GARY JAY GOTTFRIED
ATTORNEY AT LAW
608 Office Parkway, Suite B
Westerville, Ohio 43082
614-297-1211
614-297-6387 (FAX)
E-mail: Gary@Gottfriedlaw.com

2023-2024 CASE LAW UPDATE

A. ATTORNEY MATTERS

1. DISCIPLINARY MATTERS:

a. **Disciplinary Counsel v Skolnick** Slip Opinion No 2018-Ohio 2990

FACTS: Paralegal for Attorney records conversations with Attorney wherein Attorney berates employee as to her physical appearance and dress and calling her a " ho", dirtbag and other obscenities. The Attorney's explanation for his behavior was that he learned the lingo from rappers and hip hop artists he represents as an entertainment lawyer and that he thought that he was being funny. Supreme Court suspends Attorney for 1 year with 6 months stayed. The suspension was necessary to not only protect the public and the dignity of the legal system but also to deter future misconduct of this nature by the Attorney Skolnick and other attorneys licensed to practice law.

Cincinnati Bar Association v Kathman , 2021- Ohio-2189 (June 2021)

FACTS: Attorney charged with multiple violations of the Rules of Professional conduct including a violation for failing to properly supervise his paralegal. The paralegal had embezzled funds from the Attorney and subsequently plead guilty. The paralegal had prepared contingent fee agreements using a form adopted by the firm, corresponded with insurance companies on behalf of Katham and collected information related to the client's damages and expenses, and prepare checks from Counsel's IOLTA account regarding disbursement. The paralegal was allowed to work remotely on a lap top which was not connected to Counsel's office computer and carried out her duties with minimal or no oversight. During a period of time the paralegal wrote checks to herself which Katham discovered and for which the paralegal was fired.

DECISION: Based upon other trust account violations and the failure to supervise his paralegal the Board recommended a one year suspension – with 6 months stayed and reinstatement conditioned on completing 24 hours of CLE including professional ethics and law office management.

b. **Cleveland Metropolitan Bar Association v Whipple,** 2022-Ohio-510 (Sept 2021)

FACTS: During the course of a civil case Attorney Whipple filed a motion alleging that opposing counsel's performance was impaired by a mental or emotion condition or some other condition and sought the dismissal of the case. Attorney Whipple also requested in his motion that opposing counsel be referred to OLAP. The panel found that Attorney Whipple's motion contained threats of criminal and professional misconduct charges for the sole purpose of obtaining an advantage in a civil case. The panel also found that Attorney Whipple filed a frivolous motion violated or attempted to violate the professional conduct rules, and engaged in conduct that was prejudicial to the administration of justice. The panel recommend a one year suspension from the practice of law with 6 months suspended. Attorney Whipple appealed that decision to the Supreme Court arguing that his conduct only warranted a public reprimand. The Supreme Court rejected Attorney Whipple's argument and imposed the suspension recommended by the panel.

c. **Farrell v Farrell** 3rd District Case No 9-22-46 (April 2023)

FACTS: Attorney has a family emergency and can't attend a pre trial. Attorney notifies court of the emergency. Because Attorney couldn't attend pre trial a proposed agreed entry could not be signed although the agreed entry was later signed and filed with the Court. Because the Attorney didn't attend the pre trial the trial court finds the attorney in civil contempt and fines the attorney $ 250.00. Attorney appeals. Reversed

DECISION: In reversing the decision of the trial court the Court of Appeals found that the finding of contempt was a criminal contempt and not a civil contempt. In reversing the trial court's finding that the Court of Appeals found that the contempt proceeding was not to remedy a violation against a party but to punish a perceived offense against the dignity of the court and not to coerce or enforce compliance with a court order.

2. **ATTORNEY FEES**

a. **D.L.M v D.J.M**, 8th District, Case No. 107992 (November 2019)

FACTS: Husband files to terminate the parties shared parenting plan on the basis of alleged sexual abuse allegation against his former wife even though the Police Department and Children Services Agency had determined that the allegations were not credible. Eventually the Husband's motion was dismissed. Wife then files a Rule 11 motion for sanctions and fees against the Husband's attorney alleging that the Father and his counsel did not consult with either the detective assigned to the case or children's services. Trial Court dismisses the motion without a hearing . Wife appeals, Reversed.

DECISION: In reversing the trial court's decision the Court of Appeals first noted that a motion for sanctions under Rule 11 creates a proceeding ancillary to and independent of the underlying case. Rule 11 sanctions are collateral to the underlying

.

matter and a court may consider such sanctions after an action is no longer pending. If there is an arguable basis for an award of sanctions the trial court must hold a hearing on the issue.

b. **Caparella-Kraemer & Associates v Grayson,** 12 District, Case No. 19-11-184 (6/2019)

FACTS: Law firm sues former divorce client for $ 2,600.00 in unpaid fees. Attorney who represented client testified as to his billing practices. Law firm also called the office manager who managed the firm and handled the firms billing. Client challenged the bills both as to its accuracy and the amount which was billed for a particular service. Trial Court grants judgement in favor of the law firm finding that the burden of proof was on the client to prove by the preponderance of the evidence that the charges were improper . Client appeals, Reversed.

DECISION: An attorney has a professional duty not to charge a " clearly excessive fee". Where an attorney and client enter into a fee agreement but the agreement fails to provide for the number of hours to be expended by the attorney, the Attorney has the burden of proof to show that the time charged was fairly and properly used and the burden of proof of reasonableness of work hours devoted to the case rests on the attorney.

Factors which a court can consider in determining whether a fee is reasonable are:

1. Time and labor required
2. The novelty and difficulty of the questions involved.
3. Skill required to perform the legal service properly
4. The likelihood, if apparent to the client that the acceptance of the particular employment will preclude other employment by the lawyer
5. The fee customarily charged in the locality for similar legal services
6. The amount involved and the results obtained
7. The time limitations imposed by the client or the circumstances
8. The nature and length of the professional relationship with the client
9. The experience, reputation, and ability of the lawyer or lawyers performing the services
10. Whether the fee is fixed or contingent.

Generally, merely submitting an attorney's itemized bill is insufficient to establish the reasonableness of the amount of work billed. Expert testimony or testimony from other individuals may be offered to corroborate an attorney's self-serving testimony that the fee requested is reasonable.

c. **King v King** 10th District Case No 20AP 225 (June 2021)

FACTS: Trial Court orders Husband to pay $ 19,000.00 in legal fees related to fees Wife incurred in defending Husband's unsuccessful appeal to the Court of Appeals and the Ohio Supreme Court. Husband pays the order on fees, does not request a stay and then files an appeal. Court of Appeals affirms.

DECISION: Court of Appeals rejects the Husband's argument that a litigant cannot request appellate attorney fees for the first time after the appeal has concluded. According to the Court of Appeals, the " governing statute (r. c 3105. 73(b)does not contain the restriction suggested by Husband. RC 3105.73(b) provides that in any post decree motion that arises out of an action for divorce… the court may award all or part of reasonable attorney fees and litigation expenses to either party if the court finds the award equitable. The statute also permits the trial court to consider the income and conduct of the parties in making that determination.

