

[Cite as *Jackson v. Jackson*, 2010-Ohio-4912.]

COURT OF APPEALS  
MORROW COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

DEREK JACKSON	:	JUDGES:
Plaintiff-Appellant	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
	:	Hon. Sheila G. Farmer, J.
-vs-	:	
	:	
PATRICIA K. JACKSON	:	Case No. 09CA0013
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,  
Case No. 2008DR00016

JUDGMENT: Affirmed/Reversed in Part & Remanded

DATE OF JUDGMENT ENTRY: October 5, 2010

APPEARANCES:

For Plaintiff-Appellant

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For Defendant-Appellee

RANDALL D. FULLER  
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*Farmer, J.*

{¶1} On August 5, 2001, appellant, Derek Jackson, and appellee, Patricia Jackson, were married. One child was born as issue of the marriage. On January 11, 2008, appellant filed a complaint for divorce.

{¶2} A final hearing commenced on May 26, 2009. By judgment entry decree of divorce filed November 5, 2009, the trial court granted the parties a divorce and made determinations on child custody and support, and division of property.

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

I

{¶4} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN DETERMINING CHILD SUPPORT."

II

{¶5} "THE TRIAL COURT ERRED AS A MATTER OF LAW, AND ISSUED A DECISION AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AS IT RELATES TO CREDITS FOR THE REDUCTION IN THE PRINCIPAL BALANCE ON THE MORTGAGES."

III

{¶6} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO VALUE THE INVESTMENT LOTS SEPARATELY, AND IN AWARDING THE LOTS TO WIFE."

IV

{¶7} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN DETERMINING THE ASSETS AND LIABILITIES OF THE PARTIES, AND IN VALUING THE ASSETS AS OF DIFFERENT DATES."

V

{¶8} "THE TRIAL COURT ERRED IN RENDERING A DECISION WHICH REQUIRED CERTAIN PAYMENTS TO BE MADE BY ONE PARTY TO THE OTHER, WITHOUT DETERMINING THE AMOUNT TO BE PAID."

I

{¶9} Appellant claims the trial court erred in determining child support. We agree in part.

{¶10} Appellant's argument is predicated upon the trial court's failure to provide a child support computation summary worksheet and increasing the child support order retroactive to March 1, 2008 when the temporary orders were issued.

{¶11} "\*\*\*\*A child support computation worksheet, required to be used by a trial court in calculating the amount of an obligor's child support obligation in accordance with R.C. 3113.215, must actually be completed and made a part of the trial court's record.' *Marker v. Grimm* (1992), 65 Ohio St.3d 139, 601 N.E.2d 496, paragraph one of the syllabus. Failure to complete and include the worksheet in the record constitutes reversible error. *McClain v. McClain* (1993), 87 Ohio App.3d 856, 623 N.E.2d 242.

{¶12} "We first note that *Marker* addresses prior R.C. 3113.215, which the General Assembly repealed on March 22, 2001. However, the modern version of the support guideline statute, R.C. 3119.022, continues to mandate that a court or agency

calculating child support 'shall use a worksheet.' Therefore, we find the rule of *Marker* applicable to R.C. 3119.022." *Cutlip v. Cutlip*, Richland App. No. 02CA32, 2002-Ohio-5872, ¶7-8.

{¶13} On March 10, 2008, the trial court ordered appellant to pay appellee \$75.92 per month for child support, a deviated amount based on shared parenting. On October 25, 2008, the parties filed an agreed judgment entry wherein appellant agreed to pay appellee \$450.00 per month for child support, effective October 22, 2008. Appellee argues child support computation worksheets were filed with her January 28, 2008 motion for temporary orders, and the parties' income had not changed during the seven month time-span from the temporary orders to the agreed entry.

{¶14} We note appellee's observation is true. However, the child support computation worksheet attached to appellee's January 28, 2008 motion for temporary orders calculates appellant's child support obligation as \$547.53 per month. This is not the amount found by the trial court which ordered child support in the amount of \$450.00 per month. The trial court failed to give any explanation for the deviation from the \$547.53 amount.

{¶15} R.C. 3119.22 governs deviation of amount of child support ordered and states the following:

{¶16} "The court may order an amount of child support that deviates from the amount of child support that would otherwise result from the use of the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, if, after considering the factors and criteria set forth in section 3119.23 of the Revised Code, the court determines that the amount calculated pursuant

to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, would be unjust or inappropriate and would not be in the best interest of the child.

{¶17} "If it deviates, the court must enter in the journal the amount of child support calculated pursuant to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, its determination that that amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting that determination."

{¶18} We conclude the trial court's failure to provide a child support computation worksheet and/or provide reasoning for the downward deviation necessitates a reversal and remand.

