

[Cite as *Glover v. Glover*, 2009-Ohio-5742.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

DONNA K. GLOVER	:	
	:	Appellate Case No. 2009-CA-23
Plaintiff-Appellee	:	
	:	Trial Court Case No. 07-DR-291
v.	:	
	:	(Civil Appeal from Greene County
RICHARD L. GLOVER	:	Common Pleas Court, Domestic
	:	Relations)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 30th day of October, 2009.

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Attorney for Plaintiff-Appellee

Richard L. Glover, Box 19, Rosewood, Ohio 43070
Defendant-Appellant, *pro se*

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WOLFF, J.,

{¶ 1} This case is before the court on Richard Glover's *pro se* appeal of a trial court's decree of divorce. He contends that the court should not have ordered the parties' marital residence sold by auction. He contends also that, for the purpose of determining spousal support payments to his former wife, Donna, the court miscalculated his income. We will affirm.

I. Marital residence

{¶ 2} Since the parties separated, Richard has been living in what was the marital residence, located on Archer Street, in Rosewood, Ohio. He has said on multiple occasions that, although the property had an appraised value of \$106,000 in 2005, the current value of the property is \$90,000. The trial court did not resolve the evidentiary conflict. The property is encumbered by two mortgages, totaling \$70,189.91. It is also encumbered by a \$31,641.65 federal tax-lien.

{¶ 3} A magistrate recommended that the property on Archer Street be sold by auction. Richard objected. Overruling Richard's objection, the trial court explained, "it is necessary to sell the real property to remove [Donna's] name from the two mortgages against the property. The Court finds it has a duty to financially sever the parties from one another." March 5, 2009 Entry Overruling Objections to the September 16, 2008 Report and Recommendation, the Supplemental Report and Recommendation filed September 19, 2008 & Order to File Final Judgment and Decree of Divorce no later than March 31, 2009, p.2. The court then explained why a sale by auction is appropriate: "The Court further finds the Defendant has shown by his past actions, he has no intention of following court orders. He has not filed tax returns for a number of years and he has not paid his temporary spousal support. The transcript is rich with Defendant's disdain for local, state, and federal government. His behavior proves the only way the marital residence will be sold in a timely manner is to auction it off." Id.

{¶ 4} In October 2007, soon after Donna filed a complaint for divorce, the trial court ordered Richard to pay Donna \$1,500 in partial attorney's fees and to begin

paying her \$2,500 per month in temporary spousal support. In April 2008, at the hearing before the magistrate, Richard was asked why he had failed to comply with the order to pay attorney's fees:

“Q. Okay. And then you haven't paid the temporary attorney fees either, is that correct?

“A. Absolutely not.

“Q. Okay. Now, when, you said that kind of firmly, why didn't you pay the 1,500?

“A. That would be a payment to you, is that correct?

“Q. Yes.

“A. I don't know of any contract that you and I have between each other to where I'm obligated to you, sir.

“Q. So that's why you didn't pay it, is that correct?

“A. Absolutely.”

(Tr. 20-21). Then Richard was asked about the order to pay spousal support:

“Q. Okay. And then you didn't pay the \$2500 per month, and why didn't you pay that?* * *

“A. Well, sir, I thought that I might respond by attempting to be cute and state that I haven't been able to find a money tree yet that money grows on.

“Q. Uh-huh.

“A. And I thought, well, I better not do that because the Court might find that offensive.

“Q. Okay.

“A. I thought, well, maybe I'll use the truth and the truth is that I don't have that kind of money.

“Q. Okay.

“A. But then I didn't think the Court would accept that as a proper excuse. That's just simply an excuse. So sound reasoning takes precedent.

“Q. Uh-huh.

“A. For me to pay \$2500 a month out of the money that I earn would force me to commit a felony, and I choose not to commit to be, a party to commission of a felony.”

(Tr. 21-22). His curiosity undoubtedly piqued, counsel asked Richard what sort of felony he would commit.

“A. Well, I'm glad you brought that up. See, the money that I earn, my income is defined by the United States Supreme Court as the fruits of my labor and talents. That's my property, sir. It's not community property. It certainly isn't Donna's property. Donna didn't go out and make it, I did.

“Q. Okay.

“A. I sweated for that.

“Q. Uh-huh.

“A. Now, as such, I have rights to my property. The United States Supreme Court has said so, including the State of Ohio. The law also says that deprivation of rights under color of law is a felony. It's a felony in the State of Ohio. It's a felony in the federal level as well, okay. Are you with me so far?

“Q. I'm following you.

“A. Good. The law also states that any government employee, whether it’s a Court official, appointed or elected, a Court officer, which are lawyers, a law enforcement officer, in the commission of a felony, cannot claim immunity. So for me to be coerced into making that payment, to my conscience, is unconscionable. It’s immoral and it’s illegal.