The Court of Appeals also found Husband's appeal to be moot because he had paid the judgement and had not sought a stay of the execution on the judgement. Where the judgment is voluntarily paid and satisfied such payment puts an end to the controversy and takes away from the defendant the right to appeal or prosecute error or even to move for vacation of the judgement.

d. **Greenhouse v Anderson** 10th District, Case No 20 AP-125, (December 2021)

FACTS: Husband files motion against Wife's attorneys alleging that Wife's attorney caused Husband to incur additional expense because Wife's attorney's filed motion for business evaluation and other discovery matters. Counsel does not file a response to the motion. Wife's attorney's then withdraw because Wife wanted to " go a different direction". Wife hires new counsel and settles the case with the exception of Husband's motion for legal fees against prior counsel. Court sets a hearing date but doesn't send notice to prior Counsel. Hearing conducted and Husband is awarded $ 7,500.00 pursuant to R.C 2323.51 (frivolous conduct) . Prior Counsel did not appear at the hearing. Prior Counsel appeals the award of fees. Affirmed

DECISION: Generally a party receives constructive notice of a hearing by virtue of the Court's entry on the on line docket. As a general rule once a person becomes a party to an action he has a duty to check on the proceedings of the court to assure that he will be at the hearing or trial. While prior counsel were not served with copies of the notice of hearing they were aware of the pending motion and had until they withdrew actively participated in the litigation. They were familiar with how to access the court's on line docket and new how to find out when the motion was set for a hearing. They were expected to keep themselves informed of the status of the case and a lack of diligence as to this responsibility is not excusable when a hearing date is available via the on line docket.

.

e. M.E.K v P.K 8th District Case No 112942 (March 2024)

FACTS: Magistrate in a post decree custody matter awards the Plaintiff $ 12,500.00 in legal fees. Plaintiff had asked for $ 136,000.00. Plaintiff appeals the decision to the trial court. Trial Court increases the fee to $ 40,000.00. Defendant appeals- reversed.

DECISION: A party seeking fees pursuant to R.C 3105.73(B) has the burden of proof to demonstrate that the fees were reasonable and necessary. The party against whom a request for fees is made has no duty to object to the reasonableness of the fees until the moving party produces evidence to establish the reasonableness of the fees.

In this case the Plaintiff introduced a redacted fee bill which prevented the Court from determining what services were provided and at what rate (there was no dollar amount applied to each service). In addition there was billing for services which the Court labeled as unreasonable amount of time. The Court of Appeals found that the Plaintiff failed to demonstrate the reasonableness of the services rendered by submitting a redacted fee bill. According to the Court the burden of proof never shifted to the Defendant to demonstrate the unreasonableness of the fees or services.

f. **Gauthier v Gauthier** 1st District, Case No C-220521 (January 2024)

FACTS: Trial Court awards the Wife $ 93,000.00 in legal fees. During the course of the case the hourly rate charged by the wife's attorney increased from $ 425.00 to $ 495.00 per hour and the bill submitted was calculated on the increased hourly rate. Case remanded for a hearing on attorney fees. Trial Court limits husband's attorney to one hour of cross examination. Trial Court award of fees takes into consideration the increased hourly rate. Husband appeals, Affirmed

DECISION: In affirming the trial court's award of fees the Court of Appeals held that an award of legal fees is reviewed on an abuse of discretion and will not be reversed unless the trial court's award is " so high or low" as to shock the conscience. A trial court in awarding legal fees is " not required to act as a " green eyeshade accountant and achieve auditing perfection but instead must simply do rough justice. In affirming the trial court use of increased fees the court of appeals stated that Courts have allowed an increase in historical rates to compensate for delays in payment. Wife's attorney had argued that the use of the higher hourly rate was necessary in order to compensate for the delay in payment

Court of Appeals also found while trial courts have discretion with regard to the length of cross examination a trial court should not impose arbitrary time limit. Instead according to the Court a better practice would be to allow cross examination to develop and then determine whether it is necessary to impose a

time limit. However, the Court of Appeals found no abuse of discretion in imposing a one hour limitation on cross examination,.

3. MISCELLANEOUS

a. **Kemp v Kemp:** 5 th District Case No. 18 CAF 08 0063 (April 2019)

FACTS: On October 30. 2017 and prior to the commencement of trial the Wife discharges her attorney. Case is set for trial on January 23, 2018. Trial Court grants the motion and allows Counsel to withdraw On January 17, 2018 Wife files for a continuance because her Counsel had not delivered to the wife her file. Trial Court calls discharged counsel and directs that the file be delivered to the wife. Thereafter the trial court denies the request for a continuance. Trial court conducts a 3 day trial where wife represents herself. Wife appeals the decision of the trial court denying her request for a continuance. Affirmed.

DECISION: In determining whether a trial court abused its discretion in denying a motion for a continuance an appellate court should consider the following factors; (1) length of the delay requested;(2) whether other continuances have been requested and received;(3) the inconvenience to the witnesses, opposing counsel and the court;(4) whether there is a legitimate reason for the continuance;(5) whether the defendant contributed to the circumstances giving rise to the need for the continuance (6) other relevant factors.

In affirming the trial courts decision to deny the continuance the Court of Appeals noted that the Wife had contributed to the circumstances giving rise to the need for a continuance. The Court observed that the Wife had filed her Counsel in October 2017 but had delayed in seeking new counsel or obtaining her file until shortly before the trial date. Further the Wife was aware in July 2017 of the December trial date but waited a week before the rescheduled trial date to request to continue the trial.

b. **Klockner v Klockner** 9th District, Case No 29236 (May 2019)

FACTS: Wife files for divorce. Husband doesn't file an answer. While the case is pending the parties have a discussion regarding a temporary orders. Husband believes that based upon his conversations with his wife that the wife will be dismissing her complaint for divorce and the parties will be proceeding with a dissolution of marriage. Wife doesn't dismiss her complaint for divorce. The case is set for a final hearing. Husband is notified of the final hearing but doesn't show up. Trial Court grants a divorce to the Wife and divides the property and awards spousal support. Husband files a 60 b which is denied. Husband appeals. Affirmed.

DECISION: In order to prevail on a motion for relief pursuant to Civil Rule 60(b) the movant (husband) must demonstrate that (1) the party has a meritorious defense or claim to present if relief is granted ;(2) the party is entitled to relief under of the grounds stated in Civ.R 60(b)(1) through 5 and (30 the motion is made within a reasonable time. These

.

requirements are independent and in the conjunctive; thus the test is not fulfilled if any one of the requirements is not met.

In affirming the dismissal of the Husband's motion the Court observed the Husband had presented a meritorious defense. The burden of proof is on the movant to allege operative facts with enough specificity to allow the court to decide whether the movant has met that test. A movant's burden is to not only allege a meritorious defense he/she does not have to prove that he/she will prevail on that defense. In this case, the Husband had argued that he had a meritorious defense but did not explain what the defense might be.

c. **Erie-Huron Bar Assn v Bailey and Bailey** Ohio Supreme Court 2020 Ohio-3701(July 2020)

FACTS: Attorney in a criminal case 4 days before the commencement of the trial requests a continuance of the trial so that he could attend a family wedding. Trial court denies the continuance. On the day scheduled to commence trial in advance of the selection of the jury told the court that he would not be able nor willing to proceed with the trial. The Court held a conference at the bench where counsel restated his position. The court told the attorney on 2 occasions to step and continued to argue his position. The third time when asked to " step back" counsel stated " I may , but I won't". Trial Judge ordered Counsel to participate or be held in contempt. Attorney refuses to participate in the trial, and the trial judge held him in contempt. Fined 250.00 and sentenced to 30 days in jail. The judge then proceeded with the trial. Defendant found guilty and was sentenced to life in prison. Attorney appealed the decision- affirmed.

