service was perfected upon the appellee on March 16, 2009. The appellee filed for divorce from the appellant in Ohio on December 30, 2008. Although she knew that the appellant was residing in India, she listed his address on the divorce complaint as 7558 Capilano Drive, Solon, Ohio 44139, an address at which he had not lived since 2004. As a result, service was not perfected upon the appellant until June 1, 2009, some two and one-half months after service upon appellee of the first-filed divorce in India.

On August 10, 2009, appellee filed in the Ohio divorce action her motion for support *pendente lite*. While the affidavit in support of said motion was sworn to by appellee under oath, it contained numerous misrepresentations about income and expenses. Without a hearing, on December 4, 2009, a magistrate's order was filed whereby the appellant was ordered to pay spousal support to the appellee in the sum of \$21,421 per month. The appellee was to pay all of the expenses related to the marital home at 7558 Capilano Drive, Solon, Ohio. The finding in the temporary support order that the appellant's annual gross income was \$460,000.00 was erroneous. On January 22, 2010, appellant filed to set aside the order and for a full hearing

pursuant to Civil Rule 75(N). While Civil Rule 75(N)(2) provides for a hearing within twenty-eight days to modify the order, in the instant case, a full hearing on the issue of temporary support did not begin until February 17, 2011. Appellant traveled all the way from India to be present for the hearing; however, it did not conclude on that date but was rescheduled for May 24, 2011. On May 20, 2011, appellant filed a motion for continuance because temporary support proceedings were pending in India, and his attendance was required. The trial court overruled appellant's motion on May 24, 2011, and the hearing resumed on that date and continued on May 25 and 26, and July 6, 2011. The Magistrate's Decision was filed on October 25, 2011. Appellant filed objections to that decision, which objections were overruled, despite the fact that the evidence was clear from the testimony which appellant had given that his annual earnings at the time of the issuance of the temporary support order were \$152,855.81, not the \$460,000.00 found by the original support magistrate. On June 7, 2010, the parties filed an agreed judgment entry which provided that appellant was to pay \$4,000.00 per month as and for substantial compliance with the Civil Rule 75(N) temporary support order.

The case filed in India and upon which service was first perfected remained pending, and appellee filed in the Family Court at Bandra, Mumbai, M. J. Petition No. A-2437 of 2008 a pleading entitled "Interim Application of the Respondent for Maintenance U S 24 & 25 of Hindu Marriage Act, 1955." In that petition, appellee requested what in India is called "maintenance" (in Ohio, spousal support). What is telling about her pleading is that she signed it on January 10, 2011, over a year after she had already obtained a temporary support order from the Ohio court. Appellee made no reference in her application to the court in India about the Ohio. order which she had already obtained.

Prior to filing her divorce action in Ohio on December 30, 2008, the appellee had withdrawn in excess of one million dollars from the parties' joint Fidelity account, including a \$40,036.66 withdrawal concurrently with the filing of the divorce action. She further withdrew \$150,000.00 from the parties' joint Raymond James account and transferred that \$150,000.00 into a new account in her name only at Home Savings, as well as withdrawing from four different lines of credit at Key Bank the total sum of \$240,730.00, sequestering these funds in numerous Key Bank accounts, making numerous transfers among the accounts and also cash withdrawals. Moreover, the appellee, during the course of the litigation continued to petition the trial court for further withdrawals from the Raymond James account, citing a lack of money with which to meet expenses. A total of approximately \$97,000 was released to appellee from the Raymond James account to meet her alleged living expenses.

The Ohio case was scheduled for trial on February 27, 2012. That same day, counsel for appellant filed with the court a Notice of Ruling of the Supreme Court of India pursuant to the letter of attorney Vikas Mehta, setting forth that the Supreme Court of India had granted a Special Leave Petition (C) No. 6993 of 2012 to stay the Ohio proceedings. Despite this order from the Supreme Court of India, the Ohio court proceeded with the trial. Based upon the demand of the appellant for counsel not to participate in the Ohio proceedings because of the order from the Supreme Court of India, appellant's counsel moved to withdraw as counsel, which motion was granted on February 27, 2012. The trial thus proceeded in the absence of either the appellant or his counsel. On April 12, 2012, a magistrate's decision was filed. The appellant filed his preliminary objections to the magistrate's decision on April 24, 2012. After the transcript had been completed and filed, the appellant filed his supplemental objections to the

magistrate's decision on June 6, 2012.

The trial court granted in part and denied in part appellant's objections. On September 18, 2012, the trial court issued its final judgment entry of divorce divesting appellant of virtually all marital assets and awarding them to the appellee, ordering that all the debt of the marriage, including a claimed obligation to the Internal Revenue Service in the sum of \$1.8 million dollars (although the court made no finding as to the amount of this obligation) be paid by him, and ordering appellant to pay indefinite spousal support to the appellee in the sum of \$21,421 per month. A notice of appeal from said final judgment entry of divorce was filed by appellant on September 28, 2012. On May 30, 2013, the Eighth Appellate District affirmed the decision of the trial court.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. I

Where there are divorce actions filed in two different countries, the action must proceed in the country in which service was first perfected and all judicial orders made by that country must be afforded full faith and credit or comity by the other country.

The record in the instant case reflects that service of the divorce action filed in India was perfected upon the appellee prior to her perfecting service of the Ohio action upon the appellant. Moreover, the appellee on January 10, 2011 invoked the jurisdiction of the court in India, pursuant to the Hindu Marriage Act of 1955, to award her maintenance (spousal support).

The priority of service rule is well established in Ohio both as to venue and jurisdiction. In State ex rel Balson v. Harnishfeger (1978), 55 Ohio St. 2d 38, the Ohio Supreme Court held that where venue is proper in more than one county and there are filings in two different

counties, the county in which service is first perfected will be the forum. Similarly, the jurisdictional priority rule that “as between state courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties.” is well established in Ohio. See State ex rel. Red Head Brass, Inc. v. Holmes County Court of Common Pleas, 1997-Ohio-143. State ex rel. Racing Guild of Ohio v. Morgan (1985), 17 Ohio St.3d 54

The same jurisdictional priority rule should have been applied in the instant case. The Supreme Court of India had issued an order staying the Ohio divorce proceedings. That order was entitled to be given full faith and credit or comity by the Ohio court. It should have suspended the February 27, 2012 trial proceedings as appellant’s counsel had requested. In Kalia v. Kalia, 2002-Ohio-7160, the Eleventh Appellate District upheld the trial court’s finding that “as a matter of Comity between Nations, (151 Ohio App.3d 151)***the Orders of the High Court of Delhi are VALID and should be enforced.”

