

[Cite as *Ballas v. Ballas*, 2009-Ohio-4965.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STEVEN LEE BALLAS,	)	
	)	CASE NO. 08 MA 166
PLAINTIFF-APPELLANT,	)	
	)	
- VS -	)	OPINION
	)	
CATHY T. BALLAS,	)	
	)	
DEFENDANT-APPELLEE.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Common Pleas Court, Case No. 03 DR 26.
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JUDGMENT:	Affirmed.
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APPEARANCES:

For Plaintiff-Appellant:	Attorney Robert Dunn Attorney Tiffany Miller One Columbus 10 West Broad St., 21 <sup>st</sup> Floor Columbus, OH 43215-3422
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For Defendant-Appellee:	Attorney James Messenger 6 Federal Plaza West Suite 1300 Youngstown, OH 44503
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JUDGES:  
Hon. Mary DeGenaro  
Hon. Gene Donofrio  
Hon. Cheryl L. Waite

Dated: September 14, 2009

[Cite as *Ballas v. Ballas*, 2009-Ohio-4965.]  
DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, the parties' briefs and their oral arguments before this Court. Appellant, Steven L. Ballas, appeals from the July 24, 2008 spousal support modification decision entered by the Mahoning County Court of Common Pleas, Domestic Relations Division. Steven argues that the trial court erroneously declined to find that appellee Cathy T. Ballas had been cohabitating with Joseph Wodogaza. Steven further argues that the trial court abused its discretion by modifying spousal support in the absence of a substantial change in circumstances, and by increasing Cathy's spousal support award.

{¶2} Although Cathy did have some manner of a relationship with Wodogaza, it was not unreasonable or arbitrary for the trial court to find that the relationship did not reach the level of cohabitation. Similarly, the trial court did not abuse its discretion by finding a substantial change of circumstances or in its modification and calculation of spousal support. Accordingly, the trial court's decision is affirmed.

### **Facts and Procedural History**

{¶3} Cathy and Steven Ballas were married on October 2, 1983. They had a son in 1985 and a daughter in 1988. On January 14, 2003, Steven filed a complaint for divorce. In September of 2003, Steven filed for Chapter 13 Bankruptcy. The final divorce decree was entered on March 15, 2004. In among the allocation of various marital assets and debts, the trial court awarded Cathy \$152,568.50 of Steven's interest in his business, The Heart Center of Northeastern Ohio, as well as an interest of \$389,059.06 of his pension plan. Cathy was designated the residential parent of the couple's minor daughter, and Steven was ordered to pay \$1,360.22 per month in child support.

{¶4} The trial court designated a spousal support award of \$6,500.00 per month. The trial court further stated that, given Steven's bankruptcy and the parties' debts, the spousal support being currently awarded was lower than it should be, and that the amount would be revisited in light of Steven's formation and eventual completion of his bankruptcy payment plan.

{¶5} The trial court noted that Cathy's expenses were accepted to be the \$9,501.50 per month as claimed, but noted: "The Court recognizes Defendant's desire to

enjoy a standard of living comparable to that established during the marriage. However, there are limits to her ability to maintain same [sic]. Defendant must make wise choices and help support herself. \* \* \* It may be necessary for Defendant to downsize [her residence] in order to accommodate her income level so that her expenses are not so high.”

{¶6} The trial court reserved jurisdiction to alter or amend the support amount. The trial court stated that a change in Steven's bankruptcy repayment plan would be considered a change in circumstances which would allow for a modification in spousal support. At the time of the divorce decree, Steven's bankruptcy plan had not yet been confirmed, and it was predicted that Steven would be obligated to pay \$5,000 per month for three to five years, depending on the eventual determination of the total amount owed. The original decree also noted that the bankruptcy plan would further be modified due to the outcome and ramifications of the decree: “The Court finds that to a large extent, the status of Plaintiff's Bankruptcy and Defendant's financial situation is unknown and can readily change with the disposition of property by this Court. Equity therefore dictates that the award of spousal support be subject to modification, both for the duration of the award and the amount of same.” The trial court also noted that, whatever the details of the bankruptcy plan, Steven was going to have a diminished net monthly income due to the \$5,000 monthly payments. The trial court added that Steven's net monthly income would be further diminished due to the \$3,241.63 monthly payments to Cathy for her interest in the Heart Center, as well as the \$1,360.22 monthly child support payments. Steven appealed the March 15, 2004 decision, which was affirmed by this court in the case styled *Ballas v. Ballas*, 7th Dist. No. 04 MA 60, 2004-Ohio-5128.