Bar Association filed a complaint to the Board of Professional Conduct. The 3 member panel heard the case and recommended a 2 year suspension with 1 year stayed. Attorney appealed the decision. Supreme Court found that the attorney's comments " I may but I wont" were undignified, discourteous and degrading to the trial court and that his conduct was extremely disruptive to the administration of justice.

d. **Hill v French** 6th District, Case No. L-20-1077 (January 2021)

FACTS: Mother found in contempt of court and ordered to pay Husband's legal fees of $ 18,000.00. Mother appeals to the Court of Appeals arguing that she does not have the ability to pay the legal fees. Affirmed

DECISION: The award of attorney fees is within the discretion of the court and the court retains discretion " to include reasonable attorney fees as part of the costs taxable to a party whom the court has found guilty of civil contempt. Citing the Villa case (8th District, Case No 72709 (1998) the Court of Appeals found that "Neither the common law or R. C 3105. 18(G) require that the Wife's ability to pay be considered. Attorney fees are not additional support but a cost incurred in the contempt action". The Court also relied upon the Bakhtiar case (8th District 107173) which found that evidence of a

.

parties ability to pay however, is not required when awarding attorney fees incurred for bringing a contempt motion.

e. **Schneider v Schneider** 2nd District Case No 28675 (September 2020)

FACTS: Husband agrees to pay spousal support to wife so that wife's gross income per month would be $ 3,600.00 per month. Post decree Wife enters into reverse mortgage with her son whereby Wife receives $ 500.00 per month. Husband files a motion seeking to modify his spousal support obligation on the theory that the $ 500.00 per month was income and therefore his support obligation should be reduced. Trial Court denies the motion. Husband appeals, Affirmed.

DECISION: Trial Court found that income for tax purposes is generally understood to be an "accession to wealth". Loan proceeds do not actually increase one's wealth because the receipt of the loan is offset by the obligation to repay the loan. Reverse mortgages are a special type of loan that allows a home owner to convert a portion of the equity into cash so " reverse mortgages are considered loan advances and not income. The reverse mortgage payments that the Wife received did not increase her wealth. That money was an asset she already owned (the equity in her home).

f. **Kim v Lowry&Associates** 9th District, Case No 29680 (January 2021)

FACTS: Husband files claim of invasion of privacy and gross negligence alleging that Attorney had willfully and wantonly filed unredacted subpoenas and other matters of record publicizing certain personal identifies (i.e full social security number and bank account umbers) in a post decree domestic relations matter. Trial Court granted summary judgment in favor of Attorney. Husband appeals. Affirmed

DECISION: Citing the Supreme Court case of Scholler Scholler (10 Ohio St 3d 98(1994) the Court held that an attorney is immune from liability to 3rd persons arising from his performance as an attorney in good faither on behalf of and with the knowledge of his client, unless such person is in privity with the client or the attorney acts maliciously.

g. **Reynolds v Reynolds** 11th District, Case No. 2021-L-061 (February 2022)

FACTS: Parties in a post decree matter reach an agreement on the allocation of parental rights. The party's agreement is then read into the record and then both parties acknowledge under oath that they understand their agreement, that as stated and read into the record it reflects their agreement. Counsel for Wife then prepares and send to Counsel for the Husband a typed version of the party's agreement. Husband and Counsel do not sign the agreement. Typed entry is then submitted to the Court which then adopts the agreement. Husband appeals the decision. Affirmed.

DECISION: Where the parties reach an agreement in the presence of the court, the agreement constitutes a binding contract and the trial court may properly sign a judgment entry reflecting the settlement agreement regardless of whether one of the parties refuses to sign the agreement when reduced to writing.

Generally a party may not challenge on appeal a judgment to which he has agreed. Father's assigned errors pertain to the modification of his parenting time to which he agreed and therefore he is precluded from raising this challenge on appeal.

h. **Vaughn v Vaughn** 12th District, Case No 2021-08-078 (May 2022)

FACTS: Husband during his divorce retains and then fires 4 attorneys. Husband also does not comply with local court discovery rules. Husband seeks a continuance to obtain new counsel. Motion denied. Husband proceeds to trial unrepresented. Husband is prevented from introducing witnesses and evidence because he didn't comply with the court's local rule on disclosure of evidence and witnesses. Husband appeals. Affirmed.

DECISION: To grant or deny a motion for a continuance is a matter entrusted to the broad and sound discretion of the trial court. Absent an abuse of discretion a decision to deny or grant a motion for a continuance will not be reversed by the appellate court. There is no " bright line" test to determine when an abuse of discretion occurs in the context of a motion to deny a continuance. In determining whether a trial court abused its discretion in denying a motion for a continuance a Court should consider the following factors:

1. Length of the delay requested
2. Whether there have been other requests for a continuance
3. The inconvenience to witness, opposing counsel and the court
4. Is there a legitimate reason for the continuance
5. Did the party seeking the continuance contribute to the reason for the continuance.
6. Any other relevant factors

In affirming the decision of the trial court to deny the Husband's request for a continuance to obtain counsel the Court affirmed the trial court's determination that Husband not having counsel at the final hearing was the " natural result of the choices that Husband had made that created the very risk he no complains about.

Husband also argued that the trial court committed error because the trial court did not allow him to cross examine a witness. In affirming the trial court's decision the Court of Appeals found that because the record did not contain a proffer of what the husband believed the witness would have said there was nothing for the court to review. A reviewing court will uphold a trial court's decision to exclude evidence if the record does not contain a proffer.

.

i. **Ohio Board of Professional Conduct Opinion** No. 2022-06 (June 2022)

A lawyer faced with an opposing counsel whom he/she considers a friend must exercise professional judgment in determining whether a conflict exists and what action to take. The following factors should be considered in determining whether a conflict exists:

1. the degree of mutual affinity for one another
2. the length of the relationship
3. whether the lawyer regularly socializes with opposing counsel
4. the frequency of contact with opposing counsel

Engaging in some , if not all of the following activities suggests the existence of a close friendship:

1. regularly socializing outside of professional activities
2. spending time at each other's homes
3. coordinating activities with each other's spouses and children
4. exchanging gifts at holidays or special occasions
5. vacationing together
6. sharing confidences or intimate details of their lives

When a close friend as defined above is opposing counsel the lawyer must disclose the relationship and obtain informed written consent from the client.

An acquaintance may be distinguished from a friend where there is little mutual affinity and attachment between one and another. For example, attending bar events, CLE or meetings, interacting cordially at shared community spaces such as places of worship, country clubs,school or sporting events. Lawyers who fall within the category of " acquaintances " need not be disclosed to the client nor does the lawyer need to obtain a written consent.

j. **Ohio Board of Professional Conduct** Opinion No. 2023-04 (June 2023)

When an attorney receives a subpoena duces tecum for a former client's file the attorney must promptly notify the client of the request and seek the client's informed consent to the disclosure of client information contained in the file. If a client consents the lawyer's disclosure should be made only to the extent that the lawyer believes that it is reasonably necessary to comply with the subpoena. If the client chooses to challenge the subpoena the lawyer must assert all reasonable claims to limit the disclosure of client information relating to the former representation including filing a motion to quash and an appeal of an adverse court ruling. If the client can not be timely located the lawyer must assert all reasonable claims to limit the disclosure of client information related to the former representation including filing objections to the subpoena and filing a motion to quash.

