



pursuant to the divorce decree, to division.

{¶ 2} We conclude that there is competent, credible evidence in the record from which the trial court could determine that the payment was an early retirement award. Furthermore, even if the trial court had erred in so determining, any error in that regard would constitute invited error. Therefore, we conclude that the trial court did not commit reversible error in dividing the money. Accordingly, the judgment of the trial court is affirmed.

I

{¶ 3} The parties were granted a divorce by decree dated December 5, 2002. Under the decree, Hale was required to pay spousal support to Rose until the date he retired. The decree contained the following provision regarding Hale's retirement plan:

{¶ 4} "IT IS FURTHER ORDERED that the marital portion of the Defendant's retirement/profit sharing benefits, through his employment with General Motors shall be equally divided between the parties. A Qualified Domestic Relations Order shall issue.

{¶ 5} "For purposes of preparing the Qualified Domestic Relations Order, it is noted the Plaintiff and Defendant have been married twenty one years of the twenty six years the Defendant has been employed at General Motors. Plaintiff would therefore be entitled to one half of 21/26 of the accumulated benefits as of the date of the filing of this Decree. It is further noted that in the event the Defendant would take an 'early out' and receive a bonus for same, the Plaintiff would be entitled to one

half of the 'marital portion' of same."

{¶ 6} Hale retired from his employment with General Motors in July 2006. Thereafter, the parties filed motions regarding Hale's spousal support obligation. Hale sought to terminate the obligation, while Rose filed motions to hold him in contempt for failing to make a number of payments. A hearing was held in November 2006, during which Hale testified on direct examination as follows:

{¶ 7} "Q: How long did you work at General Motors?

{¶ 8} "A: 30.1 years.

{¶ 9} "Q: When did you leave that employment?

{¶ 10} "A: My last day of work was June 30<sup>th</sup> of this year.

{¶ 11} "Q: What were the terms or conditions or what happened on June 30<sup>th</sup>?

{¶ 12} "A: I accepted a – it was a normal retirement. I just retired and got up the 1<sup>st</sup> of July and was no longer working.

{¶ 13} "Q: Were you eligible to retire because of your thirty years?

{¶ 14} "A: Yes.

{¶ 15} "Q: And was there some kind of incentive that GM was offering at that time?

{¶ 16} "A: It's been in the news. They offered an incentive program that they offered some employees that had enough time to retire they offered them a certain amount of money if they would accept a retirement.

{¶ 17} "Q: At that moment of July 1 you were eligible to accept a retirement with or without the incentive?

{¶ 18} "A: That's true.

{¶ 19} “Q: But the incentive – they gave you money to go away?”

{¶ 20} “A: Yes.

{¶ 21} “Q: How much money did you get?”

{¶ 22} “A: Gross amount, thirty-five thousand dollars.

{¶ 23} “Q: That was one time?”

{¶ 24} “A: One-time lump sum deal.

{¶ 25} “Q: In – according to the decree your wife is entitled to a portion of that?”

{¶ 26} “A: Yes.”

{¶ 27} Following the hearing, the magistrate issued a decision containing the following comment:

{¶ 28} “[Mr. Hale] acknowledges that he recently received a check from General Motors in the amount of \$35,000.00, which he acknowledges [Ms. Rose] is entitled to a portion. [Mr. Hale] contends that he has not provided [Ms. Rose] with her portion of this, in that, he wishes to offset some of this against any spousal support overpayment that may accrue as a result of a retroactive modification of his spousal support.”

{¶ 29} Hale objected to the magistrate’s decision. His only objection with regard to the above-cited statement concerned the fact that the \$35,000 payment was reduced to \$21,647.50 after taxes were deducted, thereby reducing both his share and Rose’s share in the monies. On November 8, 2007, the trial court entered a Decision and Judgment stating, in relevant part, as follows:

{¶ 30} “As part of his retirement, the defendant accepted a \$35,000.00 retirement incentive. The plaintiff is entitled to one-half of 21/26 of the \$35,000.00

incentive, or \$14,135.00. Spousal support payments made after June 30, 2006 may reduce the plaintiff's portion of the retirement incentive. On remand, the [magistrate] shall determine the spousal support payments made after June 30, 2006 that may impact the division of the incentive award as well as taxes paid on the incentive award by the defendant."

{¶ 31} On remand, the magistrate conducted another hearing in February 2008, during which Hale testified on cross-examination as follows:

{¶ 32} "Q: [With regard to the \$35,000 award] did you have to work at least thirty years to receive that?

{¶ 33} "A: Yes, I did.

{¶ 34} "Q: And could you tell the Court how that was determined; did GM give you anything or Delphi to that?

{¶ 35} "A: Well, when they came up with this attrition program they had several options, there were trying to get rid of the older workers and get them out – out the door, and they came up with several options, the particular – they offered buyouts to people just to leave and, you know, take a lump sum and go away.

{¶ 36} "Me, I had – I met the criteria for a thirty years accredited service to get the \$35,000. And that was received \$35,000 less taxes, less attachments."