The appellant obeyed the order from the Supreme Court of India, did not participate in the Ohio trial, and instructed his counsel to withdraw. By obeying this order of the Supreme Court of India, which clearly had jurisdiction over the parties by virtue of the Hindu Marriage Act of 1955 and the perfection of service upon the appellee first, the appellant was stripped of virtually all of the marital assets, was ordered to pay all of the debt, including an obligation to Internal Revenue Service for taxes due on the income which he had used to support his wife and children and to acquire assets, and was ordered to pay spousal support that was neither reasonable nor appropriate for an indefinite period of time. By disobeying the order, the appellee was enriched

by receiving virtually all of the assets of the marriage, was required to pay no debt, received a \$100,000 award toward her attorney fees, and received indefinite spousal support going forward in the sum of \$21,421 per month.

PROPOSITION OF LAW NO. II.

A litigant is denied due process of law where, in obedience to an order of a court of competent jurisdiction, he does not participate in divorce proceedings in another country, resulting in his being divested of virtually all of the assets acquired during the marriage by the fruits of his labor, ordered to pay all of the debts of the marriage, and ordered to pay indefinite spousal support in an amount which exceeds his annual income.

Ohio Revised Code Section 3105.171(C)(1) provides as follows:

“(C)(1) Except as provided in this division of 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.”(Emphasis added)

In his Supplemental Objections filed on June 6, 2012 to the Magistrate’s Decision of April 12, 2012, the appellant set forth the assets which had been accumulated during the marriage, as follows:

<u>Real Estate</u>	<u>Net Equity</u>
(H) Marital home located at 7558 Capilano Drive, Solon, Ohio 44139 - fair market value per appraisal of Anthony Musca - \$1,200,000 Mortgage to IndyMac Mortgage Services	
Balance due as of 3/2/12 -\$946,280.19 net equity in property	\$ 253,719.90
(H) Vacant lot adjacent to marital home (listed for sale by order of 12-23-10)	\$ 150,000.00
(W) Jaipur Real Estate purchase - funds	

transferred from joint Fidelity account for purchase	\$ 300,000.00
<u>Household Furniture and Furnishings</u>	
(H&W) Household furniture and furnishings located in marital home per Wolf's appraisal	\$ 46,665.00
<u>Brokerage After-Tax Account</u>	
(H & W) Raymond James balance as of 1/30/12	\$ 675,478.00
<u>Closely-Held Stock</u>	
(H) A. T. Kearney - 32 shares valued at \$20,100 per share - \$643,200.00	
Loan from ABN/AMBRO collateralized by the stock - \$(145,429.00)	
Net equity in stock	\$ 497,771.00
<u>Retirement Benefits</u>	
(H) A. T. Kearney 401(k) balance 2/6/12	\$ 510,708.00
(H) A. T. Kearney Executive Supplemental	\$ 127,059.00
(H) A. T. Kearney Executive Deferral	\$ 97,378.00
(H) Raymond James IRA balance as of 1/30/12	\$ <u>119,473.00</u>
TOTAL	\$ 2,778,251.90

The liabilities of the parties included an I.R.S. claim for \$1.8 million dollars and a KeyBank claim for \$240,730.00. The KeyBank debt arose from the appellee's withdrawing funds from four different lines of credit during the divorce, sequestering the money in numerous bank accounts in hers and the children's names, transferring monies among those accounts, and then making numerous cash withdrawals.

The appellee was awarded all of the retirement accounts, totaling approximately \$854,618, approximately \$437,597 of the Raymond James after-tax account, and all of the A.T. Kearney stock, the net equity in which was \$497,771. She was not charged with the \$150,000

she had previously withdrawn from the Raymond James account at the time of the divorce filing, the \$40,036.66 she had withdrawn from the Fidelity account concurrently with the divorce filing, nor with the \$240,730.00 she had withdrawn on the KeyBank lines of credit. The court ordered the marital home sold and the equity (of which the court found there was none), divided equally between appellant and appellee. The real estate in India was to be sold and the proceeds divided equally. The court awarded the appellant two non-existent assets; namely, Cambridge Solutions stock in the sum of \$66,667 and HDFC in the sum of \$88,889. There was no evidence in the record that these accounts existed at the time of trial in February of 2012.

Pursuant to Ohio Revised Code Section 3105.171(F)(2), the court in making a division of property and in determining whether to make and the amount of any distributive award is mandated to consider “the assets **and liabilities** of the spouses.” (Emphasis added.)

In Longo v. Longo, 2005-Ohio-2069, the Eleventh Appellate District said that the “equitable division of marital property necessarily implies the equitable division of marital debt.” (Citing O.R.C. 3105.171(F)(2)). The trial court was thus upheld in its order that the income tax liability of the parties was a marital debt to be paid from the assets of the parties. It denied, however, Mr. Long’s cross-assignment of error that the trial court should have also equally divided the interest and penalties on the tax liability as his access to financial resources was restricted by restraining orders and his ex-wife’s financial misconduct.

The starting point for allocating marital property is an equal division of both marital assets and marital debts. Smith v. Smith, 2002-Ohio-5405

The lopsided division of marital assets and non-division of marital debt denied appellant the due process of law to which he was entitled to receive an equitable division of property so as

to be able to enjoy the fruits of his labor during the marriage, including the knowledge that when he could no longer work, he could utilize the retirement benefits he had accumulated during his working years.

PROPOSITION OF LAW NO. III

Property must be divided before a determination can be made as to whether it is reasonable and appropriate that spousal support be awarded, and it is plain error for a court to offset alleged arrearages in spousal support against property division and thus alter the taxability of spousal support pursuant to I.R.C. Section 71 and non-taxability of property division pursuant to I.R.C. Section 1041, and to further exacerbate its error by ordering the pre-decree spousal award to continue for an indefinite period post-decree

