

ORIGINAL

IN THE SUPREME COURT OF OHIO

JAMES P. KUHN
APPELLANT,

Case No. 2014-0601

v.

On Appeal from the Guernsey
County Court of Appeals,
Fifth Appellate District

KELLY L. KUHN NKA COTTLE,
APPELLEE

Court of Appeals
Case No. 13-CA-24

MERIT BRIEF OF APPELLANT, JAMES P. KUHN

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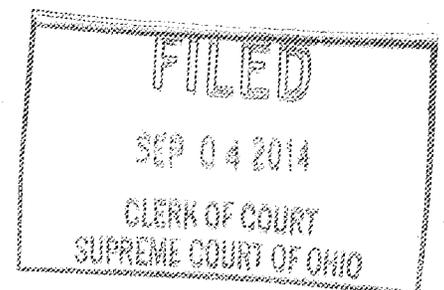


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STATEMENT OF FACTS

On April 19, 2001, Appellant, James P. Kuhn, purchased 24.257 acres more or less, located at 64720 Haught Road, Cambridge, Guernsey County, Ohio for \$30,000.00. All mineral rights were included with the land. (See Mag. Dec. Decree of Divorce at A-6 at page 2, para. 10, hereinafter referred to as "A-6, p.---") Appellant was unmarried at the time he acquired this real estate and the general warranty deed for the real estate was held solely in Appellant's name. (A-6, p. 2, para. 10) A copy of said deed was presented to the Trial Court as a joint exhibit by the parties and marked "Joint Exhibit 1".

Appellant paid \$6,000.00 down on that real estate and financed the remaining \$24,000.00 balance with the First Federal Savings Bank of Eastern Ohio. (A-6, p. 2, para. 11)

On March 13, 2002, Appellant refinanced the existing mortgage and borrowed additional monies from the Caldwell Savings and Loan Co in order to construct a home on the property. Following this refinance, Appellant mortgage liability was \$136,000.00. (A-6, p. 2, para. 11)

On June 3, 2006, Appellant executed a home equity line of credit with Wright-Patt Credit Union in the amount of \$25,000.00 in order to consolidate credit card debt. (A-6, p. 2, para. 13)

None of the above actions were done in anticipation of marriage and, in fact, much of this occurred prior to the parties meeting one another.

After the parties met and began dating, but prior to their marriage, Appellee, Kelly L. Kuhn nka Cottle, paid, from her separate monies, the balance due on the home equity line of credit in the amount of \$18,644.38. (A-6, p. 2, para. 13) This occurred on February 5, 2007.

Subsequently, on February 17, 2007, Appellee paid \$80,000.00 towards the Caldwell Savings and Loan Co. mortgage, again from her separate monies. (A-6, p. 2, para. 14) Appellant agreed that Appellee was entitled to reimbursement of this \$80,000.00 and the payment of that sum by Appellant to Appellee constituted a portion of the settlement terms in this matter.

On March 30, 2007, the parties jointly refinanced the property with Summit Federal Credit Union in the amount of \$47,500.00 which was the amount then remaining on the Caldwell Savings and Loan Co. mortgage. (A-6, p. 3, para. 16)

On May 12, 2007, the parties were married. (A-6, p. 1, para. 2)

The parties paid the remainder of the mortgage during the period of the marriage and, as such, at the time of final divorce hearing in this matter, the real estate was unencumbered. (A-6, p. 3, para. 16)

During the parties' marriage no deed transferring any interest to Appellee was ever executed. (A-6, p. 3, para. 16)

On October 22, 2011, the parties entered into an oil and gas lease with Gulfport Energy Corporation for oil and gas rights to the subject real estate. The lease referred to the parties as "*James P. Kuhn and Kelly L. Kuhn, his wife...(hereinafter called the "Lessor")*". The Memorandum of Oil and Gas Lease

referred to the parties as "*James P. Kuhn and Kelly L. Kuhn, his wife...hereinafter collectively called "Lessor"*". The Memorandum of Oil and Gas Lease and Lease dated 10/22/2011 were submitted to the trial court as joint exhibits by the parties and marked as "Joint Exhibit 12 and Joint Exhibit 13".

The Gulfport lease provided for a per acre signing bonus that totaled \$121,285.00. The lease further provided for a twenty percent royalty interest in the event that oil and gas are produced from the property.

The signing bonus check was issued to the parties on February 16, 2012. That check was issued jointly in the names of both parties. A copy of the check was presented to the trial court as Joint Exhibit 2. The parties jointly negotiated that check and placed the proceeds therefrom in an account pending separation of the parties.

Approximately one month later, on March 19, 2012, Appellant filed a complaint for divorce in the Guernsey County Common Pleas Court. That case was captioned "*James P. Kuhn vs. Kelly L. Kuhn, Case Number 12-DR-140*" on the docket of that court.

During the course of proceedings, the parties entered in to various agreements regarding the division of property. First, and of significant importance, by order filed June 12, 2012, the parties agreed that Appellant would pay to Appellee \$70,000.00 as repayment for much of what she had paid towards the Caldwell Savings and Loan Co. mortgage on the subject real estate.

Thereafter, a final hearing was held before Magistrate Marcia A. Hollins on March 1, 2013. At that time, the parties entered in to further agreement and disposed of all issues except for the disposition and/or division of the \$121,285.00 signing bonus and the rights to any future royalties paid under the oil and gas lease. (A-6, p. 6) Pursuant to that agreement, Appellant agreed to repay Appellee an additional \$10,000.00 to fully compensate her for the monies Appellee had previously paid towards the mortgage. (A-6, p. 6)

The Magistrate's decision was issued March 26, 2013. Within that decision, the Magistrate make extensive findings regarding the Haught Road property and the oil and gas lease related thereto. Specifically, the Magistrate found that there were no documents giving the Wife/Appellee interest in the Haught Road property. (A-6, p. 3, para. 17) The Magistrate therefore found that the subject real estate was Appellant's separate property.

Further, having found the Haught Road property to be Appellant's separate property, the Magistrate continued on to find that no transmutation of that separate property had occurred by virtue of Appellee's various payments as the same had been traced and reimbursed to Appellee. (A-6, p.3, para. 20-21).

Finally, based upon the testimony presented at trial, the Magistrate found that Appellee's arguments that she was entitled to an interest in the oil and gas bonus and/or royalties because her actions in obtaining the lease rendered this an "active" appreciation in the value of the real estate failed. As such, the lease and

the subsequent signing bonus and future royalties were determined to be a passive appreciation of Appellant's separate property. (A-6, p.4, para. 28)

Therefore, the Magistrate found that the full signing bonus and any rights to future royalties were determined to be the sole, separate property of Appellant.

Appellee filed a timely notice of appeal to the Fifth District Court of Appeals. Pursuant to a decision dated January 13, 2014, the Fifth District Court of Appeals affirmed in part and reversed in part the decision of the trial court. (A-3) The appellate court determined that Appellee had been fully reimbursed for her investments in the real estate by agreement of the parties, that no "transmutation" of the property had occurred and, therefore, that Appellee did not acquire a separate property interest in and to the subject real estate property. (A-3, p. 8) Because no transmutation occurred, the appellate court determined that any future royalty rights belonged exclusively to Appellant. (A-3, p. 9)

However, the appellate court found that the signing bonus of \$121,285.00 was "income" received during the marriage. The appellate court found that the oil and gas signing bonus was "just as any other income generated during a marriage" and therefore was subject to division between the parties. (A-3, p. 9) Only within the dissent to the appellate court's opinion was the question of "active or passive" income addressed. (A-3, pp. 11-12)

Appellant filed an Application for En Banc Consideration and Reconsideration in the Fifth District Court of Appeals on February 4, 2014 urging the appellate court to reconsider its decision as it had failed to consider the

application of Ohio Revised Code Section 3105.171(A)(4) and 3105.171(A)(6)(a)(iii) regarding active vs. passive appreciation when rendering its decision.