{¶ 37} Following the hearing, the magistrate issued a decision that, in part, reduced Rose's portion of the \$35,000 to \$12,250. On June 5, 2008, Hale filed objections to the decision, and, for the first time, asserted the claim that Rose was not entitled to any portion of the \$35,000. Rose filed a response in opposition to Hale's objections to which she attached, as exhibits, copies of the "Special Attrition

Plan GM-IUE-CWA Moraine Assembly” and “Special Attrition Plan Conditions of Participation Release Form” executed by Hale. Those documents provide, in part, as follows:

{¶ 38} “General Motors Corporation (‘GM’) has discussed with me the option of separating from employment under the separation options of the Special Attrition Plan for my facility as negotiated by GM and the International Union, IUE-CWA. I have evaluated the benefits and options made available to me and have decided to separate from employment under the option that I have checked on the Special Attrition Plan form for my facility. My separation will be effective at the time called for in the option I have selected.

{¶ 39} “ \*\*\*

{¶ 40} “I acknowledge that the benefits provided to me under the option of the Special Attrition Plan for my facility which I have selected are greater than the benefits to which I would otherwise be entitled and that such benefit package is available only under the terms of the Special Attrition Plan for my facility to those employees who meet all eligibility criteria for the option I have selected and who agree to separate on the applicable date.”

{¶ 41} Thereafter on October 28, 2008, the trial court issued a decision and judgment in which it determined:

{¶ 42} “The [\$35,000] attrition award became due to [Hale] when his employment with GM reached the thirty-year mark. [Hale] reached this accomplishment, in part, as a result of working with GM during his marriage to [Rose]. Pursuant to the final decree of divorce, [Rose] is owed half of this attrition

award, discounted for the nine years that [Hale] worked with GM but was not married to [Rose]. This amounts to thirty-five percent of [Hale's] award. [Hale's] objection is therefore overruled."

{¶ 43} From this order, Hale appeals.

## II

{¶ 44} Hale's sole assignment of error states as follows:

{¶ 45} "THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THAT DEFENDANT TOOK AN 'EARLY RETIREMENT' PAYMENT."

{¶ 46} Hale contends that the trial court erred by determining that the lump-sum payment constituted monies paid due to taking an "early out," and that the trial court thus erred by dividing the proceeds between him and Rose. In support, he claims that the evidence shows that the retirement benefit at issue was not an early retirement bonus.

{¶ 47} "In assessing a manifest weight challenge in the civil context, we will not reverse a judgment as being against the manifest weight of the evidence where the judgment is 'supported by some competent, credible evidence going to all the essential elements of the case.' " *In re S. S.*, Montgomery App. No. 22980, 2008-Ohio-294, ¶ 47, citing *Gevedon v. Ivey*, 172 Ohio App.3d 567, 579, 2007-Ohio-2970, at ¶ 54.

{¶ 48} In this case, the decree of divorce does not include a definition of the pertinent term – "early out." Hale, at the time he took the lump-sum payment option, had worked for thirty years and was therefore eligible to retire with what he termed as

“basic” pension benefits from GM. Hale testified that his basic pension provided him with the sum of \$300 per month. He testified that he was also receiving a supplemental benefit from GM in the sum of \$2,200 per month. Hale testified that this supplemental benefit would expire upon his qualification for social security benefits at age sixty-two.

{¶ 49} The pension plan under which Hale retired was not made a part of the record before us, so we cannot determine whether Hale’s basic or supplemental pension benefits would have increased had he continued to work past his eligible retirement date. However, it appears from the language of the “attrition plan” forms executed by Hale that the lump-sum payment was made in exchange for his retirement by a date certain, and that the payment was an addition to the benefits he would have received under his defined pension plan. In other words, Hale received this money in lieu of continuing to work past his retirement date and the lump-sum payment was made to offset the adverse financial impact of not working past his eligible retirement date.

{¶ 50} Significantly, Hale initially treated the funds as though they were paid as the result of an “early out,” and he acknowledged that they were subject to division pursuant to the decree. Indeed, he even testified during his direct examination at the November 2006 hearing that the proceeds were subject to division. His only objection, at that time, involved the question of whether he was entitled to an offset against Rose’s share of the “early out” proceeds. Specifically, he claimed that he had overpaid spousal support, which entitled him to an offset. He further claimed that because the net amount received was greatly reduced after taxes, he was

entitled to an offset for the amount of taxes he paid. Not until June 2008, almost two years after receiving the funds, did Hale first make the claim that they were not paid as a result of an “early out.”

{¶ 51} For two years the trial court and the parties proceeded upon the assumption that the payment was the result of an “early out.” The trial court and magistrate both entered decisions in conformity with this belief, and Hale did not take issue with these initial determinations. Thus, we conclude that Hale invited any error made by the trial court.

{¶ 52} Although Hale eventually contested whether the proceeds were subject to division, this was well after the determination that they should be divided. When Hale first changed his position and claimed that the proceeds were not the result of an “early out,” the only issue then before the court for resolution was the amount of the offset, if any, represented by his overpayment of spousal support. We conclude that the trial court acted within its discretion in declining to revisit the issue of whether the payment was an “early out” subject to division.

{¶ 53} From this record, we cannot say that the trial court erred by finding that the lump-sum payment was received as an “early out” payment, subject to division.

{¶ 54} Hale’s sole assignment of error is overruled.

III

{¶ 55} Hale’s sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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BROGAN and GRADY, JJ., concur.

Copies mailed to:

Jose M. Lopez  
Douglas B. Gregg  
Hon. Judith A. King