

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

DENISE L. KEDANIS,	:	
Plaintiff-Appellee,	:	CASE NO. CA2012-01-015
- vs -	:	<u>OPINION</u>
	:	8/6/2012
LEONARD J. KEDANIS,	:	
Defendant-Appellant.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR2011-03-0381

Susan Hovey, 1382 Burdett Avenue, Cincinnati, Ohio 45206, for plaintiff-appellee

M. Lynn Lampe, 1248 Nilles Road, Suite 7, Fairfield, Ohio 45014, for defendant-appellant

POWELL, P.J.

{¶ 1} A domestic relations court ordered a husband to pay spousal support to his wife for ten years. Husband argues on appeal that the trial court erred when it only considered the disparity in incomes and the length of the marriage. We find the trial court did not abuse its discretion in its spousal support determination as it properly considered all of the factors of

R.C. 3105.18(C).¹

{¶ 2} The Butler County Domestic Relations Court entered a decree of divorce in December 2011, terminating the marriage between Leonard J. Kedanis and Denise L. Kedanis. Included in the provisions of the decree was an order that husband pay \$384.62 per biweekly pay period in spousal support to wife for ten years.

{¶ 3} On appeal of that decision, husband's single assignment of error avers:

{¶ 4} TRIAL COURT ABUSED ITS DISCRETION WHEN IT ORDERED HUSBAND TO PAY SPOUSAL SUPPORT ON A PARITY ANALYSIS, WHILE ONLY CONSIDERING THE LENGTH OF MARRIAGE AND DISPARITY OF INCOMES.

{¶ 5} Husband argues the trial court abused its discretion by using a "parity analysis" after wife testified at one point in the proceedings she needed less than what the trial court subsequently awarded her.

{¶ 6} In the entry, the trial court found that the parties were married on May 25, 1991. Husband earns \$71,000 per year and wife earns \$43,701 per year plus an additional \$5,755 per year in rental income. The entry stated that spousal support "is just and appropriate because of the length of the marriage and the disparity of incomes between the parties." The court ruled that spousal support was taxable income to wife and a tax deduction for husband. The court retained jurisdiction over the amount of support. The court's entry did not cite to R.C. 3105.18, the statute dealing with spousal support.

{¶ 7} Husband acknowledges the trial court made findings from R.C. 3105.18 at the final contested divorce hearing and those findings are reflected in the transcript, but argues the trial court only mentioned the length of the marriage and disparity in incomes as the basis for its decision.

1. Pursuant to Loc.R. 6(A), we have sua sponte removed this appeal from the accelerated calendar.

{¶ 8} R.C. 3105.18(C)(1) contains 14 factors the court must consider in determining if spousal support is appropriate and reasonable. *Woodrome v. Woodrome*, 12th Dist. No. CA2000-05-074, 2001 WL 290067 (Mar. 26, 2001).

{¶ 9} R.C.3105.18(C)(1), indicates, in part, that

[i]n 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:

- (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;
- (b) The relative earning abilities of the parties;
- (c) The ages and the physical, mental, and emotional conditions of the parties;
- (d) The retirement benefits of the parties;
- (e) The duration of the marriage;
- (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;
- (g) The standard of living of the parties established during the marriage;
- (h) The relative extent of education of the parties;
- (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;
- (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;
- (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;

(l) The tax consequences, for each party, of an award of spousal support;

(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

(n) Any other factor that the court expressly finds to be relevant and equitable.

{¶ 10} A trial court has broad discretion to determine the proper amount and duration of spousal support based on the facts and circumstances of each case, and a trial court's award of spousal support will not be disturbed absent an abuse of discretion. *Woodrome*, 12th Dist. No. CA2000-05-074, 2001 WL 290067; *Gregory v. Kottman-Gregory*, 12th Dist. Nos. CA2004-11-039, CA2004-11-041, 2005-Ohio-6558.

{¶ 11} If the court does not specifically address each R.C. 3105.18 factor in its order, absent evidence to the contrary, a reviewing court presumes each factor was considered. *Justice v. Justice*, 12th Dist. No. CA2006-11-134, 2007-Ohio-5186, ¶ 21.