{¶7} Subsequent to changes in marital debts and assets, the trial court entered another order reallocating marital debts on September 13, 2006. The trial court noted that foreclosures and sales were still pending on the marital business and residential property, and that Steven's bankruptcy payoff amount would be affected. Cathy requested an increase in spousal support at that time. The trial court noted that Steven's final bankruptcy plan had not yet been confirmed by the bankruptcy court, and too many

factors were still uncertain in order to allow for an adjustment in spousal support. However, the trial court retained jurisdiction to revisit the issue once the parties' financial situation became clearer.

{¶8} On June 11, 2007, Steven filed a motion requesting a decrease or termination of spousal support. In support of his request, Steven indicated that the resolution of marital debts and his bankruptcy plan resulted in greater deficiencies than had been anticipated. Cathy filed a motion requesting an increase in spousal support, noting the emancipation of a child, loss of child support, and increased debt. Steven countered that the emancipation of their child was contemplated at the time of the trial court's original order, and that her increased debt was due to her own financial misconduct. Lastly, Steven filed a supplement to his original motion, arguing that spousal support should be terminated due to Cathy's cohabitation with an unrelated adult male. A September 14, 2007 Judgment Entry reflects that the parties came to an agreement that Steven had paid more than his share of the remaining marital debt, and that Cathy owed Steven \$15,855.93.

{¶9} On September 10, 2007 and December 10, 2007, the magistrate conducted hearings on the parties' motions. At the December hearing, the magistrate accepted Steven's oral motion to include the argument that spousal support should be decreased based on changes in the parties' respective incomes.

{¶10} During the hearings, Cathy testified that she had a periodically romantic relationship with Wodogaza during the last three years. Cathy testified that she and Wodogaza had sexual relations and that he would stay the night at her house a few nights per week. Cathy stated that Wodogaza bought a sofa for her and has done some domestic chores at her house in the past. Cathy admitted that she had taken Wodogaza on two vacations, once to a resort in Mexico and once to her son's graduation in Atlanta. Cathy owned the Liberty Racquet Club, where Wodogaza lived from 2000 to 2006. Cathy testified that Wodogaza managed the Club property, and that his living arrangements were part of his salary with the Club. After 2006, Wodogaza lived at his sister's house, where he kept his belongings and received mail. Cathy testified that Wodogaza had

loaned her money four times during 2005 in order to pay her COBRA insurance bills.

{¶11} Steven offered the testimony of a private investigator who had observed Cathy's residence from June 25 to August 3, 2007. The investigator witnessed a male who fit Wodogaza's description at Cathy's house on 21 separate days during the investigation period. The investigator witnessed the man retrieving Cathy's mail and garbage on occasion. Another private investigator observed Cathy's residence from June 4 to June 13, 2007, and observed that a male who fit Wodogaza's description had stayed overnight at Cathy's residence on six nights.

{¶12} Steven offered the testimony of Paula Peterson, who is the office manager at Steven's business, The Heart Center. Peterson testified that Steven's 2007 salary would be \$310,399.00. Steven's salary had decreased because he was no longer serving as the managing partner for the S corporation. Peterson testified that another partner had been voted into the managing position, but did not know whether Steven had competed to retain the position. Peterson stated that Steven's actual income for 2007 could be higher depending on business profitability, but that it was not likely.

{¶13} Steven testified that business profitability was not likely for 2007, due to new tax and regulatory issues and decreased production from another partner. Steven testified that he did not intentionally leave the managing partner position. Steven reported a decline in his standard of living due to his cash flow. Steven testified that he remarried two and a half years ago, and that his current wife pays for the mortgage, utilities, insurance, taxes, and furnishings for the home. He stated that he did not know his current wife's income or debts. He made his final bankruptcy payment in November of 2007, and no longer pays child support. His bankruptcy case was concluded on November 20, 2007.

