

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Laura Scherer, :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. : No. 11AP-180  
 : (C.P.C. No. 08DR-10-4128)  
 Stephen [G.] Scherer, :  
 : (REGULAR CALENDAR)  
 Defendant-Appellant. :

---

D E C I S I O N

Rendered on December 30, 2011

---

*Solove and McCormick, Ronald L. Solove, Kerry L. McCormick, and Elisabeth M. Howard*, for appellee.

*Wolinetz Law Offices, LLC, Barry H. Wolinetz, and Kelly M. Gwin*, for appellant.

---

APPEAL from the Franklin County Court of Common Pleas,  
Division of Domestic Relations.

TYACK, J.

{¶1} Stephen G. Scherer is appealing from various rulings of the Franklin County Court of Common Pleas, Division of Domestic Relations. He assigns three errors for our consideration:

I. THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION WHEN IT DIVIDED THE PARTIES' MARITAL ASSETS AND LIABILITIES.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION WHEN IT AWARDED WIFE SPOUSAL SUPPORT.

### III. THE TRIAL COURT ERRED IN DETERMINING ITS CHILD SUPPORT ORDER.

{¶2} The second assignment of error is the most easily resolved. On the date of the final divorce hearing, Stephen and Laura Scherer had been married for 18 years. Laura was unemployed and soon to begin receiving unemployment compensation. Stephen had earned \$94,555 in 2008 and \$96,486 in 2009, the two full years before the final divorce hearing. He had every reason to expect to earn similar income for the foreseeable future, as did the trial court.

{¶3} The only issue literally presented by the second assignment of error was whether it was an abuse of discretion for the trial court to award spousal support under these circumstances. A trial court has broad discretion in awarding spousal support, as noted in *Kunkle v. Kunkle* (1990), 51 Ohio St.3d 64, and many cases following it. Clearly, the trial court did not abuse its discretion in awarding spousal support in this case. The parties had been married for 18 years. Stephen had a significant income. Laura was facing unemployment. A spousal support order was clearly appropriate.

{¶4} The second assignment of error is overruled.

{¶5} The third assignment of error is also overruled. The trial court also has considerable discretion in determining the amount of child support to be awarded. See *Pauly v. Pauly*, 80 Ohio St.3d 386, 1997-Ohio-105.

{¶6} Here, the trial court completed a child support worksheet, as required by R.C. 3119.022 and *Marker v. Grimm* (1992), 65 Ohio St.3d 139. The trial court awarded the child support in accord with the worksheet. The trial court clearly did not abuse its discretion by following the mandates of R.C. 3119.022 and *Marker*.

{¶7} Most of the issues regarding the two minor children of the parties were resolved through a shared parenting plan which was the subject of an agreement before the final divorce hearing. To a point, Stephen is attempting to backtrack on that agreement by arguing that his child support should be the subject of a deviation from the worksheet computation because he agreed to pay for a parochial school education for one or both of his children. His independent agreement for tuition does not automatically result in a deviation from the figure generated through use of the child support worksheet. The trial court was within its discretion to apply the figure which resulted from the worksheet computation.

{¶8} The third assignment of error is overruled.

{¶9} In the first assignment of error, counsel for Stephen argues that the trial court "erred as a matter of law and abused its discretion" in its distribution of marital property. Counsel argues that the trial court did not divide the property equally or equitably, as required by R.C. 3105.171(C)(1).

{¶10} Addressing one of counsel's individual assertions, the trial court was clearly within its discretion to award the marital residence to Laura. The residence has been the marital home in which the two minor children of the parties have resided for several years. The divorce of the parents should not require the minor children to split their time between two new residences. The action of maintaining the home for the emotional well-being of the minor children was clearly within the trial court's discretion.

{¶11} Other issues regarding the marital property are more difficult to address. The trial court included in its final decree of divorce a chart which supposedly reflects the

distribution of assets. Unfortunately, some of the entries on the chart do not completely correspond with individual orders within the decree regarding certain particular assets.

{¶12} Counsel for Laura Scherer tacitly acknowledges this difficulty by arguing that the individual awards of property should take precedence over the entries in the chart.

{¶13} We do not see a basis for finding that the trial court abused its discretion in the awarding of assets based upon the discrepancies, but find it hard to know exactly what was awarded to whom under the circumstances. Since we cannot be clear on what was awarded to whom and under what conditions, we cannot completely address the argument that the trial court failed to honor the mandate of R.C. 3105.171(C)(1) that the award be equal or equitable. For that reason, the case must be returned to the trial court to rectify the discrepancies between the chart and the balance of the decree and thus provide additional clarity for all involved. To that extent, the first assignment of error is sustained.

{¶14} A majority of this panel does not believe that the clarification can result in such a significant change in property distribution that the award of spousal support or the award of child support would become an abuse of discretion. The general outline of the distribution of marital property is relatively clear from the initial final decree of divorce, but some of the specifics are hard to ascertain.

{¶15} In summary, we overrule the second and third assignments of error. We sustain the first assignment of error to allow the case to be returned to the trial court to

clarify its distribution as to marital property, without finding at this time that the trial court erred as a matter of law or abused its discretion in its handling of marital property issues.

*Judgment affirmed in part and reversed in part; remanded with instructions.*

CONNOR, J., concurs.

SADLER, J., concurs in part and dissents in part.

SADLER, J., concurring in part, dissenting in part.

{¶16} While I concur with the majority's disposition of the first assignment of error, I respectfully dissent with respect to their resolution of the second and third assignments of error.

{¶17} As resolved by the first assignment of error, the inconsistencies between the trial court's written orders and its chart pertaining to the division of marital assets and liabilities make it impossible to determine the propriety of the property division; accordingly, the trial court's judgment must be reversed and remanded for clarification. Contrary to the majority's conclusion, I do not believe that this court can definitively determine at this juncture that clarification of the property distribution will not affect the awards of spousal support and child support.

{¶18} Pursuant to R.C. 3105.18(B), a trial court may award spousal support only after it determines the division of property under R.C. 3105.171. Among the statutory factors a trial court must consider before awarding spousal support are the parties' respective retirement benefits and the relative assets and liabilities of the parties. In addressing these factors, the court referenced its chart pertaining to the allocation of marital assets and liabilities. In my view, until such time as the court clarifies its intentions regarding the property division, this court cannot determine whether the trial court abused

its discretion in making its spousal support award. Therefore, I believe the trial court's judgment with respect to the spousal support award must be reversed and remanded for reconsideration following resolution of the property division issue.

{¶19} Further, the child support worksheet completed by the trial court includes on Line 10 an entry for "Spousal Support Paid." Commensurate with its spousal support award of \$1,800 per month, the court entered \$21,600 on Line 10 as appellant's annual spousal support obligation. The trial court followed the child support worksheet computations and ordered child support as dictated by those calculations. However, because I believe that the trial court's judgment with respect to the spousal support award should be reversed and remanded for reconsideration following resolution of the property division issue, I believe it is impossible to determine at this juncture whether the trial court abused its discretion with regard to its child support order.

{¶20} Accordingly, to the extent that the clarification of the property division would require the trial court to revisit its awards of spousal support and child support, I would sustain the second and third assignments of error. Because the majority does not do so, I respectfully concur in part and dissent in part.

---