

August, 2014 Case Law Review

Vanderbilt v. Vanderbilt, 2014 Ohio 3652

Procedural History: The parties were married after a lengthy relationship. Immediately before the wedding, the parties executed a prenuptial agreement that included a waiver of spousal support. During the marriage, the wife used her income to fund the couple's living expenses. She supplemented her income with the proceeds of the sale of her home. She used part of the proceeds for her children's college expenses.

Ten years after the marriage, wife filed for divorce. The trial court granted the divorce, deemed that the prenuptial agreement was valid but did not control with respect to the issue of spousal support and awarded wife spousal support.

Husband appealed.

Synopsis: On appeal, husband argued that the trial court erred in determining the spousal support provision to be unconscionable, specifically that the parties' lifestyle during the marriage made the prenuptial agreement unconscionable.

The Ninth District began with a review of prenuptial agreements and the award of spousal support. "Prenuptial agreements may contain provisions related to spousal support, but a party may challenge the spousal support provisions contained therein by demonstrating that the terms related to spousal support are unconscionable at the time of divorce." The Ninth District concentrated on whether there was changed circumstances which would render the spousal support provision unconscionable at the time of divorce. "...whether a couple's circumstances have changed during the marriage to such a degree that the spouse seeking spousal support should be relieved of the agreement he or she made regarding spousal support." This change of circumstance must not have been contemplated at the time the parties entered into the prenuptial agreement.

The Court relies on two cases: *Gross v. Gross* (11 Ohio St.3d 99) and *Saari v. Saari* (2009 Ohio 4940). In *Gross*, the Supreme Court found that the \$200 per month spousal support award stipulated to in the prenuptial agreement was unconscionable in light of substantial increase in husband's income and assets during the marriage. Given the "opulent" nature of the couple's lifestyle during the marriage, the low support payment would cause significant hardship for wife.

In contrast, the Ninth District in *Saari* found that there was no change of circumstance making the spousal support provision of the prenuptial agreement unconscionable. Wife had similar income at the time of divorce as she did at the time she entered into the agreement and the marriage only lasted three years.

The Court notes that a higher standard of living, by itself, is not enough to warrant the finding a change of circumstance such that the spousal support provision of the prenuptial agreement is no longer valid, “especially given that such agreements are often the product of income inequality”.

For these reasons, the Ninth District found that there was no change of circumstance making the spousal support provision unconscionable and remanded the matter to the trial court for further consideration.

Organ v. Organ, 2014 Ohio 3474

Procedural History: The parties were married in 1983. Wife quit her job to care for the parties’ children while husband continued to work outside the home. Husband enjoyed success in his career. In 2009, husband filed for divorce. The parties were able to resolve most issues but the case proceed to trial on the issue of whether husband’s stock was marital property and whether wife was entitled to spousal support.

The trial court held that husband’s stock was separate property but that any income derived from the stock could be considered for spousal support purposes. It also determined that wife was entitled to spousal support in the amount of \$13,525 per month indefinitely plus a percentage of husband’s employment bonuses and a percentage of income derived from his stocks.

Husband appealed.

Synopsis: In one of his assignments of error, husband argued that the trial court erred in using a mathematical formula to calculate spousal support. The Ninth District disagreed. Although the Ohio Supreme Court had previously cautioned against using a mathematical formula to calculate support, the statute had been amended making the Ohio Supreme Court cases no longer applicable. After reviewing the record, the Ninth District found that the trial court properly considered the factors found in R.C. 3105.18(C). The mere fact that the trial court used a Fin Plan analysis did not mean that it relied on a mathematical formula.

In his next assignment of error, husband argued that the trial court erred in ordering him to pay spousal support from his separate property, specifically that the trial court erred in funding his spousal support obligation with his separate property.

The Ninth District disagreed. It found that the trial court did not fund husband's spousal support obligation from his separate property. Instead, it ordered husband to pay wife part of the proceeds from the investment of his separate property. This did not constitute an inequitable form of double dipping.

Husband also argued that the trial court erred in distributing husband's separate property to wife under the guise of spousal support. Specifically, he argued that by granting wife a percentage of the income he earned from stock that was separate property, the trial court had in effect transferred a portion of the stock to her. Husband relied on *Heller v. Heller*, 2008 Ohio 3296. The Ninth District disagreed. It found that this case differed from *Heller*. In this case, the stock in question was separate property and was not included as part of the division of marital property. Further, wife was not entitled to the stock, only the income from it.

Finally, husband argued that the spousal support award was inappropriate and unreasonable because wife would have been able to maintain the marital standard of living for less. The Ninth District disagreed. It relied on *Howell v. Howell* (2003 Ohio 4842) from the Second District, "...equity requires that a disadvantaged spouse receive sufficient spousal support to bring him or her up to a reasonable standard of living in light of the standard maintained during the marriage." The Ninth District writes, "...the mere fact that a spousal support award allows a spouse to continue to maintain the same standard of living as the other spouse and allows a spouse to continue to benefit from the paying spouse's success does not mean that the trial court abused its discretion in forming the award." Because the parties had worked as a team throughout their marriage so that they could acquire the marital assets they accumulated and maximize husband's earning capacity, the trial court's spousal support award was proper.

Deitz v. Deitz, 2014 Ohio 3531

Procedural History: The parties were divorced in 2013. Pursuant to the decree, the magistrate deemed various personal property located in a barn as marital property and

granted ownership of the property to wife. The trial court made this decision after considering the testimony of the parties and of husband's mother.

Husband objected to the magistrate's decision, arguing that some of the property belonged to a third-party. Additionally, husband's brother and mother filed motions to intervene. Both the objections and the motions to intervene were denied. The trial court categorized the motions to intervene as "too little, too late".

Synopsis: Husband's mother and brother appealed from the trial court's denial of their motion to intervene.

The Ninth District started its analysis by considering Civ. R. 75, which allows a joinder only when a person claims an interest in property that is at issue in the action. Here, neither the mother nor the brother identified any specific items of personal property that belonged to them or explained their interest in those items. Instead, the mother and brother filed a vague affidavit that averred merely that a "number of the personal property items... referenced in the Magistrate's Decision...are my sole and exclusive property." The Court found that the mother and brother had the ability to access the barn and identify the personal property belonging to them contained therein and failed to do so. For this reason, it affirmed the lower court's decision denying the mother and brother's motion to intervene.

Decision: Affirmed.

Goad v. Goad, 2014 Ohio 3534

Procedural History: The parties were divorced in 2005. Pursuant to the divorce, they entered into a shared parenting plan for the care and custody of their minor children. Mother was the residential parent and father had visitation. Upon the motion of both parties and after a hearing on the matter and after considering the recommendations of the G.A.L. and Dr. Robin Tener, the court ordered that father be the residential parent of the remaining unemancipated child.

Mother appealed, arguing that there had been no change of circumstance to warrant a modification of the shared parenting plan.

Synopsis: Specifically, on appeal, mother argued that the minor child's various mental health diagnoses were "conditions" and not "changes in circumstance". The Ninth District disagreed. It noted that when determining whether a change of circumstance

occurred, the focus is not on the cause of the change; instead, the focus is on whether a change of circumstance actually occurred. While the term “condition” may be the appropriate medical term for the child’s diagnosis, these diagnosis were also a change of circumstance, especially considering the effect these diagnoses had on the child’s quality of life. For these reasons, the Ninth District found that the trial court was proper in finding that a change of circumstance occurred and that father should be named as the residential parent.

Decision: Affirmed.