In this case the lawyer received a subpoena duces tecum from the prosecuting attorney to turn over the former client's file.

.

k. **Ohio Board of Professional Conduct Opinion 2024-2 (February 2024)**

The Ohio Board of Professional Conduct issued an advisory opinion that stated that an Attorney who is appointed in the dual role of GAL and Attorney for the child may not communicate with a represented person without the permission of counsel. However, if the communication is authorized by law or court order or the communication is solely to obtain information about how to contact the child or schedule an appointment with the child then a lawyer with a dual appointment may contact the represented person with the permission of counsel.

B. BANKRUPTCY

1. **Olson v Olson** : 7th District Case No 15 CO2 (December 2015)

FACTS: Both parties file for Chapter 13 bankruptcy protection and submit a 5 year repayment plan. The plan of both parties is confirmed by the Bankruptcy Court in November 2011. In February 2013 the Parties file for a dissolution of marriage. At the time of the filing of the dissolution of marriage neither Party filed for relief from stay. Dissolution of marriage is granted. Post decree the wife files to set aside the dissolution alleging that the trial court did not have jurisdiction to issue a dissolution of marriage because no relief from stay had been issued. Trial Court denies the motion. Wife Appeals. Affirmed.

DECISION: In affirming the trial court's decision the 7th District Court of Appeals found that 11 USC 1327(b) states that upon confirmation of a plan the confirmation vests all the ownership of all property in the estate of the debtor. Because all of the property being divided in the dissolution of marriage was in the estate of the debtor and not in the bankruptcy estate the parties in the dissolution of marriage (separation agreement) were not seeking to divide property of the bankruptcy estate and therefore there was no violation of the provisions of USC 362(b) which creates the automatic stay against assets of the bankruptcy estate. Thus because the separation agreement only divided the property of the debtors and not the bankruptcy estate there was no need to seek relief from the automatic stay provision of 11 USC 362(b). Because there was no automatic stay provision in force the trial court had jurisdiction to approve the separation agreement and grant the dissolution of marriage.

C. CHILD SUPPORT

1. **42 USC 659** (International Collection of Child Support)

Statute wherein the United States consents to the income withholding and garnishment for enforcement of child support and spousal support. 42 USC 659 brings the United States into compliance with the Hague Convention of 11/23/2007 which is an international treaty for the collection of child support and other forms of maintenance.

.

42 USC 659 creates a class of countries called Foreign Reciprocating Countries (FRC) . FRC are countries which are signatories to the Hague Convention on the international collection of child support and other forms of family maintenance. Presently there are 30 countries which are signatories to the convention and which are considered as being a FRC. The significance of 42 USC 659 is that provides that State VID agencies (i.e CSEA in Ohio)can provide collection services to FRC. In addition under 42 USC 659 a State VI D agency (CSEA) can request collection assistance of an obligor through the " Central Authority " of the country where the obligor resides.

2. S**weeney v Sweeney** 1st District, Case No C-189976 (May 2019)

FACTS: The Parties reach and agreement on shared parenting but can not reach an agreement on the amount of child support to be paid. Trial Court hears the evidence on the issue of child support and finds that Husband is voluntarily underemployed and imputes income to the Husband. Trial Court also imputes 4% interest on the money which the husband had received from the sale of his business and which the husband had placed in a savings account. Husband appeals the decision. Reversed.

DECISION: A voluntary reduction in income is not sufficient in and of itself to establish that potential income should be imputed to the parent. The test is not only whether the change was voluntary, but also whether it was made with due regard to the parent's income-producing abilities and his duty to provide for the continuing needs of the children. The record must demonstrate an objectively reasonable basis for reducing employment income, where " reasonableness is measured by examining the effect of the parents decision on the interest of the child. The goal is to protect and insure that the

best interest of he children and the parent's subjective motivations for being voluntarily unemployed or underemployed play no part in the determination whether protentional income is to be imputed to that parent in calculating his or her support obligation.

The Trial Court committed error when it imputed income to the funds which the Husband has received from the sale of his business and which he placed in a saving account. R.C 3119. 01 (C) (11)(b) does not permit the imputation of income from income-producing assets. Assets deposited into an account earning in interest are in fact income producing" and do not fall with the rubric of income producing assts under former R.C 3119.01.(C) (11)(b).

3. **N.W v M.W**:8th District, Case No. 107503 (May 2019)

FACTS: Party's obtained a dissolution of their marriage. As a part of their dissolution the parties agreed to shared parenting. The parties further agreed that the Husband would pay spousal support for 4.5 years at $ 12,500.00 per month and child support of $ 1,200.00 per month. When the spousal support ends the Wife files a motion seeking to modify and increase her child support. At the time of the motion the Husband's income is $ 500,000.00 per year. The wife was self employed and owned a Math

.

Franchise where she tutored after school children in math. Wife expected to break even in 2017. A vocational evaluation was conducted and it was determined that the Wife could earn $ 55,000.00 per year. Trial Court sets child support at $ 7,000.00 per month. Both Husband and Wife appeal. Affirmed.

DECISION: Because the parties income exceeded $ 150,000.00 per year R.C 3119.04 does not require the court to extrapolate to determine the proper amount of support. Rather, R.C 3119.04 requires the trial court to determine the child support amount on a " case by case" basis considering the " needs and the standard of living of the children who are the subject of the child support order and of the parents" citing R.C 3119.04.

For purposes of R.C 3119.04 the children's " needs" include food, clothing, shelter, medical care and education. The lifestyle of a child, on the other hand goes beyond mere needs; it reflects the level of comfort that the child would have enjoyed beyond basic necessaries had the parents remained living together. It is sometimes referred to as the child's " qualitative " needs.

Citing the Phelps case out of the 8th District the Court of Appeals stated that a qualitative analysis focuses on observation and descriptions of a child's lifestyle. Although the word " qualitative does not necessarily provide for precise determinations, its use recognizes that circumstances between the children can vary based on their parents income, and the court has discretion to fashion a support order accordingly and on a case by case basis.

5. **Crandall v Crandall** 11th District, Case No. 2019 -G-0202

FACTS: Parties are divorce. Post decree Wife files to modify child support. At trial the evidence was that the Husband earned 1.8 million dollars per year. At trial the Wife argued that the trial court should extrapolate child support due to the husband's income. Trial Court declines to extrapolate in determining child support and awards the wife $ 1,450.00 per month in child support. Wife appeals. Affirmed.

DECISION: The extrapolation method " takes the applicable percentage under the child support schedule for couples with combined incomes of $ 150,000 and applies it directly to what income the parents make. In affirming the trial court's decision not to extrapolate income the Court of Appeals for the 11th District relied upon the Longo decision out of the 8th District Court of Appeals. In the Lango decision the Court of Appeals suggested that extrapolation would be helpful in those cases where the combined income of the parties only marginally exceeds $ 150,000.00 and expressed doubt whether the Court fulfills it's statutory duty to determine child support on a case by case analysis as required by R.C 3119.04(B) when it by rote extrapolates a percentage of income to determine child support and concluded " as the combined income of the parents rise sharply, mere extrapolation can lead to large and possibly unrealistic child support amounts. In affirming the trial court's decision not to use extrapolation to determine child support, the Court of Appeals for the 11th District found that since the Husband's income far exceeded the $ 150,000.00 threshold, it is likely that pure extrapolation would

.

have the effect of income equalization or de facto spousal support as opposed to ensuring that the children enjoy the same standard of living as if the parties had remained married.