{¶19} As to making the order retroactive, the trial court found the following:

{¶20} "The Defendant seeks retroactive child support to March 1, 2008. The Temporary Order of \$75.00 per month was extremely low taken into consideration the income of the parties. The Court felt the parties had agreed to an increase in temporary child support while attempting to settle the case in May of 2008. On November 6, 2008 when the parties agreed to the \$450.00 per month temporary child support. The income of the parties is now substantially the same and the Court find the \$450.00 per month child support reasonable for temporary child support from March 1, 2008. Plaintiff's temporary child support obligation is increased, effective March 1, 2008 and the Morrow County Child Support Enforcement Agency shall correct its records to reflect this change. The Plaintiff shall pay said arrearage forthwith, or make additional payment of

\$100.00 per month to his current child support obligation notify MCCSEA accordingly." See Judgment Entry Decree of Divorce filed November 5, 2009 at Conclusion No. 20.

{¶21} We fail to find such order to be error. The original order of \$75.00 per month for child support was contrary to the parties' income and the best interest of the child. Appellant agreed to the increase from the temporary orders on October 25, 2008, some ten months from the filing of the motion for temporary orders.

{¶22} Assignment of Error I is granted as to issues based on *Marker*, supra.

## II

{¶23} Appellant claims the trial court erred in determining the credits to be granted to appellee for paying the mortgage payments, thereby decreasing the principle balance and increasing the equity. We disagree.

{¶24} In its judgment entry decree of divorce filed November 5, 2009 at Conclusion Nos. 4 and 5, the trial court held the following:

{¶25} "The Defendant is awarded the property at 745 West Marion Road, Mt. Gilead, Ohio 43338. This includes the entire tract including the two adjoining tracts of land. The Defendant shall pay one-half (1/2) of the equity to the Plaintiff using May 2009 as the termination date of the marriage.

{¶26} "The Defendant paid the mortgages and expenses on these during the pendency of this action so, she shall get credit for any reduction in the mortgage balance."

{¶27} Appellant argues the trial court did not make a finding as to the "duration of the marriage." Although there is no specific finding as to duration, the trial court throughout the judgment entry uses the hearing date as the closure date:

{¶28} "The marital residence is awarded to the Defendant as that was the wishes of the parties. The Defendant shall pay the Plaintiff one-half (1/2) the equity as of May 2009 as the termination date." Conclusion No. 3.

{¶29} R.C. 3105.171(A)(2) states the following:

{¶30} "(2) 'During the marriage' means whichever of the following is applicable:

{¶31} "(a) Except as provided in division (A)(2)(b) of this section, the period of time from the date of the marriage through the date of the final hearing in an action for divorce or in an action for legal separation;

{¶32} "(b) If the court determines that the use of either or both of the dates specified in division (A)(2)(a) of this section would be inequitable, the court may select dates that it considers equitable in determining marital property. If the court selects dates that it considers equitable in determining marital property, 'during the marriage' means the period of time between those dates selected and specified by the court."

{¶33} We find although not specifically stated by the trial court, the duration of the marriage was from the date of the marriage, August 5, 2001, to the date of the final hearing, May 26, 2009.

{¶34} Appellant argues that despite appellee's court ordered obligation to make the mortgage payments, he should somehow benefit from her payments. We note the trial court ordered the equity in the marital residence to be divided equally; therefore, appellant receives the benefit of appellee's credits. Conclusion No. 3, supra.

{¶35} Although this assignment of error is styled as a manifest weight argument, there is no dispute as to the facts on this issue. Therefore, the appropriate standard of review is abuse of discretion. 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.

{¶36} Upon review, we find no abuse of discretion in awarding appellee credit for her payments on the mortgage.

{¶37} Assignment of Error II is denied.

### III

{¶38} Appellant claims the trial court erred in valuing the investment lots collectively and not individually, and in awarding the lots to appellee. We disagree.

{¶39} Both parties agreed to the appraiser, Kevin Osbun. T. at 15. Mr. Osbun appraised the marital residence/real estate office and two adjacent half-acre lots collectively. T. at 23-25. He testified the half-acre lots "may have some limited demand as individual parcels\*\*\*in the marketplace" however, the lots were zoned R-1 residential whereas the primary use in the area was commercial. T. at 27-28. Mr. Osbun testified the lots appeared to be buildable, but was uncertain because of a flood zone. T. at 33.

{¶40} Upon review, we find the trial court did not abuse its discretion in valuing the lots collectively given the zoning and buildable issues.

{¶41} Assignment of Error III is denied.

### IV

{¶42} Appellant claims the trial court erred in determining the assets of the parties by using different dates. We disagree.

{¶43} As to the real estate property, two appraisal values were conducted, one dated August 15, 2008 and the other May 18, 2009. T. at 18. Mr. Osbun explained as



a result of the economy and the overall downturn of the real estate market in the county, the properties decreased in value over the nine month time span. T. at 20.

