

Havrilla v. Havrilla, 2014 Ohio 2747

Procedural History: The parties both filed for divorce in August, 2011. A three day trial was held and the parties were divorced in July, 2013. Wife was ordered to pay spousal support and Husband's child support obligation was set at \$0. Wife appealed.

Synopsis: Wife's assignments of error and the Ninth District's decision are each listed below:

1. Wife appealed the trial court's failure to order that her name be changed back to her former name. Husband conceded the error. The Ninth District sustained the assignment of error.
2. Wife argued that the trial court erred in ordering that the marital home be transferred to Husband. However, Wife did not file a proper appeal of this order and instead, filed a motion to vacate the transfer order. Because the Wife did not appeal the order to transfer, her argument about the transfer were not properly before the Ninth District. The Ninth District overruled Wife's assignment of error.
3. Wife argued that the trial court erred in finding that she was involved in Husband's termination and awarding Husband spousal support. At the trial, Wife admitted to having an affair with Husband's boss' friend (who was employed at Husband's company) and threatening to have Husband fired. Husband testified that both Wife and her boyfriend threatened to have Husband fired. The Ninth District found that there was evidence that Wife played a role in Husband's termination. The Ninth District overruled Wife's assignment of error.
4. Wife argued that the trial court erred by offsetting Husband's child support obligation against Wife's spousal support obligation. Wife argued that by offsetting her spousal support obligation against Husband's child support obligation, she was denied a tax deduction for the full amount of her spousal support payment. Because the trial court considered the tax consequences in the divorce decree, the Ninth District disagreed with Wife and overruled her assignment of error.
5. Wife argued that the trial court erred in granting Husband a deviated child support obligation by failing to account for Husband income from the spousal support. R.C. 3119.23(C) allows the court to consider other court ordered payments when determining whether to grant a deviation. Wife argued that RC 3119.23(C) applies only when the obligor's income is reduced by other court ordered payments and not when the income is increased. The Ninth District found that there was no authority limiting R.C. 3119.23(C) to circumstances when the obligor's income is decreased. For this reason, the Ninth District overruled Wife's assignment of error.
6. Wife argued that the trial court erred in adopting Husband's Shared Parenting Plan. Wife failed to cite any provision of the Shared Parenting Plan that conflicted with the testimony at trial. The Ninth District, citing *Cardone v. Cardone* (1998 WL 224934) found, "If an argument exists that can support [Wife's] assignment of error, it is not this Court's duty to root it out." The Ninth District overruled Wife's assignment of error.
7. Wife argued that the trial court erred by including the amount Wife owed to Husband due to a prior finding of contempt in the final decree of divorce. The Ninth District found that the trial court was correct in including this debt and granting Husband a judgment. The Court overruled Wife's assignment of error.
8. Wife argued that the trial court erred in not holding Husband accountable for squandering marital property. The Ninth District agreed with Wife, in part. It found that

the \$6,740.00 in marital funds that Husband lost gambling shortly before the filing of the divorce and while he was in the process of retaining a divorce attorney may have been financial misconduct and remanded the matter for further consideration by the trial court. 8. Wife argued that the trial court erred in failing to find Husband in contempt for refusing to provide a full accounting of his use of marital funds. According to Wife's forensic accountant, there is approximately \$60,000 that is unaccounted for during the six month period during the pendency of the divorce. The Ninth District failed to see the import of what Husband was spending his money on after the filing of the divorce. The trial court had already issued temporary orders and was aware of what both parties' incomes were. Wife's assignment of error was overruled.
Decision: Affirmed in part, reversed and remanded in part.

Uphouse v. Uphouse, 2014 Ohio 2514

Procedural History: Husband filed a complaint for divorce and wife filed an answer and counterclaim. The parties reached an agreement about some issues and the remaining issues were resolved by the trial court. The trial court issued a decree. Wife appealed.
Synopsis: In her first assignment of error, wife argued that the trial court erred in making a determination about the disposition of the marital home. The parties had reached an agreement about the marital home that was read into the record. That agreement was not reflected in the decree. The Ninth District agreed and sustained wife's first assignment of error.

Wife also argued that the trial court erred in determining the amount and duration of spousal support. The Ninth District declined to rule on these assignments of error until after the trial court made a determination about the division of marital property.

Decision: Reversed in part.

Bowman v. Bowman, 2014 Ohio 2851

Procedural History: Wife filed a petition for a civil protection order requesting protection for herself and her three children against husband. Wife alleged that husband had used excessive corporal punishment on the children on numerous occasions and had been violent towards her. Wife was granted a four year civil protection order. Husband appealed.

Synopsis: On appeal, husband argued that the evidence submitted at trial did not support the issuance of a civil protection order. The Ninth District noted that when "determining whether corporal punishment is excessive, a trial court must consider the totality of the circumstances 'including the age of the child, the child's response to non-corporal punishment and the behavior being punished.'"

In the case *sub judice*, the punishment was excessive for a minor infraction, husband had a history of abusing the children and wife and the children were afraid of him.

Decision: Affirmed.

McDonald v. McDonald, 2014 Ohio 2861

Procedural History: The parties were divorced in 2011. Both parties were designated the residential parent and legal custodians of the two minor children. The eldest child began to refuse to visit with father and father filed for a motion to terminate the shared parenting plan as it related to the younger child and a motion to show cause why mother

should not be held in contempt for failing to follow the visitation schedule with regard to the eldest child.

After a full evidentiary hearing and an *in camera* interview of the older child, the trial court terminated the shared parenting plan with regard to the youngest child and limited mother's companionship time to the standard parenting time schedule. Mother appealed.

Synopsis: Mother argued that the trial court erred in designating father as the residential parent of the youngest child and granting her only the standard order of visitation.

Specifically, mother argued that the trial court failed to find a change of circumstance that pertained to the youngest child. Mother argued that any change of circumstance discussed by the trial court pertained only to the older child (older child's refusal to attend visitation with father).

The Ninth District disagreed. It found no authority for the type of limitation mother imposed on R.C. 3109.04(E)(1)(a).

Mother also argued that it was not in the younger child's best interest to name father the residential parent. The Ninth District disagreed. Although it was clear that both parents loved and cared for the children, it was reasonable for the court to conclude that it was in the younger child's best interest for father to be the residential parent.

Decision: Affirmed.

Patton v. Hickling-Patton, 2014 Ohio 2862

Procedural History: The parties were divorced. Wife appealed.

Synopsis: The appellate opinion is, for the most part, unremarkable with one exception.

Wife argued that the trial court erred in granting a divorce. Specifically, wife argued that there were no grounds for divorce. The trial court had found that wife had engaged in extreme cruelty and gross neglect of duty. On appeal, the Ninth District found that the trial court's factual findings were supported by the record.

Justice Belfance, in a concurring opinion, noted that it was unnecessary to find that wife engaged in extreme cruelty or gross neglect of duty as the parties had lived separate and apart for one year.

Decision: Affirmed.