6. **McRae v Salazar;** 10th District, Case No. 18AP-749 (November 2019)

FACTS: Mother files a motion to modify child support. Trial Court after hearing the evidence modifies and increases Husband's child support from $ 1,800.00 to $ 3,300.00 per month for the support of two children. In the hearing the Wife testified that she could not meet the children's needs and standard of living compared to the life style that the Husband was able to provide. Husband appeals, Affirmed

DECISION: In affirming the trial court's decision the Court of appeals found that the evidence as presented indicated that the wife was not able to meet the needs and standard of living of the children when compared to the life style of the Husband. Ohio Revised Code 3119. 04(B) contemplates a " conjunctive analysis where the court considers not only the qualitative needs of the children but also the standard of living of the children and parents.

7. **Thomas v Lewis,** 9th District, Case No 29164 (September 25, 2019)

FACTS: Trial Court Orders Husband to pay in addition to child support the sum of $ 14,750.00 per year to cover part of the cost of his daughter's extracurricular activities and tuition for one of the children at a private out of state dance academy. Husband appeals, Reversed.

DECISION: A domestic relations court has authority to order a parent to pay for private school tuition as a form of child support only if it determines the following: 1) that it is in the children's best interest to have private school education; 2) the payor(s) can afford to pay the tuition; 3) the child has been in private schooling and 4) private schooling would have continued if not for the termination of the marriage.

In this case, the trial court failed to consider the 4 factors necessary to order the payment of private school tuition. While the children had attended private school and were involved in dance while the parties lived together the cost was almost double to send the children to an out of state private school. In addition there was no evidence that whether the Husband could afford to pay the tuition nor was there evidence that schooling would have continued had the marriage continued.

8. **Grover v Dourson**. 12th District, Case No CA 2019-07-007 (September 2020)

FACTS: Trial Court orders husband to secure his child support obligation with life insurance. The original order was appealed and reversed. In Grover 1 the Court of Appeals reversed the trial court's decision stating that in securing a child support order the order should be structured in such a manner that the child will only receive that portion of the insurance proceeds equal to the amount of the child support the child would have received if the parent remained alive. Case remained. Trial Court issues an post appellate decision

.

which conditioned Father's ability to name his trust as the beneficiary of his private insurance upon his designation that the children receive all of the income from the policies as Mother deems acceptable to provide for their general welfare. Father appeals, Reversed.

DECISION: Trial Court abused it's discretion by ordering Father to designate the children as beneficiaries on Father's life insurance where the children would receive more from the life insurance benefits if father dies than the amount of support they would have received if Father remained alive.

In reversing the trial court's decision the Court of Appeals also found that the trial court failed to consider Father's social security benefits would be greater than his total child support obligation. Father was eligible to receive social security benefits which could provide for the children's general welfare in the event of his death. These benefits would provide security for Father's child support obligation in the vent he dies before the obligation terminates. By failing to consider social security benefits the trial court inappropriately subjected Father's trust to more than his total support obligation and ordered Father to pay for more than what the children are entitled to during their minority.

9. **A.S v J.W** Ohio Supreme Court 157 Ohio State 3rd 47 (June 2019)

FACTS: Trial Court in calculating the Father's gross income used the average of Father's commissions including projected commissions for the year in which the motion was filed (2014-2015-2016). Trial Court sets child support based upon this 3 year average. Father appeals to Court of Appeals which affirms trial court. Father appeals to the Ohio Supreme Court. Reversed.

DECISION: In reversing the decision of the Court of Appeals the Ohio Supreme Court found that commissions are included within the definition of R. C 3119.05(D) and that the Court of Appeals committed error when it found that commissions were not within the definition of the gross income as found in 3119.05(D).

The trial court committed error when it included the current years commissions when it calculated child support and included commissions earned during the year that the motion was filed in determining Father's gross income. R.C 3119.05(D) directs that a court to use the lesser of either the 3 year average of all commissions, bonus or overtime during the 3 years immediately prior to or the total of over time, bonus or commissions in the year immediately prior which ever is lower. In this case the trial court committed error because it used Father's income in the year in which the motion was filed rather than the lesser of either the 3 year average of all commissions, bonus or overtime during the 3 years immediately prior to or the total of over time, bonus or commissions in the year immediately prior.

10. **A.L.D v L.N.S and R.D**, 2nd District, Case No 2021-CA-49 (March 2022)

FACTS: Father is sentenced to prison for 7 years of sexually assaulting his daughter. After Father is sentenced to prison Mother files for custody and child support. Trial Court based on

.

Mother's testimony imputed income to Father that he had when he was working ($ 216,000.00 per year) and ordered Father to pay child support. Father appeals. Reversed.

DECISION: From a review of the record the Court of Appeals inferred that the trial court applied former R.C 3119.0591)(5) which allowed a trial court to impute income to a person who was incarcerated if the incarceration was for an offense relating to abuse or neglect. However, effective October 17, 2019 R.C 3119.05(1)(5) was amended to and a new provision was added under 3119. 05(J) which provided that a court or agency shall not determine a parent to be voluntarily unemployed or underemployed and shall not impute income to that parent if the parent is incarcerated. Because the trial court imputed income to Father who was incarcerated the decision to award child support was contrary to the law and the decision was reversed.

11. **V.C v O.C** 8th District, Case No. 111118 (May2022)

FACTS: Husband post decree files to modify his child support. Both Husband and Wife earn in excess of $ 200,000.00 per year. Trial Court ordered Husband to pay $ 2,444.00 per month in child support. Husband appealed the decision and the decision of the trial court was reversed. On remand the trial court ordered the Husband to pay $ 2,348.00 per month in child support. Husband appeals, Affirmed.

DECISION: Because the parties combined income exceeded $ 336,467.04 R. C 3119.023 requires that the determination of child support be on a case by case basis. R.C 3119.023 does not contain nor reference any factors to guide the court's determination in setting the amount of child support. In high income cases the proper standard for calculating child support is the amount necessary to maintain for the children the standard of living they would have enjoyed had the marriage continued.

With the exception of extraordinary medical or developmental issues, the ' needs" of a child are necessaries like food, clothing, shelter, medical care and education. The needs of a child are not income based. If a child enjoyed a high standard of living during the marriage the child is entitled to enjoy that standard after the marriage has been dissolved. The Courts must however be careful to consider only how the child would have lived had the parents remained together not how the child could have lived. When considering the standard of living of the parents the court must ensure that the obligor parent is not so overburdened by support obligations that it affects that parents ability to survive.

12. **Meyer v Meyer** 10th District Case No 21AP-3 (February 2022)

FACTS: Wife worked for Cardinal Health and as a part of her compensation package she was paid pursuant to a long term incentive plan (LTIP) which included performance share units (PSU)which made up 60% of the bonus and restricted share units (RSU) which made up the remaining 40% of the bonus. Wife took the position that her LTIP were property and not income. The Husband argued that the LTIP were income. The trial court for purposes of determining the Wife's income for child support and spousal support purposes included as a part

.

of her income the vested portion of her PSU and RSU but did not include the unvested portion of her PSU and RSU and found the unvested portion of the Wife's PSU and RSU to be the wife's separate property. Husband appealed. Reversed.

DECISION: The Court of Appeals found that the trial court abused it's discretion when it failed to consider the Wife's post marital LTIP bonuses as income to the Wife for purposes of calculating her spousal support obligations. The Wife's post marital LTIP bonus shares are simply a bonus which should be considered in the calculation of her spousal support obligation citing as authority the case of Ghanayem (12th District).