{¶44} The final hearing was held on May 26, 2009. We find the trial court did not abuse its discretion in accepting Mr. Osbun's May 18, 2009 values.

{¶45} Appellant argues his 401(K) was valued as of October 2008. In Conclusion No. 9, the trial court specifically stated, "[t]he Defendant is entitled to one-half (1/2) of Plaintiff's 401(K) retirement account. The amount shall be determined as of May 2009." This date is the same as the real estate valuation date.

{¶46} Appellant also argues the trial court used different dates to value the liabilities:

{¶47} "13. The Court finds the Mohawk Credit Card to be a marital debt and any subsequent transfer of said debt to another credit card. The Plaintiff knew about the shower remodeling and the expense was utilized during the marriage. Squabbling over whether the credit card for which the shower bill was interest free is irrelevant since Defendant handled the finances during the marriage. The Court finds no wrong doing by the Defendant. Plaintiff shall pay \$1,092.00 as his equal share plus one-half of the remaining balance of \$3,332.00. Defendant shall be responsible for payment of the balance of said debt.

{¶48} "14. Plaintiff shall pay \$125.00 for one-half (1/2) of the security deposit received by him from the rental property.

{¶49} "15. Each party shall pay one-half (1/2) the minor child's medical bills of \$346.14 (\$178.07).

{¶50} "17. The parties shall equally pay all marital debts including the Mohawk bill and the equity line of credit, as the equity line of credit was obtained and utilized during the marriage and therefore is a marital debt. As indicates (sic) in this Decision each party will be credited with any reduction in a marital debt that they paid on and each shall pay one-half of any remaining balance. This includes any credit for Defendant in her reduction of the equity line of credit. Each party shall be responsible for any lease or loan associated with the motor vehicle in their possession that each is retaining." Conclusion Nos. 13, 14, 15, and 17.

{¶51} Appellant does not challenge the amounts, but argues the valuation dates are uncertain. The parties stipulated that October 2008 was a good valuation date for everything except the real estate. T. at 72-74.

{¶52} Assignment of Error IV is denied.

V

{¶53} Appellant claims the trial court erred in not determining the exact amount of certain payments. We disagree.

{¶54} In particular, appellant argues that in equally dividing the net equity from the parties' real estate, the trial court failed to establish how the equity amount was to be determined. We note the trial court listed the values of the real estate and ordered the equity amount to be determined as of May 2009:

{¶55} "2. \*\*\*The Court finds the most current appraisals [May 18, 2009] to be the values of these properties. The current value is what the Court must use as reflective of the most reasonable value at the Final Hearing. Those values are as follows: 1) the

marital residence at 328 N. Main Street, \$170,000, 2) real estate office at 745 W. Marion Road, \$230,000, 3) rental property at 264 & 264-1/2 West High Street, \$82,000.

{¶56} "3. The marital residence is awarded to the Defendant as that was the wishes of the parties. The Defendant shall pay the Plaintiff one-half (1/2) the equity as of May 2009 as the termination date.

{¶57} "4. The Defendant is awarded the property at 745 West Marion Road, Mt. Gilead, Ohio 43338. This includes the entire tract including the two adjoining tracts of land. The Defendant shall pay one-half (1/2) of the equity to the Plaintiff using May 2009 as the termination date of the marriage.

{¶58} "5. The Defendant paid the mortgages and expenses on these during the pendency of this action so, she shall get credit for any reduction in the mortgage balance.

{¶59} "6. Neither party wants the rental property at 264 and 264-1/2 West High Street, Mt. Gilead, Ohio 43338. The property shall be sold at Public Auction, forthwith. Both parties will share any profits or losses equally, after payment of expenses. Pending said auction, each party shall be responsible for one-half of the monthly mortgage payment and entitled to one-half (1/2) any rental payments. If either party should want the property the Court finds the value to be \$82,000. The equity would be determined as of May 2009." Conclusion Nos. 2, 3, 4, 5, and 6.

{¶60} Although it is foreseeable that a disagreement could arise, the way the case was tried left the valuations open to the trial court's discretion. The trial court determined the values, and set May 2009 as the equity determination date. We concur

with appellee's argument that the matter of the amounts is discernible by simple mathematics.

{¶61} Upon review, we find no abuse of discretion in the trial court's orders.

{¶62} Assignment of Error V is denied.

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

By Farmer, J.

Gwin, P.J. and

Hoffman, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ William B. Hoffman

JUDGES

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IN THE COURT OF APPEALS FOR MORROW COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

DEREK JACKSON

Plaintiff-Appellant

-vs-

PATRICIA K. JACKSON

Defendant-Appellee

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JUDGMENT ENTRY

CASE NO. 09CA0013

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Morrow County, Ohio is affirmed in part and reversed in part and the matter is remanded to said court for further proceedings consistent with this opinion. Costs to appellant.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ William B. Hoffman

JUDGES