Pursuant to judgment entries filed March 10, 2014, the appellate court denied both requests. Appellant filed a timely Notice of Appeal and Memorandum in Support of Jurisdiction with this Court on April 16, 2014. By Order dated July 9, 2014, this honorable Court accepted jurisdiction of the case and has agreed to hear this matter.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: Pursuant to Ohio Revised Code Sections 3105.171(A)(4) and 3105.171(A)(6)(a)(iii) passive appreciation and income generated from one spouse's separate, non-marital property is not marital property subject to division between the parties.

Proposition of Law No.2: Where one spouse owns real property in an area experiencing a high volume of oil and gas exploration and leasing, the acquisition and execution of a lease by the property owner is not the result of contribution of labor, money or in-kind contribution such that any income generated from said lease could be considered "active income" pursuant to Ohio Revised Code Section 3105.171 but is instead "passive income" generated from the separate property and therefore is not subject to division between the spouses in an action for divorce.

Ohio Revised Code Section 3105.171(A)(3)(a) defines "marital property" as follows:

Marital property means, subject to division (3)(b)(3) 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...*

ORC 3105.171(A)(3)(b) states simply, "*Marital property*" does not include any separate property."

“Separate property” is thereafter defined in ORC Section 3105.171(A)(6)(a)

as follows:

“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 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) *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.*

Ohio Revised ORC 3105.171(A)(4) defines "Passive Income" as *“income acquired other than as a result of the labor, monetary, or in-kind contribution of either spouse”*.

This Court reviewed the issue of passive vs. active income in *Middendorf v. Middendorf* (1998), 82 Ohio St.3d 397. There, this Court held that ORC Section 3105.171 unambiguously mandates that when either spouse makes a contribution of labor, money, or and in-kind contribution that *causes* an increase in the value of separate property that increase must be considered marital. (emphasis added)

In *Middendorf*, it was determined that the husband's efforts in operating and expanding his stockyard business were what had caused and created the increase in the value thereof. Thus, this Court determined that the increase in value of that business was the result of one party's active participation in the business rather than passive growth and, as such, the additional value created was considered a marital asset that was subject to division between the parties.

Here, the determination of whether the lease signing bonus of \$121,285.00 was *active* or *passive* income generated from Appellant's separate property is of paramount importance. Both the trial court and the Fifth District Court of Appeals determined that the Haught Road property was the separate property of Appellant as he had owned the same prior to the marriage and as all financial contributions made thereto by Appellee had been traced and reimbursed. Specifically, Appellant purchased the real estate more than six (6) years prior to his marriage to Appellee. During the period of the marriage, the deed was never revised or amended in any way. Appellant never executed any deed or other document transferring any of his interest in the real estate to Appellee. Further, pursuant to the terms of the parties' settlement agreement, Appellee was fully reimbursed for the monetary contributions she had made to the real estate mortgages. As the parties were able to identify the contributions made by Appellee and fully reimburse her for those contributions there was no transmutation of the property from Appellant's separate, pre-marital asset in to one in which both parties owned an interest.

Based upon all of these factors, the trial court and appellate courts correctly determined that Appellee was not entitled to any interest under the lease or to any royalties that may be paid thereon.

Despite this determination, and the trial court's finding, the Appellate Court determined that the signing bonus was income generated during the marriage yet failed to address whether that income was *active* or *passive* when making the determination that the same was marital property.

Here, the trial court determined that the signing bonus was passive income as the parties did nothing to generate the income that was derived in the form of the \$121,285.00 signing bonus. That signing bonus was obtained solely because of exploration and development of the Utica Shale formation. All of the actions described by Appellee which she alleged created or generated the interest in the property and the opportunity for this lease, such as going to meetings and obtaining a copy of a recorded document did not *cause* the income...ownership of land within the area being developed did. The location of this land within the Utica Shale development determined its marketability to Gulfport, not any action undertaken by either of these parties.

In fact, the very terms of the lease reflect payment based upon a per acre basis which suggests a passive income based solely upon the amount of land owned by Appellant. There is no evidence within the record or presented to the trial court proved, or even suggested, that the terms of the lease and/or the per acre payment were increased due to the work of Appellee or Appellant. No evidence was

presented to show that either of the parties *caused* the Gulfport Lease to come to fruition or that their actions led to the lease signing. Instead the evidence clearly established that the lease, and therefore the signing bonus were based upon the location of the land and the current oil and gas exploration and nothing more. While the parties took actions to take advantage of the current market conditions (i.e. oil and gas exploration), those actions did not *cause* the signing of the lease.

Quite simply, it was Appellant's mere ownership of the land within the current hot bed of oil and gas exploration that led to Gulfport's interest and the lease that was signed. Had Appellant not owned land in that area, (or if the mineral rights had been reserved by a prior owner, if Appellant had previously executed a lease, etc.) Appellee could have performed all the same actions and recognized no benefit by way of oil and gas lease.

Proposition of Law No. 3: *The signature of a spouse upon a document regarding real estate, which signature is procured solely for the purpose of acknowledging the spouse's dower interest does not create in the non-owner spouse an ownership interest in the subject real estate or in any proceeds and/or benefits obtained from said real estate*

From all evidence presented in this matter, it is clear that Appellee signed the Gulfport lease only as the spouse of Appellant. Under Ohio law, particularly ORC 2103.02, Appellee's signature on the lease was required in order to recognize her dower interest in the real estate.

Ohio Revised Code Section 2103.02 states:

A spouse who has not relinquished or been barred from it shall be endowed of an estate for life in one third of the real property of which the consort was seized as an estate of inheritance at any time during the marriage. Such dower interest shall terminate upon the death of the consort except:

(A) To the extent that any such real property was conveyed by the deceased consort during the marriage, the surviving spouse not having relinquished or been barred from dower therein; ...

Joint trial exhibit 11 as presented by the parties indicated that counsel preparing the lease documents requested Appellee's presence at the lease signing and, ultimately her signature upon the lease, solely in recognition of her dower interest in said property.

The 1099 received reflecting this income also indicates this as, while both names appear thereon, the social security number under which said income was reported to the IRS was only that of Appellant indicating that this was income received by Appellant as his separate property.

Most importantly, the lease itself also makes this clear as the lease never refers to the parties as “*lessors*”. The term “lessors”, as a plural term, would suggest that both Appellant and Appellee were in equal positions and both were vested with authority and ownership interest sufficient to allow them enter in to the lease regarding the real estate. Instead, the lease consistently refers to the parties as “James P. Kuhn and Kelly L. Kuhn, his wife,...(hereinafter called *the “Lessor”*)” This *singular* designation of “Lessor” as opposed to use of the plural term “Lessors” clearly indicates that Appellee was not in a position to lease anything. This was Appellant’s lease. Appellee was to, and ultimately did, sign merely as his spouse.