{¶ 12} In the case at bar, there is evidence the trial court reviewed the factors in R.C. 3105.18(C). The hearing transcript indicates the trial court specifically stated it was required to consider R.C. 3105.18 (C)(1)(a) through (n), and proceeded to list its factual findings as they correspond to the pertinent factors. The trial court indicated at the hearing "[b]ecause of the long duration of the marriage, their disparity in income, the Court finds spousal support is appropriate and reasonable. With a marriage of such long duration, this Court has always brought them to parity and retained jurisdiction over that."

{¶ 13} The trial court specifically mentioned the two factors cited by husband, but the record confirms the trial court understood its obligation to and did apply all of the pertinent R.C. 3105.18(C)(1) factors to this case. The court's entry, apparently drafted by husband's counsel and signed by wife's counsel, should have more accurately reflected the full analysis performed at the hearing.

{¶ 14} With regard to husband's challenge to the trial court's income parity or income equalization analysis, we find his arguments not well taken. The hearing transcript indicates the trial court discussed the R.C. 3105.18 factors applicable to this case, the fact that husband's income was \$71,000 and wife's income was \$49,456, and stated that the \$10,000 support award, "that's what brings them to parity."

{¶ 15} "[A]lthough a trial court is not required to equalize incomes, it is not prohibited from doing so where such a result is reasonable and equitable." *Arthur v. Arthur*, 3rd Dist. No. 17-11-28, 2012-Ohio-1893, ¶ 33. While R.C. 3105.18 does not require a spousal support award that provides the parties with an equal standard of living or a standard of living equivalent to that established during the marriage, an "income equalization" approach does not appear to have resulted in an inappropriate or unreasonable award in this case. *Arthur*; see *Wolf v. Wolf*, 2nd Dist. 96 CA 10, 1996 WL 563997 (Sept. 27, 1996); see *Yates v. Yates*, 12th Dist. Nos. CA2004-07-010, CA2004-07-011, 2006-Ohio-743, ¶ 20.

{¶ 16} Husband also argues the trial court abused its discretion in ordering an amount of spousal support that was more than wife testified she would need. The record indicates the wife testified earlier in the hearing that she was meeting her "debt load every month" with her earnings, but she would need \$600 in monthly spousal support for four years to afford living in the marital home. Husband testified that he was currently living in the marital home and paying two of the three mortgages on the home.

{¶ 17} After both parties testified they did not want to live in the marital home, the trial court ordered the home sold, with husband and wife splitting the expenses of paying all three mortgages on the home and the utility costs for the home until it was sold.

{¶ 18} We acknowledge this court previously placed strong emphasis on establishing the needs of the party receiving the support as referenced in our decision in *Carnahan v. Carnahan*, 118 Ohio App.3d 393 (12th Dist.1997). In *Carnahan*, which addressed the

modification of spousal support, we relied on cases examining the version of R.C. 3105.18 that directed courts to determine whether alimony was "necessary," before it was amended to direct courts to determine whether spousal support is "appropriate and reasonable." To the extent that *Carnahan* imposed an overriding "need" requirement rather than a balanced review of the R.C. 3105.18(C)(1) factors in determining what is appropriate and reasonable, we hereby overrule it and will no longer follow it for the initial support award or for a modification thereof.

{¶ 19} We find that a trial court must consider each of the factors listed in R.C. 3105.18(C)(1), and while a number of statutory factors relate to the financial condition of the parties, others exist to assist the trial court in achieving an equitable result. Need is but one factor among many that the trial court may consider in awarding reasonable and appropriate spousal support. See *Waller v. Waller*, 163 Ohio App.3d 303, 2005-Ohio-4891 (7th Dist.).

{¶ 20} Accordingly, a review of the record indicates the trial court heard the testimony of the parties and considered the pertinent factors of R.C. 3105.18(C)(1) in making its spousal support determination. We do not find the trial court abused its discretion. See *Miller v. Miller*, 7th Dist. No. 08 JE 26, 2009-Ohio-3330 (fact that appellee received more support than what is needed for her monthly budget does not render the award an abuse of discretion). Husband's single assignment of error is overruled.

{¶ 21} Judgment affirmed.

RINGLAND and PIPER, JJ., concur.