{¶14} Cathy testified that she currently makes \$35,000.00 teaching tennis. Cathy submitted evidence of her expenses in the form of taxes, food budget, bank statements, medical bills, and credit card debt statements. Steven had provided about \$12,000 per month of support to Cathy at the end of the marriage and during the pendency of the divorce. Cathy stated that the current \$6,500 per month of support was not enough, and

that an additional \$20,000 per year of support would return her to her marital standard of living. Cathy admitted that her income had increased since the divorce, and that she had since purchased a different home and car.

**{¶15}** On April 21, 2008, the magistrate issued findings of fact and conclusions of law. The magistrate found that previous orders had expressly retained jurisdiction, that the parties' incomes and living situations had changed, and that the previously unclear statuses of the marital residence and business property foreclosures, car repossession, and Steven's bankruptcy plan were now clear and had undergone changes. The magistrate noted that the change in Steven's bankruptcy plan alone satisfied the requirement of a substantial change in circumstances allowing the court to revisit the issue of spousal support.

**{¶16}** The magistrate found that Steven did not provide adequate proof of shared financial or familial responsibilities in order for the relationship between Cathy and Wodogaza to reach the level of cohabitation.

**{¶17}** The magistrate found that although the value of Cathy's current residence is higher than that of the marital residence, the monthly mortgage payment of \$1839 was considerably less than the \$2787 paid per month for the marital residence. The magistrate noted that expenses related to the support of emancipated children could not be considered.

**{¶18}** The magistrate granted Steven's request to prematurely cease Cathy's Heart Center payments by six months in order to satisfy the amount owed by Cathy to Steven for payment of the remainder of marital debts. The magistrate granted Cathy's motion to increase spousal support, and held that Steven would pay \$8,250.00 per month in spousal support as of December 1, 2007, reducing to \$7,500.00 per month as of August 1, 2008. The magistrate denied Steven's motion and amendments requesting the reduction or termination of spousal support.

**{¶19}** Steven timely filed objections to the magistrate's decision on May 15, 2008 and filed transcripts of the proceedings. In his objections, Steven argued that the elements of cohabitation had been met, there had been no substantial change in

circumstances meriting a modification of spousal support, and that the cessation of bankruptcy and child support payments were not unanticipated changes meriting modification of spousal support.

**{¶20}** On July 24, 2008, the trial court issued a judgment entry adopting the decision of the magistrate, after analyzing its application of all the factors within R.C. 3105.18(C). Regarding Steven's first objection, the trial court noted that Wodogaza's presence at Cathy's house did not necessarily equate to cohabitation, and that there was insufficient evidence demonstrating that Wodogaza resided with Cathy for any sustained period. The trial court also noted that Cathy and Wodogaza did not provide one another with any significant direct financial support or share day-to-day expenses. Regarding Steven's second objection, the trial court found that the original divorce decree explicitly identified changes in Steven's bankruptcy repayment plan as changes in circumstances that would merit modification of spousal support. Regarding Steven's third objection, the trial court held that Steven's decrease in income was counterbalanced by an even larger decrease in expenses. The trial court further noted that Cathy will still experience financial difficulties compared to her previous financial situation, even with the increase in spousal support payments.

### **Cohabitation**

**{¶21}** In his first of three assignments of error, Steven argues:

**{¶22}** "The trial court erred as a matter of law by refusing to terminate spousal support when its own findings of fact fulfilled every element of cohabitation."

**{¶23}** Steven asserts that the trial court erroneously declined to find that Cathy and Joseph Wodogaza had been cohabitating. Steven argues that the trial court improperly ignored evidence which proved all of the elements of cohabitation, and that the trial court considered improper factors in order to justify ignoring such evidence.

**{¶24}** Steven argues that this court should apply a de novo standard of review to this assignment of error, because there does not exist any factual dispute between the parties. However, Steven has mischaracterized the facts as being undisputed. Moreover, it is well established in Ohio law that the issue of cohabitation is to be

determined by the trier of fact. *Moell v. Moell* (1994), 98 Ohio App.3d 748, 753, 649 N.E.2d 880, paragraph one of the syllabus. A trial court enjoys broad discretion to determine issues within the context of spousal support. *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 67, 554 N.E.2d 83. Thus a reviewing court may not disturb the decision of the trial court absent an abuse of discretion. *Moell* at 753.