The law is clear that the assets are to be divided equally, and if equal is not equitable, then the trial court must make findings of fact to support its division. Ohio Revised Code Section 3105.171(G) ; Brown v. Brown, supra. Ohio Revised Code Section 3105.171(B)(3) provides that the court must make an equitable division of marital property prior to making any award of spousal support to either spouse and without regard to any spousal support so awarded. Then, if spousal support is reasonable and appropriate, an award can be made pursuant to Ohio Revised Code Section 3105.18. The court may not, however, juxtapose what would be taxable temporary spousal support and offset it against non-taxable division of property. Pursuant to Internal Revenue Code Section 1041, it is clear that inter-spousal transfers or transfers incident to a divorce are treated as a gift and are not taxable to the recipient. On the contrary, Internal Revenue Code Section 71 is clear that, in most instances, spousal support is taxable to the recipient and deductible to the payor. If there were, in fact, arrearages in the temporary support order, the payment of them would represent taxable income to the appellee and would be deductible to the appellant. However, the Eighth Appellate District affirmed the trial court's

erroneous offset of these alleged arrearages of \$616,481 against marital assets and in so doing, with the stroke of a pPen, removed \$616,481 of assets which rightfully belonged to the appellant and gave them to the appellee. The trial court attempted to justify this offset by claiming it had utilized pre-tax retirement assets. This was an incorrect finding by the trial court. First of all, the 32 Class A shares of ABN Ambro stock with a net value of \$498,641 were clearly not pre-tax retirement assets. Retirement benefits are specifically classified as property pursuant to Ohio Revised Code Section 3105.171(A)(3)(a)(ii). Moreover, transfers of retirement benefits through QDRO or trustee-to-trustee transfers are not taxable events. It is only if and when any withdrawals are made from the retirement accounts that there are any tax consequences. Thus, the trial court created a situation where appellee will escape paying taxes on this \$616,481 as income pursuant to I.R.C. 71, and appellant will not be able to deduct it pursuant to I.R.C. 215. This unintended tax benefit to appellee is in stark contrast to the loss by the appellant of virtually all of his assets. This offset of property against alleged spousal support arrearages is particularly egregious where there is a remedy provided by Ohio Revised Code Section 3123.21 for the collection of support arrearages. That code section provides that there is to be added to the monthly support order twenty per cent of the current payment, which twenty per cent goes to the pay off of the arrearages.

Moreover, the arrearage determination was incorrect. Without a hearing the court had made a determination that the appellee's annual gross income was \$460,000. Appellee refuted this finding by his testimony and presentation of his current income tax returns. The magistrate nevertheless did not alter the temporary support award. Appellant filed objections to the magistrate's decision of October 2, 2011, which objections were overruled. However, a

temporary support order is just that - temporary. It is an interim order which may be changed at any time before a final decree is issued. It is well-established in Ohio jurisprudence that until a case is final and appealable, all orders entered by the court are interlocutory orders. Mahlerwein v. Mahlerwein (2005), 160 Ohio App. 3d 564. Interlocutory orders are subject to change and may be reconsidered upon the court's own motion or that of a party. Nayman v. Kilbane (1982), 1 Ohio St.3d 269,271. The Eighth Appellate District should have corrected the trial court's erroneous temporary support order and vitiated the arrearages for the following reasons:

1. A hearing on temporary support had been scheduled by the court in India. Thus, appellee was seeking dual orders, one in India, and one in the U.S.
2. The appellant had testified at the temporary support proceedings on February 17, 2011, giving extensive testimony and identifying his tax returns, which were received into evidence. Appellant clearly testified that he earned \$152,855.81 in the tax year which began on April 1, 2009 and ended on March 31, 2010.
3. Appellee's counsel had completed the court-ordered (12-27-10) deposition of the appellant on February 14, 2011, said deposition lasting all day and into the evening, covering some eleven hours. The deposition had been filed by the appellee on October 20, 2011 and as such was part of the Civil Rule 75(N) proceedings and is part of the record herein. The appellant's deposition was consistent with his testimony at the hearing on February 17, 2011 regarding his income.
4. Appellee filed eight motions to show cause. The magistrate erroneously consolidated these motions into a single claim, despite the fact that the motions to show cause argued for different monthly amounts to be paid. Even though the support magistrate correctly "takes notice" of its prior order filed on June 7, 2010 which adopted the parties' agreement that the appellant shall pay a substantial compliance order of \$4,000.00 per month as temporary support and not the \$21,431 per month previously ordered, the arrearage calculation utilized the \$21,431 number.
5. Appellee filed a motion to show cause on January 21, 2010, just over one month after the temporary support order was issued. Only the January 21, 2010 motion alleges nonpayment of \$21,000.00 per month since it preceded the June 7, 2010 agreement for the reduced amount. The other motions to show cause regarding

nonpayment of temporary support filed by appellee all allege non-payment of the \$4,000.00 per month. Thus, it was clear error for the support magistrate to calculate an arrearage using the full \$21,000.00 as the monthly obligation when the appellee moved for relief only from the \$4,000.00 monthly order.

6. Appellee herself failed to comply with the temporary support order of December 4, 2009. Pursuant to said order, appellee was to pay the following:
 - Mortgage payment
 - Real estate taxes
 - Homeowner's insurance
 - Electricity
 - Cable television
 - Telephone (basic monthly charge)
 - Gas/fuel oil/propane
 - Water/sewer
 - Internet service

At a minimum, the court should have deducted the total amount of expenses not paid by appellee from the \$4,000.00 per month agreed order of June 7, 2010. It is noteworthy that the magistrate admitted into evidence drafts of agreed judgment entries reducing the temporary spousal support to \$4,200.00 per month and finding an arrearage of \$94,680.00 "minus any appropriate payments made from August 18, 2009 through April 30, 2011."

Instead of correcting the support magistrate's obvious errors, the trial court exacerbated them, carrying forward the \$21,421 per month spousal support order through March 2, 2012. The trial court also ignored the fact that the appellee had not paid the expenses allocated to her in that order. Under questioning by her own counsel in the trial proceedings on February 27, 2012, the appellee admitted that she had paid these court-ordered expenses up to a certain time but then stopped paying them. On direct examination by her own counsel, appellee testified that she had paid the first mortgage on the Hudson home until November 1, 2009 and on two other mortgages on said home until January 1, 2010. Appellee testified that the Hudson home was sold in

February of 2010.

With respect to the first mortgage on the Solon home to Indymac, on direct examination, the appellee testified that she paid that mortgage until November 1, 2009. As of March 2, 2012, there was a balance due on the Indymac mortgage in the sum of \$946,280.19. Appellee's failure to make the mortgage payments, even though she was court-ordered to do so, caused Indymac to file a foreclosure action in March of 2010.

With respect to the three lines of credit from KeyBank from which the appellee had withdrawn the total sum of \$240,730.00 concurrently with her filing of the divorce action, the appellee testified on direct examination that she had stopped making the payments on those three lines of credit on January 1, 2010. The appellee also testified on direct examination that she had not made a payment on the real estate taxes due on the vacant lot adjacent to the marital home in Solon since January of 2010.