“Q. Well, thank you very much for your honest answer.

“A. Thank you. You’re welcome, sir.”

(Tr. 22-23).

{¶ 5} Despite repeated demands by the Internal Revenue Service (IRS), Richard has not paid federal taxes, or filed a federal-tax return, since 1994. As a consequence, the IRS placed on the Archer Street property the \$31,641.65 tax lien mentioned above. Counsel also asked Richard about the lien:

“Q. * * * These tax liens were as a result of your not reporting your income for those tax years, is that correct?

“A. The tax liens were the result of the IRS responding to my challenge to their authority to assess a tax, not only on myself, but on any citizen of the United States.

“Q. Okay.

“A. And I submitted, as far back as 1994, a FOIA, a Freedom of Information Action, to the IRS to the Commissioner of the IRS, to the United States Justice Department.

“Q. Okay.

“A. And to the Secretary of the Treasury.

“Q. Yeah. You've answered that.

“A. I've done that every three years since then.

“Q. Okay.

“A. And until they can provide me with a certified tax bill from the Secretary of the Treasury, I don't have a tax obligation.”

(Tr. 42-43). Donna testified that in each year since 1994 she earned an income she filed a return under the married-filing-separately option and remitted any taxes owed.

{¶ 6} In the divorce decree, the trial court explained the situation regarding the Archer Street property this way:

{¶ 7} “Intertwined in the determination of the appropriate financial division and disposition of the two parcels of marital real estate is Mr. Glover’s testimony that he believes his money is his property and cannot be taken by any order. This belief has resulted in nonpayment of income taxes, failure to file tax returns and failure to comply with this Court's Order to pay temporary spousal support and attorney’s fees.

The failure to pay taxes has led to federal tax liens being attached to the marital residence in the amount of \$31,641.65. Further, as of the date of [the] hearing Mr. Glover owes Ms. Glover \$20,000.00 in unpaid temporary spousal support and \$1,500.00 in attorney’s fees.” March 25, 2009 Final Judgment Entry Decree of Divorce, p.3.

{¶ 8} The court said that Richard’s failure to file tax returns is financial misconduct that reduced Donna’s equity in the property. Donna, said the court, is innocent with respect to this misconduct. “Based on Mr. Glover’s financial misconduct, the liens on the property and Mr. Glover’s admitted unwillingness to

comply with government and/or Court Orders,” said the court, “it is fair, just and equitable to Order that the marital property on Archer Street be sold at auction.” Id. at p.4. The proceeds from the sale are to be applied to the mortgages and the tax lien, and if any of these encumbrances remain after doing so, they are Richard’s sole responsibility. If any proceeds remain they are to be divided equally between the parties.

{¶ 9} Richard claims that the forced sale will leave him homeless, and that the court had no basis for determining that his failure to file tax returns was financial misconduct. His sole grievance is that the court ordered that the Archer Street property be sold where he has agreed “to accept those mortgage responsibilities.”

{¶ 10} The trial court has statutory authority to order the sale of property and direct the use of proceeds. R.C. 3105.171(J)(2) (“The court may issue any orders under this section that it determines equitable, including * * * [a]n order requiring the sale or encumbrancing of any real or personal property, with the proceeds from the sale and the funds from any loan secured by the encumbrance to be applied as determined by the court.”). An appellate court yields broadly to a trial court’s division of marital property. To that end, the trial court’s decision will not be disturbed absent abuse of discretion. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144. For it to find that the trial court abused its discretion, the appellate court must find more than an error of law or judgment: it must find an attitude that is “unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. The question, then, is whether the court abused its discretion when it exercised its authority.

{¶ 11} In addition to Richard's name, Donna's name is also on the two mortgages, making her responsible for them. Richard says that he will accept sole responsibility for the mortgages, but this would not remove Donna's name or end her legal responsibility. In addition to preventing the separation of the parties' financial relationship, these obligations may become a stumbling block to Donna were she to apply for any sort of credit, such as, for example, a mortgage to buy a home or a loan to buy a vehicle. Removing Donna's name can be accomplished in two ways. One, Richard refinances the property without Donna. But finding a willing lender will be difficult for Richard given that he, according to his brief, has been unemployed since January 2009 and, according to the evidence, owes \$23,988.22 for repairs to his truck. And lenders will not be eager to loan Richard money when they discover that the property is encumbered by a sizeable federal tax lien. The other way to protect Donna is to sell the property. This would force satisfaction of the mortgages. While both paths have potholes, considering Richard's past behavior, we cannot say that the trial court erred in its choice.