Where, as here, real estate is owned by one spouse independent of the other spouse, leasing companies will require signature of the non-owning spouse in recognition of the right of dower he or she may possess.

By construing the revenue generated from Appellant’s separate property real estate to be marital income subject to division between the parties, the appellate court has essentially created in Appellee an interest in the subject real estate that she did not have prior to her signature being affixed upon the lease. While not vesting an ownership interest in Appellee, the Fifth District’s decision in this matter certainly created an interest in the subject real estate that Appellee did not previously own. Appellee’s only prior interest in the real estate was the right of dower which would not be recognized unless she remained the spouse of Appellant at the time of his death.

Thus, the fifth district's decision in this matter is not only contrary to well settled property law but also against public policy as it has permitted a third party, being the leasing company, to create an interest in property to someone who previously had no such interest.

In order to execute the lease and obtain the signing bonus, Appellant was required to obtain the signature of his spouse (Appellee) on the leasing documents. Should this decision stand and the leasing companies continue to require non-owner spouses to sign the leasing documents, owners of real estate may continue to inadvertently, and involuntarily, transfer interests in his/her separate property to his/her spouse when such is not the intention.

Proposition of Law No. 4: *Where no abuse of discretion is shown, a reviewing court may not modify or reverse a trial court's decision regarding property division*

Absent a showing of abuse of discretion, a reviewing court may not modify or reverse a trial court's property division. *Cherry v. Cherry* (1981), 66 Ohio St.2d 348 (*superseded by statute on other grounds*). In order to find an abuse of that discretion, the court must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

Here, there was no finding by the Appellate Court that the trial court had committed any abuse of discretion. This was recognized within the dissent to the majority opinion. In fact, the trial court in this matter made very extensive and detailed findings of fact and conclusions of law. Those findings included review and determination of whether the Haught Road property was separate or marital property, whether transmutation had occurred based upon Appellee's payments towards the various mortgages that encumbered that real estate and Appellee's claims that the signing bonus was active income due to her labor, monetary, or in-kind contributions.

In its review of this matter, the Appellate Court failed to follow the long established precedent of this state and reversed the trial court's decision despite there being no showing of an abuse of discretion. As such, the Appellate Court's decision was in error and must be reversed.

CONCLUSION

Based upon the foregoing, Appellant respectfully requests that Court determined that this matter involves an issue of great general or public interest and therefore accept the appeal in this matter and enter judgment summarily finding that the income derived from the separate property of Appellant, while income generated during the marriage, was the result of passive appreciate of the property and is therefore Appellant's separate property, not marital property subject to division and determining that Appellee's signature upon the lease documents did not create in her any interest in the real estate, lease and/or proceeds derived from that lease. In the alternative, Appellant respectfully requests that the appeal in this matter be accepted and the Court order the case be briefed.

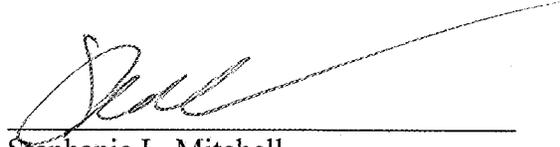
Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a true copy of the foregoing MERIT BRIEF OF APPELLANT upon Counsel for Defendant-Appellant, Attorney Robert Roe Fox, 388 South Main Street, Suite 402, Akron, Ohio 44311 by regular U.S. Mail, postage prepaid this 4th day of September 2014.



Stephanie L. Mitchell
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COUNSEL FOR APPELLANT,
JAMES P. KUHN

Appendix

14-0601

IN THE SUPREME COURT OF OHIO

14-0601

JAMES P. KUHN
APPELLANT,

On Appeal from the Guernsey
County Court of Appeals,
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v.

KELLY L. KUHN NKA COTTLE,
APPELLEE

Court of Appeals
Case No. 13-CA-24

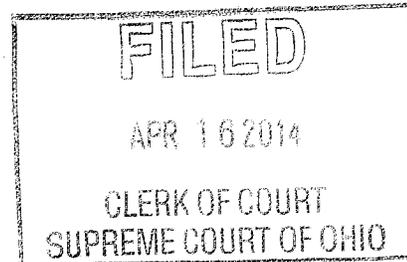
NOTICE OF APPEAL OF APPELLANT JAMES P. KUHN

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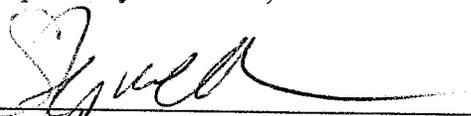
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NOTICE OF APPEAL OF APPELLANT JAMES P. KUHN

Appellant, James P. Kuhn, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Guernsey County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case No. 13-CA-24 on March 10, 2014.

This case is one of public or great general interest.

Respectfully submitted,



Stephanie L. Mitchell
TRIBBIE, SCOTT, PLUMMER & PADDEN
COUNSEL FOR APPELLANT,
JAMES P. KUHN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a true copy of the foregoing NOTICE OF APPEAL upon Counsel for Defendant-Appellant, Attorney Robert Roe Fox, 388 South Main Street, Suite 402, Akron, Ohio 44311 by regular U.S. Mail, postage prepaid this 15th day of April 2014.



Stephanie L. Mitchell
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IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
COURT OF APPEALS

JAN 13 2014

GUERNSEY COUNTY, OHIO
Teresa A. Dankovic, Clerk of Court

JAMES P. KUHN

Plaintiff-Appellee

-vs-

KELLY L. KUHN NKA COTTLE

Defendant-Appellant

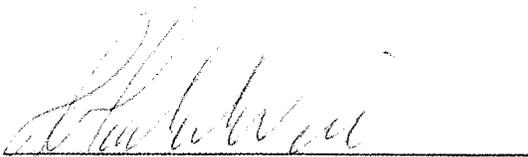
JUDGMENT ENTRY

CASE NO. 13 CA 24

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Guernsey County, Ohio is affirmed in part and denied in part. Costs to be divided equally between the parties.


Hon. Sheila G. Farmer

Hon. W. Scott Gwin



Hon. John W. Wise

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GUERNSEY COUNTY, OHIO
Teresa A. Bankovic, Clerk of Court

JAMES P. KUHN

Plaintiff-Appellee

-vs-

KELLY L. KUHN NKA COTTLE

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 13 CA 24

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. 12-DR-140

JUDGMENT:

Affirmed/Reversed in Part

DATE OF JUDGMENT:

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Farmer, J.

{¶1} On April 19, 2001, appellee, James Kuhn, purchased a property for \$30,000.00. He put \$6,000.00 down and financed the remaining amount with First Federal Savings Bank of Eastern Ohio. The property was deeded in his name only.

{¶2} On March 13, 2002, the mortgage was rolled into a mortgage with Caldwell Savings and Loan Co. in the amount of \$136,600.00 in order to construct a home on the property.

{¶3} On June 3, 2006, appellee executed a home equity line of credit with Wright-Patt Credit Union in the amount of \$25,000.00.

{¶4} On February 5, 2007, appellant, Kelly (Fatheree) Kuhn nka Cottle, paid the balance due on the home equity line of credit in the amount of \$18,644.38. On February 17, 2007, appellant paid \$80,000.00 toward the Caldwell mortgage.

{¶5} On March 30, 2007, appellee, together with appellant, refinanced the property with Summit Federal Credit Union in the amount of \$47,500.00, the amount remaining on the Caldwell mortgage.