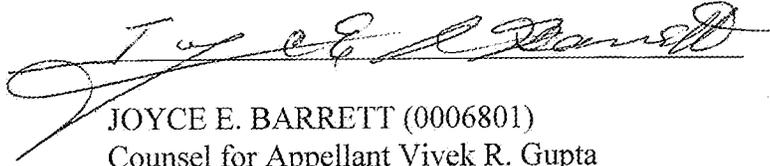
The appellee's non-payment of these court-ordered obligations should have been credited against any alleged temporary support arrearages. The approximate half million dollars to which the appellee had access during the course of the Ohio divorce litigation should also either have been credited against the support arrearages or charged against appellee as a partial division of property.

Moreover, as previously raised by the appellant in his objections to the October, 2011 trial court's decision determining the temporary support arrearages, service of the contempt motion was not properly made. In Hansen v. Hansen, 132 Ohio App.3d 795, 726 N.E. 2d 557 (Ohio App. 1st Dist. 1999), the appellate court held that a contempt motion must be served on the alleged contemnor, not only on his or her attorney.

CONCLUSION

It is respectfully submitted that this Honorable Court grant appellant's Memorandum in Support of Jurisdiction.

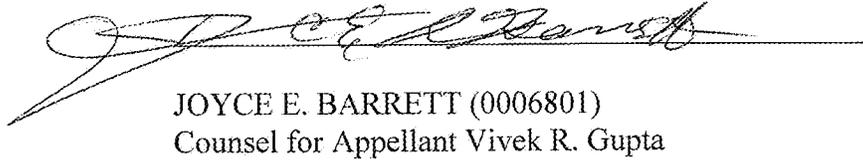
Respectfully submitted,



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Counsel for Appellant Vivek R. Gupta

CERTIFICATE OF SERVICE

A copy of the within Memorandum in Support of Jurisdiction was served upon Jonathan A. Rich, Zashin & Rich Co., LPA, Public Square, 4th Floor, Cleveland, Ohio 44113, by ordinary United States mail this fifth day of July, 2013.



JOYCE E. BARRETT (0006801)
Counsel for Appellant Vivek R. Gupta

APPENDIX

Judgment Entry of the Cuyahoga County Court of Appeals in Case No.
99005 (May 30, 2013)

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99005

NIYATI GUPTA

PLAINTIFF-APPELLEE

vs.

VIVEK R. GUPTA, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-09-329401

BEFORE: Blackmon, J., Stewart A.J., and Kilbane, J.

RELEASED AND JOURNALIZED: May 30, 2013

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PER APP.R. 22(C)

MAY 30 2013

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By  Deputy

PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Vivek R. Gupta ("Vivek") appeals the domestic relations court's decision to proceed with a trial and issue a final judgment entry of divorce to his wife, appellee, Niyati Gupta ("Niyati"). Vivek assigns nine errors for our review.¹

{¶2} Having reviewed the record and pertinent law, we affirm the domestic relations court's decision. The apposite facts follow.

{¶3} On February 15, 1983, Vivek and Niyati were married in India. A year later, Niyati joined Vivek in the United States, where he was attending school. Two children were born of the marriage, both of whom were emancipated at the time of the trial.

{¶4} Niyati, age 50 at the time of trial, graduated from high school and attended college in Delhi, India, where she obtained a Bachelor of Science in Home Sciences in 1980. In April 1982, Niyati obtained a Masters in Home Sciences from the University at Bardo, in India.

{¶5} Vivek, age fifty-five at the time of trial, graduated from high school in India, then received a Bachelors in Engineering from IIT in India. In 1983, Vivek obtained a Masters in Engineering from the University of Oklahoma. Subsequently, in 1989, Vivek obtained a Masters in Business Administration

¹See appendix.

from Cleveland State University. Later, in 1997, Vivek obtained an Executive MBA from Columbia University.

{¶6} For over 20 years, Vivek was employed as a consultant with AT Kearney, an international business consulting firm. Early in the marriage, Niyati worked part-time as a sales associate and later taught fashion design part-time at Kent State University. In 1988, Niyati stopped working to become the primary caretaker for the parties' then school-aged children.

{¶7} Vivek and Niyati maintained an upper class lifestyle for most of their marriage. Both of their children attended private college preparatory schools and both children graduated from the University of Pennsylvania. The family took exotic vacations around the world, had country club memberships, owned two homes in the United States, and, at the time of the trial, two apartments in India were under contract for purchase.

{¶8} In 2004, Vivek accepted an expatriate assignment in India to serve as the managing director of AT Kearney's India operations. After Vivek accepted the position, the parties continued to travel and see each other in the United States and India. On August 31, 2008, Vivek took an unpaid leave of absence from AT Kearney and later resigned to start his own consulting firm.

{¶9} In October 2008, Vivek filed for divorce from Niyati in the Family Court in Mumbai, India. On March 16, 2009, service was perfected on Niyati.

On December 30, 2008, Niyati also filed for divorce from Vivek in Cuyahoga County, Ohio and service would later be perfected on Vivek.

{¶10} On August 10, 2009, Niyati filed a motion for support pendente lite and Vivek was ordered to pay temporary spousal support of \$21,420 per month. In addition, Vivek was ordered to pay the mortgage, real estate taxes, and insurance on the homes in Ohio, make minimum payments on the credit cards and Key Bank line of credit, as well as maintain health insurance coverage for Niyati during the pendency of the action. Niyati would later petition the family court in India for interim maintenance.

{¶11} On December 17, 2009, the parties agreed to dismiss Niyati's complaint for divorce, to re-file it the same day, and to adopt the support order in the newly filed case. On January 22, 2010, Vivek filed a Civ.R. 75(N) motion to set aside the temporary support order and for a full hearing. Pending that hearing, Vivek and Niyati agreed to reduce the temporary support ordered from \$21,420 to \$4,000 per month.

{¶12} On March 11, 2010, Vivek filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Ohio. In response, Niyati filed and was granted a relief from stay to allow the divorce action to proceed. On August 4, 2010, the trial court granted the bankruptcy court's trustee's motion to intervene in the divorce proceeding.

{¶13} After protracted and often contentious motion practices, a full hearing commenced on February 17, 2011 regarding Niyati's various motions to show cause and Vivek's Civ.R. 75(N) motion to set aside or modify the temporary support order. Vivek traveled from India for the hearing, but it was not concluded and was rescheduled to May 24, 2011.