13. **Clay v Clay** 4th District Case No. 21CA 3944

FACTS: Parties in 2008 enter into a shared parenting plan which provides that there would be no child support exchanged for their disabled child. Child has cerebral palsy. In the shared parenting plan there is no mention of the child's disability. In 2016 Mother files for child support. Parties reach an agreement whereby Father agrees to pay child support until the child turns 18. In their agreement there was no mention of the child's disability. Father pays child support until the child turns 18 (July 2016) and then stops paying child support. In 2018 Mother files for child support and raises the child's disability. Trial Court orders child support finding that the child will never be self sufficient due to having cerebral palsy. In making this finding there was no evidence submitted. The Magistrate simply commented that child had cerebral palsy Father's attorney stated that the issue of the child's disability was a matter to be heard at a future hearing. Father appeals. Reversed.

DECISION: The trial court abused its discretion in ordering lifetime child support for the benefit of the child in the absence of evidence in the record regarding the full nature and extent of the child's disability and whether that disability renders the child unable to support and maintain himself which is necessary to support such an award.

14. **Bandza v Bandza**, 8th District Case No. 110259

FACTS: Husband ordered to provide health insurance for the minor children. Trial Court made a finding that private health insurance was available to the Father and that the cost of health insurance did not exceed the Health Insurance Maximum. However, both parties agree that the cost of obtaining health insurance for the children exceeded an amount which was greater than 5 % of Father's income. Father appeals. Reversed.

DECISION: Because the cost of health insurance exceeded 5% of Father's annual income the trial court was required to make certain findings of fact required by R.C 3119.302.(A)(2)(b) before the trial court could impose an order requiring the Father to provide health insurance. Because the trial court did not make the required findings the decision requiring Father to provide health insurance was reversed.

15. **Page v Page** 2nd District, Case No 2021-CA-47 (February 2022)

.

FACTS: Husband files to modify his child support obligation. During the pendency of the case Father switches job (tractor sales to entry level accounting technician) resulting in a 40% reduction in Father's income. Father argues that the job although it had a lower salary provided benefits, pension and would allow him to spend more time with his children because he wouldn't have to work overtime or weekends. In response to the change of employment and reduction in income Mother argues that Father is now voluntarily underemployed. Trial Court finds that Father is not voluntarily underemployed and grants the motion and makes the modification retroactive to the date that Father filed his motion. Wife appeals. Reversed.

DECISION: Voluntary unemployment or underemployment does not warrant a downward modification of a child support obligation. The burden of proof is on the party who claims the other parent is voluntarily underemployed. A parent seeking to avoid the imputation of income must show an objectively reasonable basis for terminating or otherwise diminishing his/her employment.

Trial Court also committed error when it made the modification of child support retroactive to date Father filed his motion to modify child support and not the date of Father's new employment. A trial court may but it is not required to make a modification of support retroactive to the date the motion was filed. However, making the modification retroactive to the date of filing of the motion may create a hardship on one of the parties by creating a substantial arrearage or overage. In choosing an alternate date to make a modification effective courts have looked for ' special circumstances" like a significant date in the litigation. In this case if a reduction in support was warranted or that Father was non voluntarily underemployed it would have been the date Father took a new position and not the date the motion was filed.

16. **Horner v Tarleton** 9th District Court of Appeal, Case No 2023 Ohio 1785; Median County 2023)

FACTS: At the time of the parties divorce in 2017 the parties agreed that the Father would be residential parent and there would be no exchange of child support. Child support was not established and a child support worksheet was not attached to the judgement entry. Two year later the mother filed to modify the allocation of parental rights and father moved to modify child support. The trial court denied the mother's motion and granted the father's motion regarding child support. Trial Court found mother to voluntarily unemployed and inputed to her a minimum wage income. Mother appealed reversed in part.

DECISION: Court of Appeals held that father did not have to show that there was a change of circumstances in order to obtain child support. Since there was never a child support order the motion was not a modification of child support but rather the establishment of a new support order. Therefore, the change of circumstance standard did not apply. As to the issue the Court finding that the mother was voluntarily unemployed the Court of Appeals found that the trial court had committed error. The burden of proof to establish whether a person is voluntarily unemployed is on the person who is claiming that the other parent is voluntarily unemployed or underemployed. In this case the trial court committed error because it shifted the burden to mother to prove that she was not voluntarily under employed.

.

17. **Owens v Owens** 1st District Case No C-210488 (September 2022)

FACTS: Trial Court orders husband to pay child support and back dates the child support order to June 1, 2020. Husband appeals that decision. Affirmed.

DECISION: In a divorce proceeding a trial court may order child support to be paid by either of the parents. The effective date of the Order of child support can be the date a motion is filed or " some other date that coincides with an event of significance in relations to the grounds for child support that was order. In affirming the Court's decision to back date child support to June 2020 the Court of Appeals noted that in June 2020 there was an agreed temporary order issued in the case which provided that the husband was to have no contact with the children until further order of the court. Prior to June 2020 the parties had been sharing parenting time. The Court of Appeals found that the temporary order of June 2020 was a significant date in the case and the trial court did not abuse it's discretion in back dating child support to June 2020.

18. **Ayers v Ayers** Ohio Supreme Court Case No 2024-Ohio-1833 (May 2024)

FACTS: Father loses his job due to a reorganization at his job. Father files to modify his child support due to loss of job. Trial Court imputes income to Father based upon his former/lost job. Father appeals to the 6th District Court of Appeals- affirmed- Father appeals to Ohio Supreme Court- Reversed.

DECISION: The plain language of R. C 3119.01(C)(17) requires that the domestic relations court's make two specific determinations when calculating potential income. First, the court must determine that a parent's unemployment or unemployment was voluntary. Second the court must determine what the parent would have earned if fully employed using the criteria enumerated in R.C 3119.01(C) (17) (a)(i) –(xi). Because the trial court did not expressly find that the Father was either voluntarily under employed or voluntarily unemployed the decision of the trial court was reversed.

.

D. PROPERTY DIVISION CASES

1. **Hoffman v Hoffman**, 9th District Case No. 28799/29104 (June 2019)

FACTS: Trial Court finds that there was a de facto termination of marriage of December 2011. Trial Court values wife's pension as of January 2014. Trial Court doesn't award any growth to the Husband in his share of wife's retirement. QDRO is filed with no passive growth. Husband files 60(b). 60(b) denied. Husband appeals. Affirmed.

DECISION: The Court of Appeals acknowledged that the husband was correct that the QDRO valuation date was January 2014 and not the de facto termination date of December 31, 2011. However, the husband failed to show that he was entitled to any passive growth during this period of time. Nor was there any language in the divorce decree which addressed the issue of the division of appreciation. There is no controlling legal authority directing that any appreciation or depreciation in an account value between the date of judgement and the date of disbursement be shared equally between the spouses or alternatively directing that the benefit or loss go exclusively to account holder spouse. Rather the issue is left to the discretion of the trial court.

