

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

LINDA J. GILLESPIE, :
 :
 Plaintiff-Appellee, : CASE NO. CA2011-05-034
 :
 - vs - : OPINION
 : 1/9/2012
 :
 TIMOTHY W. GILLESPIE, :
 :
 Defendant-Appellant. :

APPEAL FROM CLERMONT COUNTY COURT OF APPEALS
DOMESTIC RELATIONS DIVISION
Case No. 2009 DRA 0161

Mark J. Tekulve, 785 Ohio Pike, Cincinnati, Ohio 45245, for plaintiff-appellee

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RINGLAND, J.

{¶1} Defendant-appellant, Timothy W. Gillespie (husband), appeals from the decision of the Clermont County Court of Common Pleas, Domestic Relations Division, regarding an award of spousal support following his divorce from plaintiff-appellee, Linda J. Gillespie (wife). For the reasons outlined below, we affirm.

{¶2} Husband and wife were married in 1991. Wife suffers from fibromyalgia and

cervical spondylosis and she experiences widespread pain, fatigue, and back pain from these conditions. Wife works part time at a medical office while husband works full time at Proctor & Gamble. At trial, wife contended that her physical conditions prohibit her from working full time.

{¶3} Wife filed for divorce November 13, 2009. After a final hearing before a magistrate, husband was ordered to pay wife spousal support of \$1,000 each month for seven and one-half years. Husband and wife both objected to the magistrate's decision.

{¶4} On January 28, 2011, the trial court granted wife spousal support in the amount of \$1,000 each month for an indefinite time period. In its ruling, the trial court also reserved jurisdiction to modify its award of spousal support upon a change in circumstances. Husband now appeals the duration of the award and raises the following assignment of error:

{¶5} "THE TRIAL COURT ERRED WHEN IT MADE THE TERM OF SPOUSAL SUPPORT INDEFINITE."

{¶6} Husband argues two issues in his assignment of error. In the first issue, husband claims that the court did not have competent medical evidence to establish wife's limited ability to work because wife's expert was not qualified to give an expert opinion. Dr. Hiltz, wife's physician, testified that wife suffers from fibromyalgia and cervical spondylosis. He explained that the symptoms of these conditions limit wife's ability to work to part time.¹ Husband did not object to Dr. Hiltz's testimony on the basis of his qualifications. Husband briefly objected to the "foundation" of Dr. Hiltz's testimony regarding wife's diagnosis without any further explanation. It is well established that parties who wish to preserve for appeal an error in the trial court must make a timely and specific objection. Evid.R. 103(A); *Dorsey v. Donohoo* (1992), 83 Ohio App.3d 415, 419. Further, the failure to draw a trial court's

1. Dr. Hiltz explained part time is working less than 40 hours a week.

attention to a possible error, by objection or otherwise, when the error could have been corrected, results in a waiver of the issue. *Id.*; *Marder v. Marder*, Clermont App. No. CA2007-06-069, 2008-Ohio-2500, ¶30. Thus, husband waived this error for appeal because he did not make a timely and specific objection to Dr. Hiltz's qualifications to testify.

{¶7} In his second issue, husband argues that the trial court's award of indefinite spousal support was an abuse of discretion. Husband claims that the duration of the award was error because the trial court based its decision upon improper expert testimony and illogical assumptions.

{¶8} After the division of marital property, a trial court may order an award of reasonable spousal support to either party in a divorce proceeding. R.C. 3105.18(B). R.C. 3105.18(C)(1) provides a list of factors that the trial court must consider " * * * [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[.]" These factors include the parties' income, earning abilities, and ages, as well as the parties' physical, mental, and emotional conditions. R.C. 3105.18(C)(1)(a)-(c). Also, the court is to consider the duration of the parties' marriage in fashioning a spousal support order. R.C. 3105.18(C)(1)(e).