{¶14} Over several days during May through July 2011, the magistrate heard testimony in the matter. At the close of the hearing, the magistrate found Vivek in contempt for his failure to pay temporary spousal support and also found that his arrears, computed as of May 25, 2011, was \$431,104. The magistrate then scheduled the case for trial.

{¶15} On February 27, 2012, the scheduled date of trial, Vivek did not attend, although he had been ordered to appear. Instead, Vivek's counsel presented a letter from an attorney in India indicating that the Supreme Court of India had granted a Special Leave Petition (C) No. 6993 of 2012 to stay the proceedings in Ohio. Vivek's counsel moved the court to excuse her client's absence, but the motion was denied. Vivek's counsel then advised the magistrate she had been instructed not to participate in the trial, and then orally moved to withdraw as counsel.

{¶16} The magistrate denied the motion to withdraw as counsel and proceeded with the hearing. Vivek's counsel refused to make an opening statement, did not object to any testimony, and did not proffer any evidence.

During the hearing, the magistrate recessed to allow Vivek's counsel to take a phone call from Vivek. After the recess, Vivek's counsel advised the magistrate that her client had instructed her not to participate and to withdraw from representation. Thereafter, the magistrate granted Vivek's counsel's motion to withdraw.

{¶17} The trial continued over the next three days without any participation from Vivek. The magistrate heard testimony from the bankruptcy trustee, Waldemar J. Wojcik, from Niyati, from the parties' children, and the deposition testimony of a designated representative of AT Kearney, Vivek's former employer. The magistrate also heard testimony from Niyati's counsel, Jonathan Rich, regarding attorney fees.

{¶18} In addition, the magistrate heard testimony, via Skype, from an appraiser, Chandermohan Mehra, who had been hired to appraise the parties' apartment in Mumbai, India. Further, the magistrate heard testimony on Niyati's two motions for attorney fees, her motion in limine to prevent Vivek from putting on evidence, as well as her motion to show cause, and motion for sanctions.

{¶19} At the conclusion of the trial, the magistrate found, among other things, that Vivek's total temporary support arrearage had grown to \$628,811, because he had failed to pay any of the support ordered. On April 12, 2012, the magistrate filed her decision. Vivek timely filed his objections and later filed

supplemental objections. On September 18, 2012, the trial court granted in part and denied in part Vivek's objections, and issued a final judgment entry of divorce.

Forum

{¶20} Where appropriate, we will address the assigned errors out of sequence.

{¶21} In the first assigned error, Vivek argues the trial court abused its discretion in proceeding with the trial despite the injunction issued by the Supreme Court of India prohibiting the parties from proceeding with the United States divorce action.

{¶22} As a general rule, appellate courts review the propriety of a trial court's determination in a domestic relations case for an abuse of discretion. *Kehoe v. Kehoe*, 8th Dist. No. 97357, 2012-Ohio-3357, 974 N.E.2d 1229, citing *Saari v. Saari*, 195 Ohio App.3d 444, 2011-Ohio-4710, 960 N.E.2d 539 (9th Dist.). Abuse of discretion is more than simply error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶23} In the instant case, Vivek argues that the trial court should have honored the decree² from the Supreme Court of India to stay the trial, because

²The evidence in the record established that the document presented to the trial court was a letter from Vivek's attorney in India that described a stay order. The order described was not presented and is not part of the record.

his complaint for divorce was filed in India prior to Niyati initiating divorce proceedings in Ohio. Vivek also argues that service was perfected on Niyati prior to her perfecting service on him in her complaint for divorce. In short, the court in India had priority. For the sake of argument, we will assume there existed a stay order from the Supreme Court of India.

{¶24} Comity refers to an Ohio court's recognition of a foreign decree and is a matter of courtesy rather than of right. *Rahawangi v. Alsamman*, 8th Dist. No. 83643, 2004-Ohio-4083, citing *State ex rel. Lee v. Trumbull Cty. Probate Court*, 83 Ohio St.3d 369, 374, 1998-Ohio-51, 700 N.E.2d 4; *Walsh v. Walsh*, 146 Ohio App.3d 48, 2001-Ohio-4315, 764 N.E.2d 1103 (11th Dist.). This principle is frequently applied in divorce cases. *Kalia v. Kalia*, 151 Ohio App.3d 145,155, 2002-Ohio-7160, 783 N.E.2d 623 (11th Dist.).

{¶25} Several states of the United States are empowered, if they freely elect to do so, to recognize the validity of certain judicial decrees of foreign governments where they are found by the state of the forum to be valid under the law of the foreign state, and where such recognition is harmonious with the public policy of the forum state, taking into consideration all the relevant facts of the particular case. *Rahawangi, supra*, citing *Yoder v. Yoder*, 24 Ohio App.2d 71, 72, 263 N.E.2d 913 (5th Dist.1970).

{¶26} Here, acknowledging that Vivek first filed his complaint for divorce in India and first perfected service on Niyati, we conclude, after considering all

the relevant facts, that Ohio was a more convenient forum for the proceedings. The record reveals that after the parties married in India in 1983, Niyati joined Vivek in Ohio the following year and it became their home. The parties lived, worked, and raised their children in America. Even after Vivek accepted the expatriate assignment in India, Ohio continued to be the parties' home. Vivek's income was directly deposited into a joint account in Ohio and he was responsible for filing taxes in America.

{¶27} In addition, after Niyati filed her complaint for divorce and service was perfected, Vivek had his motion to dismiss Niyati's complaint denied. Vivek subsequently appeared for hearings, agreed to dismiss the first complaint and to re-file same, and stipulated that the temporary spousal support order would become part of the newly filed complaint.

{¶28} Thus, after almost three years of divorce proceedings in Ohio, albeit proceedings that the record reveals Vivek to be an unwilling participant, it was not an abuse of discretion for the trial magistrate to disregard the purported order of stay from the Supreme Court of India. Accordingly, we overrule the first assigned error.

Temporary Spousal Support Arrearage

{¶29} In the second assigned error, Vivek argues the trial court abused its discretion in finding that he had a total temporary spousal support arrearage of \$616,481 as of March 2, 2012.

{¶30} Initially, we note that the record reveals that although Vivek was ordered to appear for trial, he did not attend. Further, as previously noted, Vivek instructed his counsel not to participate in the trial in any manner. Consequently, Vivek's counsel made no opening statement, made no objections to any testimony, and proffered no evidence. Vivek's decision not to participate in the trial after the magistrate declined to honor the decree of stay from the Supreme Court of India, is fatal to this assigned error and others that follow.