2. **Buck v. Buck** 6th District Case No F-17-102

FACTS: Husband during the marriage was injured in a work related accident. Husband settles for $ 600,000.00 of all claims including loss of consortium. In the settlement documents there is no allocation of the settlement funds between the various claims (i.e pain and suffering, loss of consortium) Both the Husband and the Wife sign the settlement documents. The settlement funds are then put into a joint account at Morgan Stanley. During the marriage the wife's mother vies the parties $ 3,000.00 per month. These funds are also put into the Morgan Stanley joint account. The money in the Morgan Stanley account is then withdrawn and used to pay the parties living expenses. At trial the Husband claims that all of the funds in the Morgan Stanley account are his separate property. Trial Court rejects that claim and awards 65% of the funds to the Husband and 35% of the remaining funds to the Wife. Husband appeals. Affirmed.

DECISION: In affirming the decision of the Trial Court the Court of Appeals found that the husband had failed to over come the presumption that the funds in the account were marital in nature. The Court finds that the settlement funds were marital in nature because the parties had both signed the settlement documents, the settlement was paid in a lump sum with no allocation between claims and was deposited into a joint account. The Morgan Stanley account was a joint account and both parties had agreed that the balance in the account would be subject to a right of survivorship. The Court also found that the funds in the account were commingled and not traceable as the husband's separate property

In affirming the division of 65/35 the Court Appeals held that while the division was not equal it was equitable taking into consideration the fact that there was no way in which to

.

determine the husband's separate property but recognizing that the majority of the funds came from the Husband's injuries and also taking into consideration that the Husband would not likely be able to return to work while the wife who was a nurse would be able to return to work.

3. **Hornbeck v Hornbeck** 2nd District, Case No. 2018-CA-75 (May 2019)

FACTS: The parties lived together form May 2000 to April 2003 when they married. Wife during the marriage was a " stay at home" mother taking care of the Husband's daughter. Husband during the marriage worked at a trucking company and the Wife did at home babysitting. Prior to the parties " ceremonial marriage" the Husband had purchased a home which the parties occupied as well as a rental property. At the divorce the Wife files a motion asking that the Court consider May 2000 as the "date of marriage" for valuation purposes. Trial Court denies the Motion. Wife appeals. Reversed.

DECISION: In reversing the trial court's decision not to use an date earlier than the marriage date for valuation purposes, the Court of Appeals noted that the majority of appellate districts in Ohio. Citing it's decision in Drumm v Drumm, the Court of Appeals found that R. C 3105.171(A)(2)(b) establishes no standard or other criteria to guide the court in determining whether and when use of the dates specified in Division A(2) would be inequitable. The section appears to reiterate the general grant of " full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters, conferred on the courts if common pleas by R.C 3105. 011. In applying R.C 3105.171(A)(2)(b) to employ a date for valuation of assets prior to other than and in addition to the interests that are created by marriage. R.C 3105.171(A)(2)(b) reasonable requires that one spouse acquired a substantial interest in the property of the other even before the marriage commenced. That finding must be based on some evidence of an investment or contribution by one spouse creating that form of interest in the property of the other.

In this case, the Court of Appeals in reversing the trial court the Court of Appeals noted that the wife was employed before the marriage and had substantial savings and a 401(K). When they moved in together they were engaged and planned to marriage. After moving into together the parties pooled their finances, and the Wife contributed to the improvements in both homes. In addition the evidence was that the Wife was by agreement a stay at home mother and performed parental duties for the Husband's daughter. Finally, the evidence was that the wife from her separate property contributed to improvements to the home, paid the husband's credit cards, paid insurance on the home and life insurance property tax payments and utilities.

4. **Cook v Cook** 5th District, Case No 18CAF 09 0072 (May 2019)

FACTS: Wife sells her pre marital home and the proceeds from the sale of that home to her Husband. The amount of the proceeds was $ 203,000.00. Husband uses the $ 203,000.00 as a down payment of a home that he purchases. Husband argues that the

.

$ 203,000.00 was a gift to him by the wife. Trial Court finds that the $ 203,000.00 was the Wife's separate property. Husband appeals. Affirmed.

DECISION: In affirming the trial court's decision the Court of Appeals rejected the Husband's argument that the trial court did not properly apply the 'family gift presumption". The family gift presumption is defined as when a transaction is made that benefits a family member there is a presumption that the transaction was intended as a gift. According to the Court of Appeals the family gift presumption has not been applied in domestic relations matters. Instead according the Court in a domestic relations matter the done spouse has the burden of proving by clear and convincing evidence that the donor spouse made an inter vivos gift. In the case the wife testified that it was never her intent to make a gift of the $ 203,000. The wife testified that the husband didn't have money for a down payment and she didn't have credit. So the parties agreed that the Wife would provide the down payment and he would provide the credit to obtain a mortgage. Husband argued that the funds were a gift to him. The Magistrate found the wife's testimony to be more creditable.

5. **Adams v Adams;** 12th District Case No CA2019-07-122 (June 2020)

FACTS: Parties attend marital counseling. During the counseling, Husband informs wife that the " marriage is over". Husband within 30 minutes of counseling session ending, begins to transfer money from joint account to a separate account- then writes checks to his family members alleging that the funds were being paid for rent, purchase carpeting and a down payment for the benefit of his brother. Husband also charges on joint credit card account. Wife files for divorce. Trial Court finds Husband committed financial misconduct in transferring funds. Husband appeals. Affirmed

DECISION: In affirming the trial court's decision, the court stated that according to R.C 3105.171(E) (4) financial misconduct includes but is not limited to the " dissipation, destruction, concealment, non disclosure or fraudulent disposition of assets." Financial misconduct implies some type of wrongdoing such as the interference with the other spouse's property rights. The trial court found and the Court of Appeals affirmed the finding that the husband's testimony lacked credibility regarding the reasons for writing checks to his family members and his need to make purchases on the credit card after the counseling sessions had ended.

6. **Pletcher v Pletcher,** 5th District, Case No. CT2019-0002 (September 2019)

FACTS: Husband and Wife during their marriage purchase a home and rent the home to the Wife's parents. To purchase the home, the Husband and Wife took out a mortgage on the home, no marital funds were used as a down payment nor were any marital funds used to pay the monthly mortgage payment. The rent paid by the parents went to pay the monthly mortgage payment. Trial Court finds that the home is the Wife's separate property. Husband appeals. Reversed,

.

DECISION: In affirming the trial court's decision the court found that the fact that the mortgage payments came from the wife's parents rent makes no difference. Whether the parties had rented the home to a 3rd party or to a family member makes no difference because the used the rent was a form of marital income to pay the mortgage and was used to reduce mortgage on the property thus increasing the value of the marital asset.

7. **Kramer v Kramer**, 10th District, Case No. 18AP-933 (November 2019)

FACTS: Trial Court finds that there was a de facto termination of marriage as of the date of the divorce was filed. Trial Court then orders the real estate to be sold as part of the Court's Order of divorce and the proceeds divided evenly between the parties. Husband appeals. Reversed.

FACTS: The Court of Appeals found that the Trial Court abused it's discretion when it determined that the value of the real estate would be established by the sale price rather than on the de facto termination of marriage date. A trial court may choose a different date for valuation purposes so long as the Court explains it's reasons. However, a trial court abuses its discretion when it chooses a division date that occurs after the end of the marriage.

8. **Lewis v Lewis** 9th District, Case No. 29164 (September 25, 2019)

FACTS: Parties agree to a de facto termination of marriage and agrees to the de facto termination date to be the date the Wife files for divorce. Trial Court in it's decision found that the Husband committed financial misconduct because the Husband hadn't filed income taxes for several years (2002-2012_. Husband appeals, Reversed.