{¶9} An award of spousal support of an indefinite duration is authorized where the marriage was long term, the parties are of advanced age, or there is a homemaker-spouse with little opportunity to develop meaningful employment outside the home. *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, 68-69. Further, the payee spouse must not have the resources, ability, and potential to be self-supporting. *Id.* Marriages of 16 to 17 years have been found to be long term for the issuance of indefinite spousal support. See *Moore v. Moore* (1992), 83 Ohio App.3d 75, 79; see, also, *Heitzman v. Heitzman*, Crawford App. No. 3-05-11, 2005-Ohio-4622, ¶5.

{¶10} The trial court has broad discretion in formulating both the amount and duration

of a spousal support award. R.C. 3108.18; see *Griffith v. Purcell* (Jan. 26, 1998), Scioto App. No. 97 CA 2512. The court's decision will not be overturned on appeal unless the decision constitutes an abuse of discretion. *Id.*; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion is found when the court's attitude is unreasonable, arbitrary, or unconscionable. *Id.*

{¶11} Upon a close review of the record, we find that there was no error on the part of the trial court in awarding wife indefinite spousal support. Ample evidence was presented to support the trial court's decision that wife's syndrome limits her ability to work. As noted above, husband's assertion that the trial court's reliance on Dr. Hiltz's testimony was error is incorrect because husband failed to object to Dr. Hiltz's qualifications to testify at trial. Therefore, Dr. Hiltz's testimony established that wife was diagnosed during the marriage with fibromyalgia as well as cervical spondylosis. The symptoms of these conditions are widespread pain, fatigue, disturbed sleep, and pain in the upper extremities. Dr. Hiltz stated that these conditions limit wife's ability to work to part time. Moreover, wife testified about her limitations due to the fibromyalgia and cervical spondylosis. She explained that she works approximately 27 to 30 hours a week at a medical office earning \$10.85 an hour. Wife stated that her physical conditions limit her ability to work because she experiences widespread pain, fatigue, and back pain. She claimed that working aggravates her syndromes and that she needs days off in between work days in order to recover. There was no evidence that wife's health will improve.

{¶12} Additionally, wife testified that the parties had been married for 18 years. Prior to wife's current position she spent 12 years as a homemaker. Wife worked at General Electric several years ago but she explained that her allergies and her outdated experience make this position infeasible. Husband testified that he was a principal researcher at Proctor & Gamble and makes an annual salary of \$82,000 a year.

{¶13} Despite husband's argument that wife is able to work full time because she has watched her grandchildren on her days off, the court did not abuse its discretion. Wife testified that she looked after her grandchildren but she also explained that she often cancelled due to pain, she had help from her daughter in watching the children, and she is no longer baby-sitting the grandchildren. The trial judge has the best opportunity to view the demeanor, attitude, and credibility of each witness, and this court will not second-guess its judgment. *Tomes v. Tomes*, Butler App. No. CA2003-10-264, 2005-Ohio-1619, ¶10. Moreover, we are aware that the trial court retained jurisdiction to modify the amount and duration of the spousal support award. Thus, appellant will always be free to seek a modification of the award if there is a "change of circumstances." R.C. 3105.18(E)(1); see *Sheehy v. Sheehy*, Clermont App. No. CA2010-01-007, 2010-Ohio-2967.

{¶14} Finally, husband's assertion that the court violated R.C. 3105.18's direction to consider all of its factors is incorrect. In its decision, the trial court referenced the physical health of the wife as well as all the other statutory factors set forth in R.C. 3105.18. A trial court is not required to specifically comment on each factor of R.C. 3105.18(C)(1). *Campbell v. Campbell*, Warren App. No. CA2009-04-039, 2009-Ohio-6238, ¶22. Instead, the record must show that the court considered each factor in making its award. *Id.* A presumption exists that the trial court considered all of the factors in R.C. 3105.18(C)(1) when it states within its entry that it did so. *Id.*, citing *Mavity v. Mavity*, Butler App. Nos. CA2000-12-244, CA2000-12-247, 2002-Ohio-556, ¶5.

{¶15} Husband's assignment of error is overruled.

{¶16} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.