{¶25} An abuse of discretion "suggests unreasonableness, arbitrariness, or unconscionability. Without those elements, it is not the role of this court to substitute its judgment for that of the trial court." *Valentine v. Conrad*, 110 Ohio St.3d 42, 2006-Ohio-3561, 850 N.E.2d 683, at ¶9. See also *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 5 OBR 481, 450 N.E.2d 1140. Appellate courts give great deference to the findings and conclusions of the trial court. *Fuller*, supra.

{¶26} The two main elements of cohabitation are consortium and the sharing of familial or financial responsibilities. *State v. Williams*, 79 Ohio St.3d 459, 465, 1997-Ohio-79, 683 N.E.2d 1126. "Possible factors establishing shared familial or financial responsibilities might include provisions for shelter, food, clothing, utilities, and/or commingled assets. Factors that might establish consortium include mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal relations." *Id.* Cohabitation is therefore more than a permanent, continuing sexual or romantic relationship: It also involves some level of consistent monetary support between the paramour and the ex-spouse receiving spousal support. *Shunk v. Shunk*, 7th Dist. No. 03 BE 62, 2004-Ohio-7060, at ¶28.

{¶27} "The purpose of a cohabitation clause is to prevent inequity in two situations involving spousal support. The first situation occurs when an ex-spouse would receive support from two sources, each of whom is either legally obligated or voluntarily undertakes the duty of total support. \* \* \* The second situation arises when the ex-spouse who is receiving spousal support uses such payments to support a nonrelative member of the opposite sex." *Moell*, supra, at 751-752 (internal citations omitted).

{¶28} Three key factors, as set forth in *Moell*, are used to determine whether a cohabitation clause has been triggered. "These factors are '(1) an actual living together;

(2) of a sustained duration; and (3) with shared expenses with respect to financing and day-to-day incidental expenses.'" *Moell* at 752, quoting *Dickerson v. Dickerson* (1993), 87 Ohio App.3d 848, 850, 623 N.E.2d 237. Without proof of regular financial support, "merely living together is insufficient to permit a termination of alimony." *Thomas v. Thomas* (1991), 76 Ohio App.3d 482, 485, 602 N.E.2d 385.

{¶29} In this case, the trial court found that Cathy was involved in a romantic relationship with Wodogaza, that he spent the night at her house sometimes, but that he did not live there. Wodogaza lived at the tennis club, and later resided at his sister's house. Steven argues that Wodogaza's residence at the tennis club, rent-free, established financial support. However, the facts also showed that Wodogaza was an employee of the tennis club, and his duties included management and caretaking of the property. Cathy testified that Wodogaza's living arrangements were part of his salary. The trial court chose to resolve any credibility issues on this particular detail in Cathy's favor. The trial court stated that Wodogaza's presence at Cathy's home did not "automatically correlate to Mr. Wodogaza actually and physically residing at the residence."

{¶30} Additionally, the trial court found that money had been exchanged between Wodogaza and Cathy, and that Cathy had paid for a vacation to Mexico for the two of them. The trial court took note of four payments from Wodogaza to Cathy, towards Cathy's COBRA benefit plan, and a few subsequent checks written from Cathy to Wodogaza. Cathy contended that she did not have enough money to pay her health insurance, that she had attempted to cover that expense using funds in a joint account with her son, but stopped doing so upon objection from Steven. Subsequent to being unable to cover the expense from the joint account with her son, Cathy borrowed money from Wodogaza. Cathy stated that the checks later written to Wodogaza were reimbursement for such loans. The trial court again resolved credibility issues in favor of appellee, and found that such an exchange did not amount to the kind of shared day-to-day expenses of cohabitants.

