

[Cite as *Flowers v. Flowers*, 2009-Ohio-4910.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ABBE A. FLOWERS	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
LARRY M. FLOWERS	:	Case No. CT2009-0007
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Domestic Relations Division, Case No.
DB2007-0560

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: September 17, 2009

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Farmer, P.J.

{¶1} On December 10, 1983, appellant, Larry Flowers, and appellee, Abbe Flowers, were married. On July 18, 2007, appellee filed a complaint for divorce.

{¶2} On July 17, 2008, a hearing was held to determine the issues of spousal support and attorney's fees. By judgment entry decree of divorce filed January 16, 2009, the trial court granted the parties a divorce, and ordered appellant to pay appellee spousal support in the amount of \$2,000.00 per month, to terminate upon the death of either party, the cohabitation or remarriage of appellee, or fifteen years from the date of commencement. The trial court retained jurisdiction over the issue of spousal support. Each party was responsible for their own attorney's fees.

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

I

{¶4} "THE TRIAL COURT ERRED IN AWARDING SPOUSAL SUPPORT TO THE PLAINTIFF IN THE AMOUNT OF \$2,000.00 PER MONTH FOR A PERIOD OF 15 YEARS AS SUCH WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND AN ABUSE OF THE TRIAL COURT'S DISCRETION."

I

{¶5} Appellant claims the trial court's award of spousal support was an abuse of discretion. Specifically, appellant claims given the marital property division, the spousal support award was unreasonable, and a \$2,000.00 per month award for fifteen years is forty-four percent of his net income which also makes the award unreasonable. We disagree.

{¶6} An award of spousal support is in the trial court's sound discretion. *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64. In order to find an abuse of discretion, we 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. "An award of sustenance alimony must not exceed an amount which is reasonable." *Kunkle*, at paragraph three of the syllabus.

{¶7} As noted in appellant's brief at 4, "the parties agreed to a property division" regarding pension and retirements plans, proceeds from the sale of the marital residence, and household goods and furnishings. In its judgment entry filed January 16, 2009, the trial court noted, "Prior to the commencement of the final hearing, the Parties represented to the Court that they had resolved all issues pertaining to the allocation of assets and debts of the marriage and the matter would therefore proceed on Plaintiff's claim for periodic spousal support and request for attorney's fees." Attached to the trial court's judgment entry is Joint Exhibit A which is the parties' balance sheet. Appellee received \$304,190.13 in assets and appellant received \$264,752.83, with five items listed as separate property.

{¶8} In the same judgment entry, the trial court ordered appellant to pay appellee spousal support in the amount of \$2,000.00 per month, to terminate upon the death of either party, the cohabitation or remarriage of appellee, or fifteen years from the date of commencement. The trial court retained jurisdiction over the issue. Appellant challenges the spousal support award, arguing appellee's budget does not warrant a \$2,000.00 per month spousal support award.

{¶9} The parties had been married for twenty-four years. T. at 57. At the time of the hearing, appellee was 47 years old and making \$47,840 per year while employed as an x-ray staff technician at The Ohio State University. T. at 57-58, 62, 76. She has numerous physical health issues. T. at 33, 66-73. Appellant claimed appellee also suffered from mental health issues, but appellee denied ever seeing a psychiatrist or taking medication for mental health issues. T. at 37-38, 75-76. Appellee would like to seek training for a more physical friendly position (MRI technician), but the cost would be \$4,000.00. T. at 74.

{¶10} During the marriage, the parties enjoyed a very comfortable lifestyle. T. at 76. They were basically able to live debt free, took numerous lengthy vacations, paid for high medical bills, and paid for their son's tuition and housing at a private college. T. at 43-46, 77-79. Now, as a result of the separation, appellee testified she lives "paycheck to paycheck." T. at 81. Her monthly budget based on her income alone had a deficiency of \$2,800.00. T. at 82; Plaintiff's Exhibit 4.

{¶11} At the time of the hearing, appellant was 48 years old and in good physical and mental health. T. at 29, 35. He is a long-term employee of AEP. T. at 23. While appellant completed the five year apprentice program to become a journey lineman, he had to take a pay cut and appellee went to work to assist with the finances. T. at 24, 59-60. The year the parties separated, 2007, appellant made \$100,703.61. T. at 31. Although appellant is not getting as much overtime as in past years, he opined his income would be a minimum of \$100,000.00 a year. T. at 133-135. Appellant submitted a monthly budget of \$2,555.96. T. at 156-157; Defendant's Exhibit Q; See, Financial Affidavit attached to Appellant's Pretrial Statement filed July 8, 2008.

{¶12} Appellant appears to argue that because appellee received a substantial amount of marital property which he concedes was divided equally, he should pay less in spousal support or none at all. T. at 160-161. We note the division of marital property is separate and distinct from the consideration of spousal support.

{¶13} Pursuant to R.C. 3105.18(C), there are many factors to be considered in awarding spousal support:

{¶14} "(C)(1) In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors:

{¶15} "(a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;

{¶16} "(b) The relative earning abilities of the parties;

{¶17} "(c) The ages and the physical, mental, and emotional conditions of the parties;

{¶18} "(d) The retirement benefits of the parties;

{¶19} "(e) The duration of the marriage;

{¶20} "(f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;

{¶21} "(g) The standard of living of the parties established during the marriage;

{¶22} "(h) The relative extent of education of the parties;

{¶23} "(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

{¶24} "(j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;

{¶25} "(k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;

{¶26} "(l) The tax consequences, for each party, of an award of spousal support;

{¶27} "(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

{¶28} "(n) Any other factor that the court expressly finds to be relevant and equitable."

{¶29} After a review of these factors in light of the basically uncontested facts, we find there were sufficient factors to support the trial court's award. The parties were married for twenty-four years. There is a great disparity of income between the parties (\$48,000 versus \$100,000). Appellee's income forces her to live paycheck to paycheck, whereas appellant's income is substantial and twice the amount of appellee's. Appellee's health is in question, whereas appellant's is not. Appellee's continued employment may be at risk because of her physical ailments. The parties lived a comfortable lifestyle that was curtailed by the separation. Each party shared equal assets from the agreed marital property division. We note the trial court retained

jurisdiction over the issue of spousal support to ensure if there were any changes in income, the award could be adjusted.

{¶30} To diminish a spousal support award based upon an equal division of marital property would be unfair. The marital property distribution award is not a gift, but a fair division of the parties' hard work and effective management of their assets during their twenty-four year marriage.

{¶31} Appellant also argues the trial court failed to consider the tax consequences of the spousal support award. The trial court had the parties' pay stubs, and no evidence was presented on the tax consequences of the spousal support award. We conclude there is nothing in the record to support the argument that the trial court disregarded the tax consequences.

{¶32} Upon review, we do not find any abuse of discretion in the spousal support award.

{¶33} The sole assignment of error is denied.

{¶34} The judgment of the Court of Common Pleas of Muskingum County, Ohio, Domestic Relations Division is hereby affirmed.

By Farmer, P.J.

Wise, J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ John W. Wise

s/ Patricia A. Delaney

JUDGES

SGF/sg 0825