{¶6} On May 12, 2007, appellee and appellant were married. The subject property and home became the marital residence. During the course of the marriage, the mortgage was satisfied and the marital residence property was unencumbered by any debt.

{¶7} On October 22, 2011, the parties executed an oil and gas lease with Gulfport Energy Corporation for oil and gas rights to the marital residence property. Both parties were identified as the "lessors." The lease provided for a signing bonus of

\$121,285.00, and twenty percent royalties in the event oil and gas are produced from the property. The signing bonus check was executed on February 16, 2012.

{¶18} On March 19, 2012, appellee filed a complaint for divorce. The parties entered into various agreements and temporary orders. By order filed June 12, 2012, the parties agreed that appellee would pay appellant \$70,000.00.

{¶19} A final hearing before a magistrate was held on March 1, 2013. The parties entered into an agreement on all issues except for the disposition of the oil and gas lease signing bonus check and the rights to any future royalties. By decision filed March 26, 2013, the magistrate determined the marital residence property was appellee's separate property and therefore the signing bonus and the rights to any future royalties under the oil and gas lease were the sole property of appellee. The magistrate noted appellant received \$70,000.00 and appellee agreed to pay appellant an additional \$10,000.00. The trial court adopted the magistrate's decision on same date. Appellant filed objections. By entry filed June 7, 2013, the trial court denied the objections.

{¶10} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶11} "THE TRIAL COURT'S DECISION TO GRANT PLAINTIFF-APPELLEE THE FULL PROCEEDS FROM THE SIGNING BONUS CHECK AND LEASE ROYALTIES WAS NOT SUPPORTED BY CREDIBLE OR SUFFICIENT EVIDENCE AS DEFENDANT-APPELLANT INVESTED SUBSTANTIAL PREMARITAL FUNDS WHICH PROVIDED HER A SEPARATE PROPERTY INTEREST IN SAME."

II

{¶12} "THE TRIAL COURT'S DECISION TO GRANT PLAINTIFF-APPELLEE THE FULL PROCEEDS FROM THE SIGNING BONUS CHECK AND LEASE ROYALTIES WAS NOT SUPPORTED BY CREDIBLE OR SUFFICIENT EVIDENCE AS THESE ASSETS REPRESENT MARITAL PROPERTY ACQUIRED DURING THE MARRIAGE."

I, II

{¶13} Appellant claims the trial court's decision to grant appellee the full proceeds from the signing bonus check and the rights to any future royalties under the oil and gas lease was against the manifest weight and sufficiency of the evidence. Appellant claims she had invested premarital funds in the subject property thereby providing her a separate property interest, and the signing bonus check and the rights to any future royalties constitute marital property acquired during the marriage. We agree in part.

{¶14} R.C. 3105.171(A)(3)(a) defines "marital property" as follows in pertinent part:

(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;

{¶15} R.C. 3105.171(A)(6)(a)(ii) defines "separate property" and includes the following: "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."

{¶16} As noted by the magistrate in her decision filed March 26, 2013 at Findings of Fact Nos. 10 and 11, it is uncontested that appellee purchased the marital residence property prior to the marriage and constructed a home on the property:

10. The real property located at 64720 Haught Road, Cambridge, Ohio, which consists of approximately 24.257 acres, more or less, and which will hereinafter be referred to as the Haught Road property, was acquired by Husband by general warranty deed dated April 19, 2001, for \$30,000. All mineral rights including oil and gas went with the land.

11. Husband paid \$6000 down and secured the other \$24,000 with a mortgage. In 3/13/2002, Husband using an equity line of credit for \$136,000 and with the help of his family and some

subcontractor's, Husband built a home on the real estate. What was left on the original mortgage was rolled over into the line of credit. The only value given for the Haught Road property was \$165,000, from a drive by appraisal for an equity line of credit.

{¶17} Appellant argues she obtained a separate interest in the property when she invested her premarital funds in the property (\$18,644.38 toward a home equity line of credit and \$80,000.00 toward the mortgage). In addition, the property was refinanced during the course of the marriage and appellant's name was included on the note and mortgage. See, Note, Disclosure, Security Agreement attached to Appellant's Brief as Appendix I.

{¶18} Appellee argues the parties agreed to an \$80,000.00 payment to appellant. During the hearing before the magistrate (T. at 5), appellant's attorney explained the following:

***Mr. Kuhn had agreed in the Temporary Orders that he would reimburse to Mrs. Kuhn Eighty Thousand Dollars that we agree she paid on the mortgage before they were married. Seventy Thousand (\$70,000.00) on it has been paid so he still owes her Ten Thousand Dollars (\$10,000.00). That Ten Thousand Dollars (\$10,000.00) will be paid as far as a cash award is concerned or a cash payment is concerned.

{¶19} The magistrate's temporary order filed June 12, 2012 stated the following:

3. That the oil and gas delayed rental/royalty deposit previously ordered held in a joint account by the parties, shall be closed and the funds held in said account shall be divided \$70,000 to the Defendant and the balance in the amount of \$51,419.48 to the Plaintiff. The parties are ordered to forthwith meet at Advantage Bank to close and liquidate said account, consistent with this agreement and order (see attached check copies evidencing closure and distribution of account proceeds.

{¶20} The parties' March 1, 2013 agreement, attached to the magistrate's March 26, 2013 decision as Exhibit A, included the following.

A. Real Estate

1. Haught Road Residence and Premises: The real estate and residence premises located at 64720 Haught Road, Adams Township, Cambridge, Guernsey County, Ohio, presently titled in the name of the Plaintiff, consisting of the Plaintiff's residence and improvements and 24.257 acres more or less, shall be the sole property of the Plaintiff, free and clear of all claims of the Defendant. Any and all mortgage indebtedness on said premises, in excess of the \$142,525 due on the Orchard property financing,

secured by the Haight Road current line of credit, shall be assumed and paid by the Plaintiff and the Plaintiff shall save the Defendant harmless therefrom. The line of credit indebtedness associated with the indebtedness due on the Orchard property/farm shall be paid in accord with subsequent provisions of this agreement. Further the Plaintiff shall pay unto the Defendant, on or before April 22, 2013, the remaining sum of \$10,000.

{¶21} The parties resolved all of their issues regarding the marital residence property save for the issue of the \$121,285.00 signing bonus for the oil and gas lease acquired during the course of the marriage, as well any future royalties.

{¶22} During the hearing, appellant presented evidence of her premarital investments in the property, despite the parties' agreement to reimburse appellant for her contributions.

{¶23} We specifically find the agreed settlement amount for appellant's contributions to the financing of the marital residence property fully resolved the issue of appellant's investments. Therefore, we find "transmutation" of the property did not occur, and appellant did not obtain a separate property interest.

{¶24} The gravamen of this case is whether the oil and gas lease signed by both parties is separate or marital property.

{¶25} The lease provided for a signing bonus of \$121,285.00 and the right to future royalties in the event oil and/or gas is extracted from the property. The lease specifically identifies the lessors as "James P. Kuhn and Kelly L. Kuhn, his wife." The

consideration for the drilling rights was the out-front payment of \$121,285.00 to the lessors. This was "income" received during the marriage and was reportable to the IRS for tax purposes. T. at 52. The 1099 from Gulfport Energy Corporation identified both parties as the recipients of the signing bonus. *Id.*

{¶26} Based on the nature of the payment, we find the \$121,285.00 to be marital property just as any other income generated during a marriage. We find it is divisible as a separate award, half to each party. Because no transmutation occurred, we find any future royalty rights belongs exclusively to the property owner, appellee herein.