{¶31} Thus the facts as the trial court determined them did not indicate that Cathy

and Wodogaza were living together at all, let alone for a sustained duration, although Wodogaza had certainly been Cathy's paramour and frequently spent the night with her. The facts further indicated that although Cathy and Wodogaza had engaged in a few financial transactions, these did not amount to sharing day-to-day expenses or regular and ongoing support. Given the trial court's resolution of these facts, the trial court's finding of no cohabitation was not an abuse of discretion. Steven's first assignment of error is meritless.

### **Substantial Unanticipated Changes in Circumstances**

{¶32} In his second of three assignments of error, Steven argues:

{¶33} "The trial court erred in granting an increase in spousal support when there was no change in the parties' circumstances that was both substantial and not contemplated at the time of the divorce."

{¶34} Steven asserts that the trial court improperly decided to modify its previous spousal support order, because the overall circumstances of the parties had stayed the same, and any change of circumstances that did occur had been fully contemplated at the time of the original divorce decree. This assignment of error thus focuses solely on the threshold issue of whether the trial court had jurisdiction to modify spousal support.

{¶35} Initially, we note that Steven was the party who requested a modification of spousal support due to a change of circumstances, specifically a change in his bankruptcy plan. In his initial June 11, 2007 motion to terminate or modify spousal support, Steven stated: "The Court also made clear that it may modify the term of the spousal support or terminate it completely, and that any change in [Steven's] bankruptcy may be sufficient to modify spousal support. As demonstrated above, [Steven's] bankruptcy has changed drastically, as has the deficiency [from sale of marital property]." In light of the fact that Steven himself asked the trial court to find that there was a substantial change of circumstances, we would normally find that any potential error in finding as much was invited. *Dunham v. Dunham*, 171 Ohio App.3d 147, 2007-Ohio-1167, 870 N.E.2d 168, at ¶21. However, we shall continue to the merits, given that a trial court's ability to revisit a spousal support award is a jurisdictional issue not subject to

waiver. See *State v. Purnell*, 171 Ohio App.3d 446, 2006-Ohio-6160, 871 N.E.2d 613, at ¶12 ("The parties cannot confer by consent or acquiescence subject-matter jurisdiction on a court where it is otherwise lacking."). See also *State ex rel. Kline v. Carroll*, 96 Ohio St.3d 404, 2002-Ohio-4849, 775 N.E.2d 517, at ¶27.

{¶36} When a party requests modification of a spousal support award, the threshold issues are whether the trial court expressly retained jurisdiction to modify the provisions of its original order and whether the circumstances of a party have changed. R.C. 3105.18(E). For the purposes of division (E), a change of circumstances "includes, but is not limited to, any increase or involuntary decrease in the party's wages, salary, bonuses, living expenses, or medical expenses." R.C. 3105.18(F). The Ohio Supreme Court recently explained that not only must the original decree contain an express reservation of jurisdiction, but there must also be a finding by the trial court that the change in circumstances was substantial and not contemplated at the time of the original divorce decree. *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, 905 N.E.2d 172, at paragraph two of the syllabus. When reviewing a spousal support decision, an appellate court will not reverse the trial court's decision absent an abuse of discretion. *Blakemore*, supra, at 219.

{¶37} The requirement that there be an express reservation of jurisdiction for later modification was satisfied by the trial court in both the original 2004 order and the subsequent 2006 order, and Steven does not argue otherwise. Steven does argue that the trial court did not satisfy the remaining criteria of R.C. 3105.18(E) because the trial court's finding relied on changes which were not substantial and were fully contemplated at the time of the original decree.

{¶38} First, Steven indicates that the trial court focused on factors which were impermissible (such as the emancipation of their minor daughter), or otherwise non-substantial changes (such as Steven's remarriage). It is true that a finding of a substantial change in circumstances based solely on, for example, the cessation of child support, could be an abuse of discretion. However, we must look at the totality of the circumstances in order to determine whether a review of the support order is warranted.

*Tremaine v. Tremaine* (1996), 111 Ohio App.3d 703, 706, 676 N.E.2d 1249; *Strain v. Strain*, 12th Dist. No. CA2005-01-008, 2005-Ohio-6035. Whether or not these changes were in fact non-substantial changes, they were accompanied by substantial changes, namely the resolution of Steven's bankruptcy. However, Steven argues that his bankruptcy proceeding was fully contemplated at the time of the divorce, and thus cannot be used to now justify a change in support.