{¶31} A party's failure to object to a magistrate's decision in the trial court waives his right to appeal the matter. *Pletcher v. Pletcher*, 5th Dist. No. CT-2000-0022, 2000 Ohio App. LEXIS 6145 (Dec. 22, 2000), citing *Asad v. Asad*, 131 Ohio App.3d 654, 723 N.E.2d 203 (8th Dist.1999).

{¶32} The record reveals that Vivek had been ordered to pay temporary spousal support of \$21,420 per month during the pendency of the divorce proceedings. Prior to trial, in an entry journalized on October 25, 2011, the trial court had found Vivek in contempt for failure to pay the ordered temporary spousal support and computed the arrears as of May 25, 2011 at \$431,104. At trial, Niyati, without objection, testified that Vivek had not paid any spousal support since the trial court's contempt finding in 2011.

{¶33} Consequently, because a little more than nine months had elapsed, the trial magistrate added \$197,707 (9.23 months @ \$21,420) to \$431,104, Vivek's arrears as of May 25, 2011, for a total of \$628,811. As previously discussed,

Vivek offered no testimony to the contrary. As such, we find no abuse of discretion in the magistrate's finding that the trial court later adopted. Accordingly, we overrule the second assigned error.

Duration of Marriage

{¶34} In the third assigned error, Vivek argues the trial court abused its discretion in its determination that the marriage ended on March 2, 2012, the day of the final divorce hearing.

{¶35} Trial courts possess broad discretion in choosing the appropriate marriage termination date for purposes of property valuation. *Soulsby v. Soulsby*, 4th Dist. No. 07CA1, 2008-Ohio-1019, citing *Berish v. Berish*, 69 Ohio St.2d 318, 432 N.E.2d 183 (1982). Thus, we will not disturb the termination of marriage date absent an abuse of discretion. *Id.* When applying the abuse of discretion standard, a reviewing court is not free to merely substitute its judgment for that of the trial court. *In re Jane Doe I*, 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181 (1991).

{¶36} Under R.C. 3105.171(A)(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.

{¶37} Thus, the court may presume the date of the final hearing for divorce is the appropriate termination date of the marriage unless the court determines that the application of such a date would be inequitable. *See Deacon v. Deacon*, 8th Dist. No. 91609, 2009-Ohio-2491, ¶ 19, citing *O'Brien v. O'Brien*, 8th Dist. No. 89615, 2008-Ohio-1098, ¶ 40, citing *Berish* at 321.

{¶38} In the instant case, we do not find that the trial court abused its discretion in determining the termination date of the marriage was March 2, 2012. The record indicates that after Vivek took the expatriate assignment in India, the parties continued to visit each other monthly, both in India and America. At trial, Niyati testified that they continued to visit each other until late 2008, when she visited India and discovered that another woman was living in their apartment in Mumbai.

{¶39} Niyati also testified that after confronting Vivek, she contacted their son, who flew to India to give her emotional support, and to talk with his father to determine if the marriage could survive. Niyati testified that after the three met, Vivek indicated that the marriage could not continue in the current manner. Vivek then left the apartment.

{¶40} Although the parties lived separately after they filed their respective complaints for divorce, in India and Ohio, their finances remained entangled

throughout the divorce proceedings. We are cognizant that the matter took more than three years to be concluded, but the record indicates that much of the delay can substantially be attributed to Vivek's lack of cooperation. Vivek's lack of cooperation is clearly evident by his failure to appear for trial and his decision to instruct his counsel not to participate in the trial.

{¶41} Under the circumstances, we find no abuse of discretion in the trial court's determination that the marriage ended on the date of the final divorce hearing. Accordingly, we overrule the third assigned error.

Division of Property

{¶42} In the sixth assigned error, Vivek argues the trial court erred in the division of property.

{¶43} Marital property includes property that is currently owned by either or both spouses and that was acquired by either or both of the spouses during the marriage. See R.C. 3105.171(A)(3)(a). Property acquired during a marriage is presumed to be marital property unless it can be shown to be separate. *Huelskamp v. Huelskamp*, 185 Ohio App.3d 611, 2009-Ohio-6864, 925 N.E.2d 167, ¶ 13 (3d Dist.).

{¶44} In dividing the parties' assets in a divorce action, the court starts with the presumption that an equal division of marital assets constitutes an equitable division of the property. *Kapadia v. Kapadia*, 8th Dist. No. 94456, 2011-Ohio-2255, ¶ 24; *Franklin v. Franklin*, 10th Dist. No. 11AP-713, 2012-Ohio-1814,

¶ 3; R.C. 3105.171(C). The trial court must make written findings of fact that support the determination that the marital property has been equitably divided.

Franklin at ¶ 3; R.C. 3105.171(G). The “trial court must indicate the basis for its division of the marital property in sufficient detail to enable a reviewing court to determine whether the award is fair, equitable, and in accordance with the law.”

Franklin at ¶ 4.

{¶45} In the instant case, the court ordered that the division of marital property would be substantially equal. The court also factored in a lump sum payment to Niyati to cover Vivek’s temporary spousal support arrearage and the award of attorney fees. The record includes a chart detailing the division of property, the values of the assets and the outstanding obligation. With the exception of the Cambridge Solutions stock and the value of an HDFC financial account that was awarded to Vivek, everything else was divided evenly between the parties.

{¶46} The record further reveals that in order to effect the lump sum payment of the temporary spousal support arrearage and the award of attorney fees, said sums were deducted from the half interest of assets awarded to Vivek. However, it is clear that the court divided the property substantially equally.

{¶47} Nonetheless, Vivek argues that certain property was not valued correctly. However, Vivek failed to proffer any evidence of alternate valuation, because he declined to participate in the trial. If a party fails to present sufficient

evidence of valuation, they have presumptively waived their right to appeal the distribution of those assets since the trial court can only make decisions based on the evidence presented and is not required to order submission of additional evidence. *Davis v. Davis*, 8th Dist. No. 82343, 2003-Ohio-4657, ¶ 18.

{¶48} Moreover, when a party fails to present evidence as to the value of an item, it is akin to an invited error and that party has waived the right to appeal in regard to that asset. *Tyler v. Tyler*, 8th Dist. No. 93124, 2010-Ohio-1428, ¶ 31. Consequently, Vivek is now barred from asking this court to review the values the court affixed to certain assets.

{¶49} Based on the foregoing, we find no abuse of discretion in the trial court's division of the property. Accordingly, we overrule the sixth assigned error.

Tax Liabilities

{¶50} In the fourth assigned error, Vivek argues the trial court erred in finding that he committed financial misconduct and assessing as a separate debt all the tax liability for tax years 2006 through 2009.