{¶27} Upon review, we find the trial court erred in granting the full proceeds of the signing bonus to appellee, but was correct in awarding appellee the rights to any future royalties. The \$121,285.00 is to be divided equally between the parties, and appellee is entitled to any future royalties under the oil and gas lease.

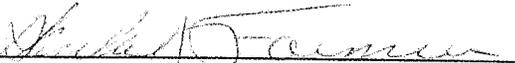
{¶28} Assignment of Error I is denied. Assignment of Error II is granted as to the signing bonus and denied as to any future royalties under the oil and gas lease.

{¶29} The judgment of the Court of Common Pleas of Guernsey County, Ohio is hereby affirmed in part and reversed in part.

By Farmer, J.

Wise, J. concurs separately and

Gwin, P.J. dissents.



Hon. Sheila G. Farmer

Hon. W. Scott Gwin

Hon. John W. Wise

SGF/sg 1210

Gwin, P.J., dissenting

{¶30} I respectfully dissent from the majority's characterization of the \$121,285.00 signing bonus as marital property to be divided equally between the parties.

{¶31} The trial court recognized that the marital residence property was appellee's separate property. The trial court further recognized that the royalties from the oil and gas lease are exclusively appellee's separate property because appellant never acquired any interest in the marital residence property.

{¶32} "Marital property" includes 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. R.C. 3105.171(A)(3)(iii). Thus, when either spouse makes a labor, money or an in-kind contribution that causes an increase in the value of separate property, that increase in value is marital property. Passive income and appreciation acquired from separate property by one spouse during the marriage, however, is separate property. R.C. 3105.171(B)(4). Therefore, because the agreed settlement amount for appellant's contributions to the financing of the marital residence fully resolved the issue of appellant's investments, allocation of the signing bonus can only be characterized as passive income acquired from the separate property of the appellee. Appellant never acquired a "separate property interest." Appellant's signing of the lease agreement could not create a property interest in the marital residence property. She therefore had no interest to convey through the oil and gas lease.

{¶33} The only interest appellant potentially had to convey was a dower interest. R.C. 2103.02. However, a "[d]ower interest arises when property is purchased during a

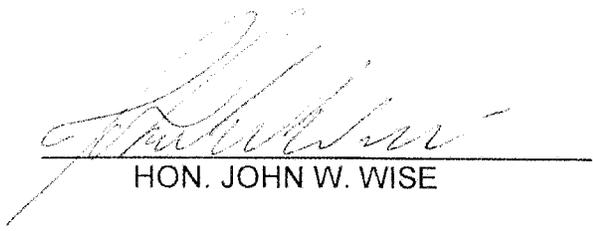
marriage and continues unless the interest is specifically released. * * * Such a release must be done in writing and recorded.' *State ex rel. Miller v. Private Dancer* (1992), 83 Ohio App.3d 27, 30, 613 N.E.2d 1066, 1068." *Ogan v. Ogan*, 122 Ohio App.3d 580, 585, 702 N.E.2d 472(12th Dist 1977); *Accord Jewett v. Feldheiser*, 68 Ohio St. 523, 67 N.E. 1072. The oil and gas lease could not, and, as found by the trial court did not create any interest in appellant in the separate marital residence property of appellee. Thus, appellant could never have a dower interest in appellee's separate property that was not purchased during the marriage.

{¶34} Accordingly, I dissent from that portion of the majority opinion that characterizes the \$121,285.00 signing bonus as marital property to be divided equally between the parties. I would overrule both of appellant's assignments of error and affirm the Court of Common Pleas of Guernsey County decision.


HON. W. SCOTT GWIN

Wise, J., concurring

{¶135} I concur with Judge Farmer's decision to affirm in part and reverse in part. I add my observation, regarding the issue of future royalties on the oil and gas lease, that even though appellee was awarded the subject real estate as his separate property, he agreed in writing in the lease to effectively make appellant a co-lessor. I find this provides at least some evidence of transmutation of the future revenue stream into marital property. However, a trial court's decision on the classification of separate and marital property is generally not reversed unless there is a showing of an abuse of discretion. *See, e.g., Valentine v. Valentine*, (Jan. 10, 1996), Ashland App.No. 95COA01120, citing *Peck v. Peck* (1994) 96 Ohio App.3d 731, 734, 645 N.E.2d 1300. I am therefore not inclined under the circumstances presented to disturb the trial court's ruling as to said future lease royalties.



HON. JOHN W. WISE

MAR 10 2014

GUERNSEY COUNTY, OHIO
Teresa A. Dankovic, Clerk of Court

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO

FIFTH APPELLATE DISTRICT

JAMES P. KUHN

Plaintiff-Appellee

-vs-

KELLY L. KUHN NKA COTTLE

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. 13-CA-24

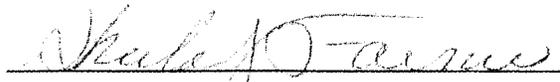
This matter is before this court upon appellee's February 4, 2014 application for en banc consideration in order for this court to secure and maintain uniformity in its decisions.

Under App.R. 26(A)(2)(a), if a majority of the court of appeals judges in an appellate district determine that two or more decisions of the court on which they sit are in conflict, the court "may order that an appeal or other proceeding be considered en banc." Under App.R. 26(A)(2)(b), the applicant "must explain how the panel's decision conflicts with a prior panel's decision on a dispositive issue and why en banc consideration is necessary to secure and maintain uniformity of the court's decisions." According to App.R. 26(A)(2)(a), "[c]onsideration en banc is not favored and will not be ordered unless necessary to secure or maintain uniformity of decisions within the district on an issue that is dispositive in the case in which the application is filed."

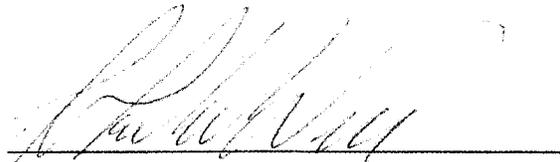
After reviewing the application and the cited cases therein, the application for en banc consideration is denied as no majority in favor of granting the application could be reached.

Appellee's application for reconsideration is denied.

SO ORDERED.



Hon. Sheila G. Farmer



Hon. John W. Wise



Hon. W. Scott Gwin

FILED
COURT OF APPEALS

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO **MAR 10 2014**

FIFTH APPELLATE DISTRICT

GUERNSEY COUNTY, OHIO
Teresa A. Dankovic, Clerk of Court

JAMES P. KUHN

Plaintiff-Appellee

-vs-

KELLY L. KUHN NKA COTTLE

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. 13-CA-24

This matter is before this court upon appellee's February 4, 2014 application for reconsideration of this court's decision entered January 13, 2014.

The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been. *Matthews v. Matthews*, 5 Ohio App.3d 140 (1981).

In his application, appellee argues this court failed to consider three issues: active versus passive income, passive income and separate property, and tax implications.

Upon review, we do not find an obvious error or an issue that was not considered or was not fully considered.

VOL 12 PG 275

Appellee's application for reconsideration is denied.

SO ORDERED.