{¶39} In a divorce decree, a court may specify triggering events that would constitute a change of circumstances pursuant to R.C. 3105.18. See, e.g., *Lira v. Lira* (1983), 12 Ohio App.3d 69, 12 OBR 211, 465 N.E.2d 1353 (noting that the original decree validly specified that the probable changes in the husband's income would trigger review and possible modification of the spousal support award); *Jordan v. Jordan*, 3d Dist No. 5-05-24, 2005-Ohio-6028, at ¶9 (original decree specified various possible conditions that would trigger future modification).

{¶40} In the present case, the trial court specifically stated that a change in Steven's bankruptcy would be considered a change of circumstances sufficient to modify spousal support. The court stated this in both the original 2004 order and in the 2006 modification. At the time of both of those orders, Steven's bankruptcy payment plan had not yet been confirmed. On March 20, 2007, his plan was confirmed, and on November 20, 2007, Steven completed payments on the plan.

{¶41} The original decree also noted that the bankruptcy plan would further be modified due to the outcome and ramifications of the decree: "The Court finds that to a large extent, the status of Plaintiff's Bankruptcy and Defendant's financial situation is unknown and can readily change with the disposition of property by this Court. Equity therefore dictates that the award of spousal support be subject to modification, both for the duration of the award and the amount of same."

{¶42} The trial court's desire to wait for a future opportunity to modify spousal support as it specifically related to the bankruptcy issue was justified for two reasons. First, the original order noted the unknown outcome and consequences of the bankruptcy payment plan, and that the total payment amount could be higher or lower than expected.

Thus the trial court recognized the inequity of selecting a specific increased or decreased amount of future spousal support. Second, the original order stated that Cathy's spousal support award was lower than it should have been due to Steven's other payment obligations, but by noting the unknown duration of Steven's bankruptcy plan payments, the trial court essentially recognized the inequity of selecting a random date to increase the payments.

{¶43} In view of the longstanding value placed on the finality of a divorce decree, the ideal practice is for the trial court to account for all foreseeable changes in the original order for spousal support. However, a trial court should be able to reserve jurisdiction for further consideration of a specific issue if it finds that it is unable to adequately predict the timing, extent and impact of a foreseeable change. Otherwise a trial court would lack jurisdiction to revisit the issue precisely because it found that it would be necessary to do so.

{¶44} Although the resolution of Steven's bankruptcy case was an eventuality, and thus contemplated at the time of the divorce, the timing and consequences of the bankruptcy could not be adequately contemplated in the original decree. The trial court did not abuse its discretion in finding a substantial change in circumstances not contemplated at the time of the original decree. Therefore, the trial court's decision to review and modify the previous spousal support award was not an abuse of discretion. Steven's second assignment of error is meritless.

#### **Reasonableness and Appropriateness of Change in Support**

{¶45} In his final assignment of error, Steven argues:

{¶46} "The trial court erred by granting a modification of spousal support that is not reasonable or appropriate under the circumstances."

{¶47} Steven asserts that the trial court's modification of spousal support was unreasonable because his income has decreased, Cathy's income has increased and her expenses have stayed the same.

{¶48} A trial court may award reasonable spousal support to either party. R.C. 3105.18(A). The trial court must consider the factors listed in R.C. 3105.18(C) when

deciding whether to award spousal support:

**{¶49}** "(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:

**{¶50}** "(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;

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

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

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

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

**{¶55}** "(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;

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

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

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

**{¶59}** "(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;

**{¶60}** "(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;

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

**{¶62}** "(m) The lost income production capacity of either party that resulted from

that party's marital responsibilities;

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

{¶64} In light of these factors, the trial court must "indicate the basis for its award of spousal support in sufficient detail to enable a reviewing court to determine whether the award is fair, equitable and in accordance with the law." *Lewis v. Lewis*, 7th Dist. No. 06 JE 49, 07 JE 27, 2008-Ohio-3342, at ¶91, citing *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 97, 518 N.E.2d 1197. "To be equitable, the parties should, if feasible, enjoy a standard of living comparable to that enjoyed during the marriage, adjusted by the factors set forth in R.C. 3105.18." *Lepowsky v. Lepowsky*, 7th Dist. No. 06 CO 23, 2007-Ohio-4994, at ¶43, quoting *Gallo v. Gallo*, 11th Dist. No.2000-L-208, 2002-Ohio-2815, at ¶ 40.