{¶51} The property to be divided in a divorce proceeding includes not only the assets owned by the parties but also any debts incurred by the parties. *Marrero v. Marrero*, 9th Dist. No. 02CA008057, 2002-Ohio-4862, ¶ 43. Marital debt has been defined as any debt incurred during the marriage for the joint

benefit of the parties or for a valid marital purpose. *Ketchum v. Ketchum*, 7th Dist. No. 2001 CO 60, 2003-Ohio-2559, ¶ 47.

{¶52} Additionally, if a party has engaged in financial misconduct, including the dissipation, concealment or nondisclosure of assets, the court may compensate the other party with a distributive award or a greater share of marital assets. R.C. 3105.171(E)(4). *Blacklock v. Blacklock*, 2d Dist. No. 25157, 2012-Ohio-6040.

{¶53} In the instant case, the record indicates that Vivek failed to timely file income tax returns for 2006 through 2009. The court found that Vivek's then employer brought his failure to file to his attention, and referred him to the accounting firm of Deloitte and Touche to have them prepared free of charge. Vivek refused to have them prepared. As a result, he was faced with a tax bill in the amount of \$1,851,097.47.

{¶54} Vivek attempted to have the tax bill discharged in bankruptcy court, but was unsuccessful. The bankruptcy trustee testified that Vivek indicated that he subsequently prepared the returns for the tax years in question. The trustee was unable to verify that the returns had been filed, but testified that if filed, it would result in a significant reduction in the tax bill.

{¶55} Here, the tax bill that resulted from Vivek's refusal to timely file four years of tax returns cannot be said to have been incurred for a valid marital purpose. Further, Vivek's refusal to prepare the returns was unnecessary,

because his then employer would have paid to have them prepared. As such, Vivek dissipated marital assets by said refusal and is guilty of financial misconduct.

{¶56} Based on the foregoing, there was no abuse of discretion in allocating the resultant tax bill as Vivek's separate debt. Accordingly, we overrule the fourth assigned error.

Bankruptcy Costs

{¶57} In the fifth assigned error, Vivek argues the trial court abused its discretion in allocating to him all the costs associated with the bankruptcy filing.

{¶58} In the previous assigned error, we discussed Vivek's unsuccessful attempt to get the tax bill discharged in bankruptcy. The bankruptcy trustees testified that Vivek would not be granted a discharge in bankruptcy due to his failure to cooperate and disclose assets at the time of filing, and that there was sufficient assets to pay the liabilities.

{¶59} The court specifically found that Vivek's voluntary and unilateral decision to file bankruptcy added an additional \$32,411 in attorney fees for the bankruptcy trustee and another \$13,000 in trustee commission.

{¶60} Again, the additional expenses incurred because of Vivek's decision to file bankruptcy cannot be said to have been incurred for a valid marital purpose. As such, there was no abuse of discretion in allocating the total cost of the bankruptcy filing to Vivek. Accordingly, we overrule the fifth assigned error.

Spousal Support

{¶61} In the seventh assigned error, Vivek argues the trial court erred and abused its discretion in its award of spousal support.

{¶62} As a general matter, we review spousal support issues under an abuse of discretion standard. See *Dunagan v. Dunagan*, 8th Dist. No. 93678, 2010-Ohio-5232, ¶ 12. So long as the decision of the trial court is supported by some competent, credible evidence going to all the essential elements of the case, we will not disturb it. *Neumann v. Neumann*, 8th Dist. No. 96915, 2012-Ohio-591, citing *Masitto v. Masitto*, 22 Ohio St.3d 63, 66, 488 N.E.2d 857 (1986).

{¶63} In determining whether to grant spousal support and in determining the amount and duration of the payments, the trial court must consider the factors listed in R.C. 3105.18, *Robinson v. Robinson*, 8th Dist. No. 97933, 2012-Ohio-5414. The factors the trial court must consider include each party's income, earning capacity, age, retirement benefits, education, assets and liabilities, and physical, mental, and emotional condition; the duration of the marriage; their standard of living; inability to seek employment outside the home; contributions during the marriage; tax consequences; and lost income due to a party's fulfillment of marital responsibilities. R.C. 3105.18(C)(1)(a)-(m). In addition, the trial court is free to consider any other factor that the court finds to be "relevant and equitable." R.C. 3105.18(C)(1)(n).

{¶64} The trial court is not required to comment on each statutory factor; the record need only show that the court considered the statutory factors when making its award. *Neumann* at ¶ 17, citing *Carman v. Carman*, 109 Ohio App.3d 698, 703, 672 N.E.2d 1093 (12th Dist.1996). If the record reflects that the trial court considered the statutory factors and if the judgment contains detail sufficient for a reviewing court to determine that the support award is fair, equitable, and in accordance with the law, the reviewing court will uphold the award. *Daniels v. Daniels*, 10th Dist. No. 07AP-709, 2008 Ohio App. LEXIS 772 (Mar. 4, 2008), citing *Schoren v. Schoren*, 6th Dist. No. H-04-019, 2005-Ohio-2102.

{¶65} In this matter, the trial court, in pages 8-10 of its analysis, sufficiently addressed each of the factors set forth in R.C. 3105.18 in relation to the evidence presented at trial. The court noted that Vivek began his employment with AT Kearney in 1989 as a business consultant, and in 2004 was transferred to India to work as the managing director of AT Kearney's India operations.

{¶66} The court noted that in 2007, one year prior to filing for divorce, Vivek earned \$1,790,628 and AT Kearney provided him with health, life, and personal liability insurance. Niyati testified that the majority of Vivek's living expenses in India including housing, automobiles, domestic staff, chauffeur, cook, food, and travel were reimbursed by his employer.

{¶67} In addition, the court found that on August 31, 2008, Vivek began a voluntary leave of absence from AT Kearney and that for tax year 2008, he earned \$1,218,854 through the month of August. The court noted that Vivek could have returned to AT Kearney, but voluntarily left to pursue even more lucrative financial opportunities as detailed to his family members verbally and in written emails.

{¶68} Further, the court noted that it was equitable to impute to Vivek the earnings that were commensurate with that he actually earned during his most recent employment with AT Kearney. The court pointed out that it was precisely the earning from tax years 2007 and 2008 that formed the bases of the temporary spousal support. The court again noted that Vivek failed to appear or put forth any evidence that the ordered amount of temporary spousal support should be changed.