Shirley J. Turner

J. M. [unclear]

JUDGES

Guernsey County, Case No. 13-CA-24

Gwin, P.J., dissents

For the reasons stated in our opinion, I would grant the motion to reconsider.


HON. W. SCOTT GWIN

**FILED
COMMON PLEAS COURT**

MAR 26 2013

GUERNSEY COUNTY, OHIO
Teresa A. Dankovic, Clerk of Court

IN THE COURT OF COMMON PLEAS
GUERNSEY COUNTY, OHIO

JAMES P. KUHN,

CASE NO. 12DR140

PLAINTIFF,

VS.

KELLY L. KUHN,

MAGISTRATE'S DECISION

DEFENDANT.

This case came before Magistrate Marcia A. Hollins for evidentiary hearing on March 1, 2013, on Plaintiff's Complaint in Divorce and Defendant's Counterclaim. Plaintiff, hereinafter referred to as Husband, appeared with counsel, Attorney Donald D. Brown. Defendant, hereinafter referred to as Wife, appeared with counsel, Attorney Robert Roe Fox.

Exhibit A, attached hereto and incorporated herein by reference as if fully rewritten, is the stipulated agreement of the parties related to the division of assets and liabilities of the marriage, excluding any interest in the oil and gas at the Haught Road property, which was the only issue remaining for the court to decide. Parties were sworn and testimony and evidence was presented.

FINDINGS OF FACT:

1. The court has jurisdiction in this matter as the parties lived the requisite time in the State of Ohio and Guernsey County prior to the filing of the complaint in divorce.
2. Parties were married on May 12, 2007.
3. Parties have no children together and Wife is not pregnant.
4. Parties agree that they are incompatible and request that the court end and terminate the marriage.
5. Parties acknowledged and approved the division of assets and debts which has been reduced to writing and attached as Exhibit A.
6. Excepted from the agreement are the ownership of the oil and gas lease rights, royalties, and Signing Bonus.

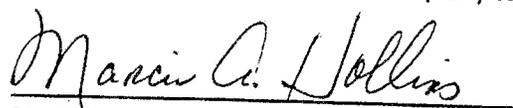
7. The question before the Magistrate is whether the payment of money by Wife on loans secured by the Haught Road property gave Wife any interest in the real property and by extension to the oil and gas lease and royalties or that she is just entitled to her money back.
8. R.C. 3105.171(A)(6)(b) reads: "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."
9. The Fifth District Court of Appeals "held in *Black v. Black* (Nov. 4, 1996), Stark App.No. 1996CA00052, a trial court must ... determine whether transmutation has occurred under the factors set forth in *Kuehn v. Kuehn* (1988), 55 Ohio App.3d 245; i.e., "(1) the expressed intent of the parties, insofar as it can be reliably ascertained; (2) the source of the funds, if any, used to acquire the property; (3) the circumstances surrounding the acquisition of the property; (4) the dates of the marriage, the acquisition of the property, the claimed transmutation, and the breakup of the marriage; (5) the inducement for and/or purpose of the transaction which gave rise to the claimed transmutation; and (6) the value of the property and its significance to the parties." *Hildebrand v. Hildebrand*, 5th Dist. No. CA954, 2003-Ohio-3654
10. The real property located at 64720 Haught Road, Cambridge, Ohio, which consists of approximately 24.257 acres, more or less, and which will hereinafter be referred to as the Haught Road property, was acquired by Husband by general warranty deed dated April 19, 2001, for \$30,000. All mineral rights including oil and gas went with the land.
11. Husband paid \$6000 down and secured the other \$24,000 with a mortgage. In 3/13/2002, Husband using an equity line of credit for \$136,000 and with the help of his family and some subcontractor's, Husband built a home on the real estate. What was left on the original mortgage was rolled over into the line of credit. The only value given for the Haught Road property was \$165,000, from a drive by appraisal for an equity line of credit.
12. It is important to note that the parties had not met and none of the above was done in anticipation of marriage. Parties were married 6 years after Husband acquired the real estate and the divorce was filed 5 years later. Husband testified that Wife asked for a divorce just after the signing bonus for the oil and gas was received. Wife said the marriage had not been good for years.
13. Husband had an additional consolidation of debt through a home equity line of credit at Wright-Patterson Credit Union (6/3/2006) for \$25,000 for credit card debt. Wife paid-off the remaining balance of \$18,644.38 by check dated 2/5/2007, prior to the marriage. However, the Magistrate finds that Husband's testimony that Wife paid the amount off because her daughters by another marriage were also coming to live in the home is credible.
14. Wife further paid \$80,000 on the remaining mortgage on the Haught Road property at Community Savings by check dated 2/17/2007, again prior to the marriage.
15. Husband agrees that Wife is entitled to repayment of the \$80,000; however, Wife believes the payment gives her interest in the real property and by extension to the oil and gas rights. The Magistrate finds no donative intent on Husband's part to give Wife an interest in the real estate and no donative intent on Wife's part to give the Husband \$80,000.

16. The remainder of the mortgage of \$47,802.86 was refinanced at Summit Federal Credit Union with both parties signing as borrowers. This money then paid off the remainder of the mortgage at Community Savings.
17. The Magistrate finds that there are no documents giving Wife interest in the Haught Road property. There was no testimony by either party that Husband ever promised Wife an interest in the property and no testimony that the parties' ever discussed Wife's payment as an investment.
18. There was no transfer of interest to Wife by deed when she paid money on the mortgage prior to marriage; there was no transfer of interest to Wife by deed at the time of marriage and there was no transfer of interest to Wife by deed when the money was borrowed at Summit Federal Credit Union.
19. The Magistrate notes that this is the Wife's third marriage and she cannot nor did she claim ignorance of the process.
20. The fact that the parties can clearly trace all of the money is evidence that the commingling of the Wife's \$80,000 and Husband's real estate did not destroy the identity of the separate property as separate property.
21. Pursuant to the above and the instructions of the 5th District Court of Appeals in *Hildebrand*, the Magistrate finds that there was no transmutation and that Wife's claim to interest in the real property fails.
22. As mineral rights, including oil and gas, also pass by deed, Wife's claim for interest in the oil and gas lease and royalties and signing bonus also fails.
23. Wife further argues that she is entitled to an interest in the oil and gas lease/royalties/bonus because she "actively" participated in obtaining the lease.
24. The Magistrate finds that Wife went to meetings with Husband, discussed it with various individuals and went to the map department for a map of the property and got a copy of the deed. It should be noted that in our community, the recorder's office and the map department are on the same floor of the County Administration Building.
25. Wife further argued that she somehow initiated the oil and gas interest for the Haught Road property because the man who first approached them at the residence had passed her several times on the road while she was jogging.
26. The Magistrate finds that due to the high volume of news coverage and community meetings in this area for over a year, no one can take credit for initiating interest in an oil and gas lease. The marketing of leases has been done by oil companies not the landowners. There is no testimony that Wife organized a group of landowners to consolidate to secure a lease they would not otherwise have profited from.

27. The Magistrate further finds that no marital funds were expended in securing the oil and gas lease on the Haight Road property. All legal fees were paid by the lessee.
28. The Magistrate finds that the lease and subsequently the signing bonus and the royalties are a passive appreciation of the mineral rights owned by Husband prior to the marriage.
29. Wife's third argument for her interest in the oil and gas lease/royalties/bonus is that her name was on the lease and she was required to sign the same. The oil and gas lease (Jt. Ex. 13) refers to the lessors as James P. Kuhn and Kelly L. Kuhn, his wife.
30. Black's Law Dictionary, Fifth Edition, defines a mineral lease as a "Lease in which the lessee acquires the right to work a mine of oil and gas, etc."
31. The lease cannot be used as a substitute for a deed to transfer ownership of the minerals to Wife.