{¶65} When reviewing an award of spousal support, an appellate court must uphold the trial court's award absent an abuse of discretion. *Blakemore*, supra; *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144, 541 N.E.2d 1028. The appellate court should not independently weigh the evidence in most domestic relations cases, and instead should be guided by the presumption that the trial court's findings are correct. *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74, 523 N.E.2d 846.

{¶66} The record reflects that the trial court considered every one of the factors listed in R.C. 3105.18(C).

{¶67} In its opinion, the trial court explicitly named all of the factors and their application to the specific facts of this case. It found that Steven has a projected annual income of \$310,399.00 and that Cathy has an estimated annual income of \$35,000.00. The court found that there continued to be a very large disparity in income and in earning ability of the parties. The court found that \$35,000.00 is likely the maximum amount that Cathy can expect to earn, and that it would be unrealistic to require Cathy to work multiple jobs to increase her earnings. The court noted that Cathy had been receiving \$3,241.63 per month for her marital interest in the Heart Center, payment of which would cease six months earlier than originally planned.

{¶68} It should be noted though, that the court was not able to consider a fuller

picture of the parties' respective financial status due to the limited amount of information provided by the parties. In that respect, the trial court's decision painted a somewhat unbalanced picture of the parties' financial positions. For example, from the information discussed by the trial court, we do know that Steven has a current total pension value of \$422,287.30, but we do not know the total current value of Cathy's retirement plan, including the interest gained from her \$389,059.06 portion of Steven's pension since the 2003 division, nor are we given the total value of her current employment-based retirement plan. Nevertheless, the trial court properly considered what it could.

{¶69} The marriage had lasted for approximately twenty years, the family enjoyed an extremely high standard of living, and Cathy was primarily a stay-at-home mother. The court found that Cathy had sacrificed her career as a nurse in order to raise the children, and that her current salary is comparable to the salary she would have earned had she continued her career as a nurse. There currently are no minor children remaining in either party's care. Cathy noted that the current state of spousal support payments have not been sufficient for her to maintain the standard of living that she enjoyed during the marriage.

{¶70} The court noted that Steven had remarried, and that his new spouse pays the mortgage and utilities for their house. Evidence in prior proceedings indicated that Steven had paid \$700.00 per month plus utilities for his living arrangements. Steven presented very little evidence regarding his current monthly expenses. According to the evidence provided by the parties, Cathy had monthly expenses of \$10,422.97, and Steven had monthly expenses of at least \$400.00 in the form of credit card debt. Finally, the trial court noted that the cessation of Steven's bankruptcy payments of \$5,000.00 per month, the upcoming termination of Heart Center payments of \$3241.63 per month, the cessation of child support payments of \$1,360.22 per month, and the fact that Steven's new spouse pays for his housing expenses all indicate that Steven experienced a great increase in net income.

{¶71} As an initial issue, Steven claims that the lack of evidence of his expenses was due to Cathy's failure to procure them in discovery. Steven claims that this discovery

issue prevented Cathy from sustaining her burden of proof as to Steven's expenses. Steven offers no legal argument to support his claim that Cathy solely carried the burden of proof regarding the parties' respective expenses in their cross-claims against one another. Steven's argument seems rather disingenuous, as Steven was the party who commenced the action and would also be expected to provide such proof to support his own request for spousal support modification. *Tremaine v. Tremaine* (1996), 111 Ohio App.3d 703, 706, 676 N.E.2d 1249. Moreover, as described above, the trial court was presented with evidence that Steven's expenses had decreased by at least \$7,060.22 per month, and would further decrease by \$3,241.63 per month in September of 2008. The burden had shifted back to Steven to refute that amount or provide evidence of increases in expenses, and Steven failed to do so. Thus, Steven's argument that Cathy had not satisfied her burden of proof is not well taken.