{¶ 12} Nor can we say that the court erred in its decision to force a sale of the property by auction rather than permit a voluntary sale in the market. Although in general it is preferable that parties be permitted the opportunity to sell property voluntarily in the market, see *Van Fossen v. Van Fossen* (1988), 47 Ohio App.3d 175, 176 ("an auction should not normally be ordered where there is a reasonable chance of a fair, timely and voluntary sale"), considering Richard's behavior and beliefs, the trial court's skepticism regarding the likelihood of Richard's compliance with an order to voluntarily sell the property is not groundless. We cannot say the

trial court erred by trying to protect Donna, the innocent spouse. Nor did the trial court err in determining Richard's failure to file tax returns was financial misconduct.

{¶ 13} Therefore, we find no abuse of discretion in the trial court's order directing the Archer Street home be sold by auction. The first assignment of error is overruled.

II. Spousal support

{¶ 14} The court set spousal support at \$2,000 per month for an indefinite period of time. The court also retained jurisdiction on the issue of spousal support. Richard contends that the trial court miscalculated his income for spousal support purposes. He contends also that because he lost his job he should not have to pay any support. Richard, an owner/operator truck driver, claims that the court based spousal support on his 2007 gross income, failing to reduce the gross amount for expenses like fuel, maintenance, toll fees, road assistance, license plates, insurance, meals, and showers. Like with decisions dividing marital property, an appellate court yields broadly to a trial court's determination of spousal support, and looks only for abuse of discretion. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218.

{¶ 15} Here is what the trial court said:

{¶ 16} "Testimony and evidence established that Mr. Glover is an owner/operator truck driver exclusively for McFarland Trucking. His gross revenues were \$128,969.98 in 2007 with expenses deducted in the amount of \$57,461.10. See *Plaintiff's Exhibit H*. Mr. Glover further testified that he had repair bills in the amount of \$1,500.00 per month. However, Mr. Glover only produced one bill in support of this

and it indicated a periodic payment in the amount of \$500.00. See *Defendant's Exhibit 1*. Therefore, with no tax returns or other evidence submitted to determine any additional expenses, the [Court] finds that Mr. Glover's income is \$65,508.88 (\$128,969.98 less \$57,461.10 less \$500.00 per month or \$6,000.00 annually in repairs)." March 25, 2009 Final Judgment Entry Decree of Divorce, p.5.

{¶ 17} Richard, then, is plainly incorrect when he says that the court based spousal support on his 2007 gross income without reducing it for expenses. Exhibit H is captioned *McFarland Truck Lines Annual Owner/Operator Settlement Recap* and is dated November 24, 2007. The settlement recap apparently was created by McFarland, and it contains a year-to-date break-down of Richard's revenue and expenses. The first section states the revenue he generated, and the last is a list of expenses. Richard explained, "before I ever get my settlement, they [McFarland] deduct those expenses from my settlement before I ever see the very first dime." (Tr. 63). We note that among the listed expenses are fuel, insurance, and repairs. Richard testified that McFarland pays any tolls or at least reimburses him for them. There is no evidence in the record of the amounts Richard spends on road assistance, license plates, and showers. Richard's monthly business expenses do include \$300 for food, at least according to a summary of expenses that Richard created, found in the record, although the food expense is not on the settlement recap. Richard's summary also lists fuel and insurance, although the amounts differ from those on the recap. We note too that expenses on the recap are not on the summary, like expenses for IFTA and Card Advance.

{¶ 18} Thus, the evidence regarding Richard's business expenses conflicts.

“[A]n appellate court should not substitute its judgment for that of the trial court when there exists * * * competent and credible evidence supporting the findings of fact * * * rendered by the trial judge.” *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. Here the court’s factual finding of Richard’s business expenses is supported by the settlement recap, Exhibit H, which is competent and credible evidence. The trial court did not abuse its discretion by adopting this evidence instead of Richard’s own statement of his expenses.

{¶ 19} Richard also claims it is unfair that he must pay any support when he is unemployed and Donna has few expenses and is capable, according to the trial court, of working at least a full-time minimum wage job. Richard says that in January 2009, after his truck developed unrepairable mechanical problems, he lost his job. However, the evidence in this case was presented to the magistrate in April 2008.

{¶ 20} Richard claims he filed a Motion to Stay Spousal Support, around February 4, 2009, in which he said he had lost his job, but the trial court, Richard says, failed to rule on it. Donna responds that she is unaware that Richard filed this motion. Indeed, we have reviewed the record, and we did not find any evidence that such a motion has been filed. So we will disregard this allegation of error. If such a motion was filed, the trial court will consider it under its retained jurisdiction over the issue of spousal support.

IV.

{¶ 21} Finding no error, the judgment of the trial court is Affirmed.

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FAIN and FROELICH, JJ., concur.

(Hon. William H. Wolff, Jr., retired judge from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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