CONCLUSIONS OF LAW:

1. Parties are **GRANTED** a divorce and the obligations of the marriage which heretofore existed are terminated.
2. The division of assets and liabilities attached hereto as Exhibit A was entered into freely and voluntarily and is fair and equitable and hereby **APPROVED** and made the order of the court.
3. The Haight Road property, including the mineral rights (oil and gas) is the premarital and separate property of Husband and no transmutation has occurred giving Wife any interest in the property (land or oil/gas). Subsequently the signing bonus and royalties are the sole property of the Husband.
4. Wife received payment of \$70,000 at the time of temporary orders by agreement of the parties. The remaining \$10,000 and any reduction of mortgage payments have been provided for in the attached agreement of the parties.
5. Wife is restored to her former name of Kelly L. Cottle.
6. Costs are to be taken equally from the deposits and any remaining costs are assessed equally to the parties.


MAGISTRATE MARCIA A. HOLLINS

NOTICE TO THE PARTIES:

A PARTY MAY FILE WRITTEN OBJECTIONS TO A MAGISTRATE'S DECISION WITHIN FOURTEEN DAYS OF THE FILING OF THE DECISION, REGARDLESS OF WHETHER THE COURT HAS ADOPTED THE DECISION PURSUANT TO CIV. R. 53(E)(4)(c). A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THAT DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3).

cc: Plaintiff, Atty. Donald D. Brown, Counsel for Plaintiff, Defendant , and Atty. Ronald Roe Fox, Counsel for Defendant

EXHIBIT "A"

The following stipulated agreement terms were entered into the record on Friday, March 1, 2013, by counsel for both Plaintiff and Defendant and confirmed on the record, under oath, by both Plaintiff and Defendant as their agreement and settlement terms, to-wit:

A. Real Estate:

1. **Haught Road Residence and Premises:** The real estate and residence premises located at 64720 Haught Road, Adams Township, Cambridge, Guernsey County, Ohio, presently titled in the name of the Plaintiff, consisting of Plaintiff's residence and improvements and 24.257 acres more or less, shall be the sole property of the Plaintiff, free and clear of all claims of the Defendant. Any and all mortgage indebtedness on said premises, in excess of the \$142,525 due on the Orchard property financing, secured by the Haught Road current line of credit, shall be assumed and paid by the Plaintiff and the Plaintiff shall save the Defendant harmless therefrom. The line of credit indebtedness associated with the indebtedness due on the Orchard property/farm shall be paid in accord with subsequent provisions of this agreement. Further the Plaintiff shall pay unto the Defendant, on or before April 22, 2013, the remaining sum of \$10,000.
2. **New Concord:** The real estate and residence premise located at 111 Eastview Drive, New Concord, Muskingum County, Ohio, presently titled in the sole name of the Defendant, consisting of lot and residence of the Defendant, having been acquired by the Defendant during the period of this marriage, after the parties separated and agreed by the parties to be Defendant's separate property, shall be and remain the sole property of the Defendant, free and clear of all claims of the Plaintiff. Any and all mortgage or loan indebtedness owed on said premises, whether secured by the said real estate or not, shall be assumed and paid by the Defendant and the Defendant shall save the Plaintiff harmless therefrom.
3. **Orchard Property:** The real estate property identified as the Orchard property/acreage, located on Bloomfield Road, New Concord, Highland Township, Muskingum County, Ohio, acquired by the parties during the period of the marriage, titled only in the name of the Husband, shall be deemed a marital asset and each party shall be entitled to an undivided one-half interest therein. The parties have agreed that the same shall be sold, at the best price attainable, by auction, utilizing the services of Kaufman Auctions (Jason Miller). The parties shall cooperate fully with the auction company to coordinate the matter of the sale by auction, as soon as possible, in order to obtain the best price obtainable for said premises. All obligations due on the Orchard property, including \$142,525 still due on the line of credit against the Plaintiff's Haught Road property, as well as the \$15,000 note still due to Plaintiff's mother, together with all costs of sale, including but not limited to insurance, real estate taxes, monthly mortgage/financing charges from and after March 1, 2013, any and all sales commissions, auction fees, surveys, and advertising, and any and all other costs and/or expenses associated with preparing the property for sale, shall be paid by the parties equally when due and from the proceeds of sale. Further, the parties agree that after payment and satisfaction of all sale expenses, costs, expenses and debts associated with the Orchard property sale, as above required, that the Defendant shall receive the first \$23,450 from the adjusted net sale proceeds, with the remaining adjusted net proceeds of sale to be divided equally. Each party shall be responsible for and shall save the other party fully harmless from his or her individual 50% obligation for the federal, state and local income taxes due resulting from the sale of the Orchard property. The parties shall execute and deliver any and all documents necessary to implement their settlement agreement for the equal division of sale proceeds and equal division/payment of his/her individual obligation for the personal income tax obligations.

B. Motor Vehicles/Motorized Equipment:

1. The 2010 GMC Truck motor vehicle, titled in the joint names of the parties, was acquired during the term of the marriage but the same shall be set off and awarded to the Plaintiff, free and clear of all claims of the Defendant. The Defendant shall execute and deliver all title and other related documents to effectuate such transfer. All outstanding debt and obligation associated with the truck motor vehicle, including its financing included in the line of credit debt against the above-referenced Haught Road premises of the Plaintiff, shall be the responsibility of the Plaintiff and the Plaintiff shall save the Defendant harmless therefrom. All costs of operation, maintenance, licensing and insurance on said motor vehicle shall be the responsibility of the Plaintiff, who shall save the Defendant harmless therefrom.
2. The 2002 Toyota Camry motor vehicle, presently titled in the name of the Plaintiff, acquired by the Plaintiff, during the period of the separation of the parties, is separate property, by the temporary orders and the agreement of the parties, and shall be and remain the sole property of the Plaintiff, free and clear of all claims of the Defendant. Any and all outstanding debt and obligation associated with the said motor vehicle shall be the responsibility of the Plaintiff and the Plaintiff shall save the Defendant harmless therefrom. All costs of operation, maintenance, licensing and insurance on said motor vehicle shall be the responsibility of the Plaintiff, who shall save the Defendant harmless therefrom.
3. The 2006 Toyota Corolla motor vehicle, titled in the name of the Defendant, acquired by the Defendant before the marriage, shall be and remain the property of the Defendant, free and clear of all claims of the Plaintiff. Any and all outstanding debt and obligation associated with the said motor vehicle, if any, shall be the responsibility of the Defendant and the Defendant shall save the Plaintiff harmless therefrom. All costs of operation, maintenance, licensing and insurance on said motor vehicle shall be the responsibility of the Defendant, who shall save the Plaintiff harmless therefrom.
4. The Kubota Tractor and implements shall be set off and awarded to the Plaintiff, free and clear of all claims of the Defendant. All equity claims of the Defendant in said tractor and equipment have been satisfied by the overall settlement terms of the property division incorporated and set forth herein.
5. The Stealth (battery powered) ATV shall be set off and awarded to the Defendant, free and clear of all claims of the Plaintiff. All equity claims of the Plaintiff in said vehicle/equipment have been satisfied by the overall settlement terms of the property division incorporated and set forth herein.