{¶69} The court noted that Niyati's earning ability and work history stood in stark contrast to Vivek's. The court stated that Niyati worked part-time for the first five years of the marriage as a sales associate and later worked part-time as a fashion design instructor at Kent State University, but has not worked outside the home since 1988. The court stated that the lost income production capacity that resulted from her marital responsibilities is immense, having stayed home to raise the parties' children. In this respect, the court noted that Niyati would be returning to the work force at age 50 and most likely would

never be able to rehabilitate herself from the lost earning capacity occasioned by the marriage.

{¶70} The court also addressed the relative health of the parties and noted that Niyati's physical condition is complicated by what she characterizes as "frozen shoulders," initial stages of glaucoma and cataracts, sleep apnea, hyperthyroidism, severe arthritis, asthma, allergies, and carpal tunnel syndrome, as well as depression. Again, the court noted that Vivek had put forth no evidence regarding his physical or mental health.

{¶71} In accordance with R.C. 3105.18(C)(1)(e), (g), (i), (j), and (m), the court observed that the parties had been married for 29 years, enjoyed an affluent upper class life style, had substantial assets, interest, and dividends, and that Niyati contributed equally in attaining the marital assets. Pursuant to R.C. 3105.18(C)(1)(l), the court addressed the tax consequences, observing that the spousal support would be a deduction for Vivek and income for Niyati.

{¶72} Finally, pursuant to R.C. 3105.18(C)(2), the court found that Vivek and Niyati contributed equally to the production of the marital income. Based upon all of the foregoing, the trial court awarded Niyati \$21,420 per month in spousal support for life, remarriage or cohabitation, or the death of Vivek.

{¶73} We conclude, the decision of the trial court is well supported in the record, and there is competent, credible evidence going to all of the statutory elements for establishing a spousal support order. Therefore, we find no abuse

of discretion in connection with this award. Accordingly, we overrule the seventh assigned error.

Attorney Fees

{¶74} In the eighth assigned error, Vivek argues the trial court abused its discretion in its award to Niyati of \$100,000 for attorney fees.

{¶75} Our review of the award of attorney fees is limited to determining (1) whether the factual considerations upon which the award was based are supported by the manifest weight of the evidence, or (2) whether the domestic relations court abused its discretion. *Neumann*, 8th Dist. No. 96915, 2012-Ohio-591, at ¶ 6, citing *Gourash v. Gourash*, 8th Dist. Nos. 71882 and 73971, 1999 Ohio App. LEXIS 4074 (Sept. 2, 1999), and *Oatey v. Oatey*, 83 Ohio App.3d 251, 614 N.E.2d 1054 (8th Dist.1992).

{¶76} Pursuant to R.C. 3105.73(A), a court may award all or part of reasonable attorney fees and litigation expenses to either party if the court finds the award equitable. In determining whether such an award is equitable, “the court may consider the parties’ marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate.” R.C. 3105.73(B); *Mlakar v. Mlakar*, 8th Dist. No. 98194, 2013-Ohio-100.

{¶77} In the instant case, the trial court found that the matter was complicated by numerous factors: the international aspect, where Vivek initially

filed for divorce in India; his bankruptcy case; ongoing discovery issues; his contempt findings; his failure to cooperate in the sale of real estate; and his refusal to attend court hearings as ordered by the court.

{¶78} The court also found that Niyati had to file a motion to compel because Vivek refused to answer questions at his deposition regarding his financial accounts and business dealings. In addition, the court found that Vivek's opposition of Niyati's motion to compel was not substantially justified.

{¶79} Here, the court findings indicates that Vivek's failure to cooperate greatly increased the cost of litigation. As such, under the circumstances, the award of attorney fees cannot be deemed unjust. Thus, we find no abuse of discretion in the trial court's decision. Accordingly, we overrule the eighth assigned error.

Admission of Exhibits

{¶80} In the ninth assigned error, Vivek argues the trial court abused its discretion in the admission of certain exhibits into evidence.

{¶81} The decision to admit or exclude evidence lies in the sound discretion of the trial court. Absent an issue of law, this court, therefore, reviews the trial court's decision regarding evidentiary matters under an abuse of discretion standard of review. *Wells v. Wells*, 9th Dist. No. 25557, 2012-Ohio-1392, citing *Jones v. Jones*, 9th Dist. No. 25468, 2011-Ohio-4393, ¶ 7. When applying the abuse-of-discretion standard, a reviewing court may not simply substitute its

judgment for that of the trial court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 1993-Ohio-122, 614 N.E.2d 748 (1993).

{¶82} In the instant case, although ordered to appear for trial, Vivek did not attend and instructed his counsel not to participate in the trial in any manner. Thus, Vivek's counsel made no opening statement, made no objections to any testimony, proffered no evidence, and did not object to the admission of any exhibits.

{¶83} Here, Vivek having made no objection to the admission of the exhibits, he has waived any challenge to the admission of this evidence on appeal, save plain error. *State v. May*, 3d Dist. No. 8-11-19, 2012-Ohio-5128. As previously stated, Vivek's decision not to appear for trial and instruct his counsel not to participate, is fatal. As such, we see no abuse of discretion in the trial court's decision to admit the exhibits into evidence. Accordingly, we overrule the ninth assigned error.

{¶84} Judgment affirmed.

It is ordered that appellee recover from appellant her costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule
27 of the Rules of Appellate Procedure.


PATRICIA ANN BLACKMON, JUDGE

MELODY J. STEWART, A.J., and
MARY EILEEN KILBANE, J., CONCUR

APPENDIX

Assignments of Error

I. The trial court erred and abused its discretion in proceeding with the trial in the absence of jurisdiction and where the Supreme Court of India had issued an injunction prohibiting appellant and appellee from proceeding with the U.S. divorce.

II. The trial court erred and abused its discretion in finding that the appellant had a total arrearage in temporary spousal support of \$616,481.00 as of March 2, 2012.

III. The trial court erred and abused its discretion in its determination that the term "during the marriage" is the period from February 15, 1983 to March 2, 2012.

IV. The trial court erred and abused its discretion in finding that appellant committed financial misconduct and assessing as the separate debt of the appellant any and all tax liabilities resulting from the years 2006, 2007, 2008, and 2009.

V. The trial court erred and abused its discretion in assessing all of the bankruptcy costs to the appellant.

VI. The trial court erred and abused its discretion in the division of property.

VII. The trial court erred and abused its discretion in its award of spousal support.

VIII. The trial court erred and abused its discretion in its award to the appellee of \$100,000.00 as and for attorney fees.

IX. The trial court erred and abused its discretion in admitting certain exhibits into evidence.