{¶72} As his main argument, Steven claims that an increase in support was unreasonable because Cathy's income increased subsequent to the award of spousal support, and her expenses were only modestly above their previous state. Steven further argues that his income has decreased, and it was unreasonable for the trial court to speculate that his expenses had decreased. Steven asserts that the mathematics of the facts clearly indicate that spousal support should not have been increased.

{¶73} According to the trial court's findings of fact, Steven's income decreased from \$375,000 to a projected estimate of \$310,399, a total of \$64,601.00. Steven's monthly expenses were reduced by at least \$6,360.22 due to the change in bankruptcy and child support payments. His monthly expenses were also reduced by at least \$700.00, as he testified that he had remarried and no longer paid for housing or utilities. Given these findings, Steven's monthly expenses decreased by \$7,060.22 per month, or \$84,722.64 annually. Steven thus had an increase of \$20,121.64 in annual funds, even considering his predicted reduction of income. Including the Heart Center payments, which were to cease in September of 2008, Steven's monthly expenses would be further reduced by \$3,241.63, or \$38,899.56 per year, which would result in an increase of \$59,021.20 in annual funds, again even considering Steven's loss of income.

{¶74} According to the trial court's finding's Cathy's income fluctuated greatly, but in the end increased from \$20,000.00 to a projected \$35,000.00 salary. Cathy's monthly living expenses increased from \$9,501.50 to \$10,442.97, a monthly difference of \$941.47, or a yearly difference of \$11,297.64. Given these facts, it is true that Cathy's annual funds have increased by \$3,702.36 since the time of the original divorce decree. However, the magistrate pointed out that the 2004 divorce order had "expressly considered the original amount of spousal support to be low and that a higher amount would be considered once [Steven's] property division payments of \$3,241.63 per month to [Cathy] were completed and the anticipated \$5,000.00 per month Chapter 13 payments were satisfied, thereby leaving him more disposable income to pay an award of spousal support." The trial court further noted that, between the original and current proceedings, Cathy did not enjoy a standard of living as it had existed during her marriage, and instead lived "paycheck to paycheck."

{¶75} Due to the fact that Cathy's overall circumstances changed little between the original and the modified spousal support award, it would have been possible for the trial court to reasonably decide not to change the spousal support. However, a trial court is not obligated to focus solely on equalization of incomes, and instead must consider the totality of all circumstances to decide upon the appropriate amount of spousal support. *Faller v. Faller*, 7th Dist. No. 07 MA 216, 2008-Ohio-6638 at 55; *Strain, supra*. Looking at the totality of the circumstances, it was not unreasonable, arbitrary or unconscionable to have increased the spousal support award, especially given that the original award was explicitly described by the trial court as being lower than it should have been due to Steven's unavailability of funds as a result of the Heart Center marital interest payments to Cathy, the child support payments, and the bankruptcy plan payments.

{¶76} For his final argument on this point, Steven asserts that the trial court abused its discretion by accepting Cathy's reported increase in expenses, specifically her new house and car, without considering whether they were reasonable. Steven argues that the expenses were unreasonable and extravagant. However, the trial court explicitly discussed Cathy's home and vehicle expenses. The trial court noted that Cathy's new

home has a higher value than the marital home, and questioned the financial viability of making such a purchase. However the trial court also noted that her monthly mortgage payment is significantly lower than it had been for the marital residence, and that her new car payment is also lower than it had been for the previous vehicle. The trial court explicitly concluded that Cathy's expenses were reasonable. Steven's argument that the court did not consider the reasonableness of the expenses must therefore fail.

**{¶77}** Considering all of the foregoing, although both parties had significant changes in their finances, they balance out to be in a relatively similar position as they were at the time of the original spousal support award. While the trial court could have decided to keep the spousal support award at the original level, it articulated reasonable justifications to increase the spousal support award. Therefore, its decision was not an abuse of discretion, and it would not be appropriate to substitute this Court's judgment for the judgment of the trial court. Steven's third assignment of error is therefore meritless.

**{¶78}** The trial court did not abuse its discretion when it found that Cathy was not cohabitating with Wodogaza, that there had been a significant change of circumstances warranting a modification of spousal support, and that the amount of spousal support should be increased. Accordingly, the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Waite, J., concurs.