C. Household Goods and Furnishings/Personal Property:

All household goods and furnishings, personal belongings, tools and equipment located at the Haught Road, Cambridge, Ohio, residence premises of the Plaintiff, shall be set off and awarded to the Plaintiff, free and clear of all claims of the Defendant, except that the sectional and two youth guns, which the parties have identified, shall be returned to the possession of the Defendant, as part of the overall settlement terms of property division herein.

All household goods and furnishings, personal belongings, tools and equipment, located at the Eastview Drive, New Concord, Ohio, residence premises of the Defendant, shall be set off and awarded to the Defendant, free and clear of all claims of the Plaintiff.

D. Pension/Retirement Benefits:

All rights of the Plaintiff in and to his 401K plan and social security benefits are set off and awarded to the plaintiff, free and clear of all claims of the Defendant.

All rights of the Defendant in and to her OPERS retirement, deferred compensation plan and accrued vacation/sick leave benefits are set of and awarded to the Defendant, free and clear of all claims of the Plaintiff.

The parties agree that the equity claim of the Plaintiff in the retirement/pension benefits of the Defendant have been satisfied by the overall terms of property settlement herein as well as all of the equity claims of the Defendant in the personal property and her equity

claims for marital mortgage reduction, have been satisfied by and are incorporated in the overall terms of property settlement herein.

E. Restoration to Former Name: Upon request of the Defendant, she shall be restored to her former name of Kelly L. Cottle.

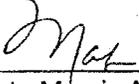
F. Spousal Support: Neither party shall pay spousal support to the other and the Court shall relinquish jurisdiction on all matters relating to spousal support.

G. Marital/Non-Marital Debt: Plaintiff and Defendant each agree that the satisfaction of all marital debt of the parties has been provided for within the terms of their overall settlement agreement herein, and that there are no other joint marital debts. The parties further acknowledge and agree that any individual debts and obligations of the parties, incurred in his/her individual names, shall be the responsibility of the party in whose name the account now stands, and the other party shall be held harmless therefrom.

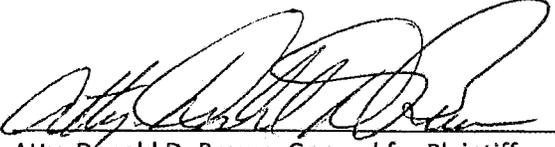
H. Bank Accounts: Plaintiff and Defendant acknowledge that all joint bank accounts of the parties have been closed and each has opened his/her own individual bank account, which each shall keep and maintain as his/her own separate property, free and clear of all claims of the other party.

I. Costs/Attorney Fees: Each party shall be responsible to pay his or her own attorney fees and expenses. The Court costs in these proceedings shall be first paid equally from the filing deposits of the Plaintiff and the Defendant, and otherwise assessed to and paid by the parties equally.

Approved by:



Magistrate Marcia A. Hollins



Atty. Donald D. Brown, Counsel for Plaintiff

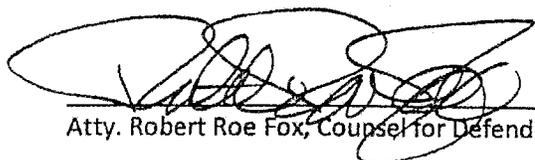
Atty. Robert Roe Fox, Counsel for Defendant

Approved by:



Magistrate Marcia A. Hollins

Atty. Donald D. Brown, Counsel for Plaintiff



Atty. Robert Roe Fox, Counsel for Defendant

**FILED
COMMON PLEAS COURT**

MAR 25 2013

**GUERNSEY COUNTY, OHIO
Teresa A. Dankovic, Clerk of Court**

**IN THE COURT OF COMMON PLEAS
GUERNSEY COUNTY, OHIO**

JAMES P. KUHN,

PLAINTIFF,

VS.

KELLY L. KUHN,

DEFENDANT.

CASE NO. 12-DR-140

FINAL AND APPEALABLE
DECISION, ORDER AND
ENTRY ADOPTING THE
MAGISTRATE'S DECISION

* * * * *

Upon careful and independent examination and analysis of the Magistrate's Findings and Decision, the Court finds the Decision of the Magistrate is sufficient for the Court to make an independent analysis of the issues and to apply appropriate rules of law in reaching a judgment. Therefore the Court adopts the Decision, and approves and enters the same as a matter of record. The Court further finds there is no error of law or other defect on the face of the Decision, and incorporates by reference the findings and decision of the Magistrate.

The Court hereby GRANTS a divorce on the grounds of incompatibility; APPROVES the agreement of the parties set forth in Exhibit A as to the division of assets and liabilities; finds the Haught Road property (including mineral rights - oil & gas) is the premarital and separate property of Husband and no transmutation has occurred giving Wife any interest in the property (land or oil/gas), subsequently the signing bonus and royalties are the sole property of the Husband; finds the Wife received payment of \$70,000 at the time of the temporary orders by agreement of the parties and the remaining \$10,000 and any reduction of mortgage payments have been provided for in the attached agreement of the parties; RESTORES Wife to her former name of Kelly L. Cottle.

The decision of the Court constitutes a final and appealable Order. The Clerk of this Court is ORDERED to comply with Civil Rule 58(B), and serve upon all parties notice of judgment and date of entry upon the journal.

Court costs from deposit and any remaining costs are assessed to the parties equally for which judgment plus interest is granted.

IT IS SO ORDERED.

FINAL APPEALABLE
ORDER

David A. Ellwood
JUDGE DAVID A. ELLWOOD

Dated: 25th March 2013

cc: James P. Kuhn
Kelly L. Kuhn
Donald D. Brown, Attorney for Plaintiff
Robert Roe Fox, Attorney for Defendant

FILED
COMMON PLEAS COURT
MAR 17 2014
GUERNSEY COUNTY, OHIO
Teresa A. Dankovic, Clerk of Court

IN THE COURT OF COMMON PLEAS
GUERNSEY COUNTY, OHIO

JAMES P. KUHN

Plaintiff

v.

KELLY L. COTTLE fka KUHN

Defendant

CASE NO. 12 DR 140

JUDGE DAVID A. ELLWOOD

JUDGMENT ENTRY

This matter came before the Court upon the Judgment Entry filed in the Fifth Appellate District on January 13, 2014, reversing, in part, this Court's prior Judgment Entry filed March 26, 2013.

Based upon said Decision of the Fifth District Court of Appeals, this Court issues the following Orders:

1. The Defendant, Kelly L. Cottle fka Kuhn, is hereby granted one half (1/2) interest of the \$121,285.00 Signing Bonus for the oil and gas lease acquired during the course of the marriage;
2. Each party shall be responsible for any tax ramifications relative to their proportionate share of said Signing Bonus; and
3. The Plaintiff, James P. Kuhn, shall pay to the Defendant her share of said Signing Bonus within thirty (30) days of the date this Judgment Entry is filed with the Court.

IT IS SO ORDERED.



JUDGE DAVID A. ELLWOOD

Approved:



Robert Roe Fox (0042179)
Counsel for Kelly L. Cottle fka Kuhn

**FINAL APPEALABLE
ORDER
NO JUST CAUSE FOR DELAY**