DECISION: Ohio Revised Code 3105. 1717 (E)(4) the trial court may compensate one spouse with a distributive award or a greater share of the marital property if it finds that the other spousal " has engaged in financial misconduct, including but not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets. The burden of proof to prove financial misconduct rests with the complaining party. However, several appellate districts including the 9th District have held that irresponsible financial decisions, and even dishonest financial behavior in and of themselves do not constitute " financial misconduct". For the Court to find financial misconduct the Court must engage in a two pronged analysis. The trial court must find (1) a wrongdoing by one spouse that interferes with the other spouses' property rights and (2) that the wrongdoing results in profit to the wrongdoer or stems from a intentional act meant to defeat the other spouses' distribution of assets.

In reversing the trial court's decision, the Court of Appeals found that the trial court failed to use the proper test to determine financial misconduct. The record was undisputed that the Husband did not file returns for several years and that as a result of his failure to file interest and penalties were assessed against the parties. However, there was no evidence to show that the Husband profited from his wrongdoing (the second prong) and therefore the Court of Appeals reversed the trial court's decision.

.

9. **Toki v Toki** 5th District, Case No. 19CA-0009 (January 2020)

FACTS: In 1994 The Wife was awarded $ 53,000.00 from the Husband's OPERS to be paid when the Husband retires. Husband retires in 2002. In 2002 Husband pays the wife $ 20,000.00 on this obligation but does not pay any else on this obligation. In 2017 Wife files a contempt action against the Husband for nonpayment on the balance of the obligation of $53,000.00 . Husband advances the argument of Laches as a defense to nonpayment. Trial Court find Husband's argument of laches has merit and denies the motion for contempt. Wife Appeals. Reversed.

DECISION: In reversing the trial court's decision denying the motion for contempt the Court of Appeals held that a delay in asserting a right (i.e to receive the balance of the funds) does not without more establish laches. Rather, the person invoking the doctrine must show the delay caused material prejudice. A party asserting financial prejudice does not as a matter of law demonstrate "material prejudice". The mere inconvenience of having to meet an existing obligation imposed by a court order at time later than specified by the Order cannot be called material prejudice. To establish "material prejudice " a party must show either 1) a loss of evidence helpful to the case or 2) a change of position which not have occurred if the right had been promptly asserted.

10. **Woyt v Woyt** 8th District, Case No. 107312,107321,107322 (September 2019)

FACTS: Four years prior to the parties marriage the husband purchased a home and as a part of the purchase made a down payment of $ 44,000.00. Husband then finances the balance of the purchase price. Husband then marries . At the time of divorce the trial court found that the husband had a separate property interest of $ 44,000.00. Wife appeals, Reversed in part.

DECISION: In reversing the trial court's decision the Court of Appeals found that although the Husband may have met his burden of establishing that he had a separate property interest in the home the husband failed to show that there was any equity in the home prior to the parties getting married. The Court of Appeals held that the relevant question was not only whether the husband had traced his pre-marital equity in the home but rather also what equity if any existed in the home at the time of marriage.

It was undisputed that the husband had purchased the home prior to the party's marriage for $ 303,000.00 and that the he had paid $ 44,219.00 in cash at closing. The fact that the husband may have had $ 44,291.00 in equity at some point in time prior to the marriage does not conclusively establish that the Husband had that amount of equity at the time marriage.

.

11. **Jones v Jones** 2nd District, Case No 28746 (December 2020)

FACTS: Husband and Wife are fired from their job. Both file suit alleging wrongful firing and discrimination. Case is settled for $ 750,000.00. Settlement documents state that the settlement in part was to resolve and settle the Wife's claim of physical illness caused by her firing. Settlement check is made payable to Wife. Thereafter wife files for divorce. At trial the Court finds that the settlement funds were the Wife's separate property. Husband appeals. Reversed.

DECISION: In reversing the Trial Court's decision the Court of Appeals found that the Trial Court relied on the terms of the settlement agreement. However, the Court of Appeals found that the settlement agreement was between the Wife and her employer and not between the Wife and her Husband. In addition, the settlement letter indicated that the settlement was not only for the Wife's physical sickness bot for many other things. Also there was evidence that the settlement was drafted to include a claim for physical sickness in order to avoid paying taxes on the settlement. Thus additional evidence was necessary in order to establish the separate nature of the wife's claim.

12. **Reynolds v Reynolds** 6th District, Case No. L-20-1098 (June 2021)

FACTS: Parties executed a pre -marital agreement which provided that New Hampshire Law would apply in the interpretation and execution of the agreement. At the time of the execution of the pre- marital agreement the parties lived in New Hampshire, owned property in New Hampshire and were married in New Hampshire. After the marriage and execution of the pre- marital agreement the parties move to Ohio. Husband then files for divorce in Ohio and the issue arose regarding whether Ohio or New Hampshire law would apply to determine the validity of the terms of the pre- marital agreement and it's performance. Trial Court finds that based on the language of the pre- marital agreement New Hampshire law applies to determine the validity of the pre marital agreement. Wife appeals, Affirmed.

DECISION: Court of Appeals rejected the Wife's argument that the law of the place of performance would control rather than the place of the formation of the pre-marital agreement. Citing Shulke Radio (6 Ohio State 3rd 436) and the Restatement of Law 2nd Conflict of Laws Section 187(2) the Court held that the parties in their pre-marital agreement agreed that New Hampshire Law should govern the parties agreement. The Court found that none of the exceptions to the Section 187(2) of the Restatement of the Conflict of Laws applied (no substantial relationship to the selected state, contrary to the fundamental policy of the proposed state). The Court found that the parties were married in New Hampshire and continued to own real estate in New Hampshire and thus continued to have a substantial relationship to New Hampshire.

The Court also found that the application of New Hampshire law to the performance of the pre-marital agreement was not contrary to the public policy of Ohio as to the validity of pre-marital agreement.

.

13. **Hoy v Hoy** 4th District, Case No 19CA717 (May 2021)

FACTS: Parties in their divorce agree to a de facto termination date. Trial Court finds that certain properties were acquired by the Wife after the date of the agreed upon de facto termination of marriage and therefore were the Wife's separate property. The Trial Court also found that Wife did not commit financial misconduct because her actions occurred in dissipating assets occurred after the defacto date of termination. Husband appeals, Reversed.

DECISION: In reversing the trial court's decision the Court of Appeals held that the critical question is whether the funds used to purchase the property were the wife's separate property or marital funds. The mere fact that the funds were spent after the de facto divorce date does not relieve the Wife from proving that the funds used to make those transactions were her separate property.

The Court of Appeals also reversed the trial court's finding that the wife had not committed financial misconduct because her conduct (dissipation of assets) had occurred after the defacto date of the termination of the parties marriage. In reversing that finding the Court of Appeals held that if the wife's expenditures were made with funds that existed before the date of the de facto divorce date with the purpose of intentionally defeating the other spouses distribution of assets, then that is financial misconduct, irrespective of when the expenditures were made.

14. **Baughman v Baughman,** 9th District Case No 29870 (June 2021):

FACTS: During the party's marriage the Husband received five million dollars in exchange for a 5 year non-compete. Husband upon receipt of the five million leaves the company. Parties thereafter spend part of the funds to purchase a business, flip homes, and live off the funds when Husband was not employed. Later Wife files for divorce. At the time final hearing on the divorce Husband argues that the funds were his separate property because the funds were a deferred bonus compensation. Trial Court rejects that argument but finds based on the Blodgett case that the funds came from a non-compete and were the Husband's separate property. Wife appeals. Reversed.

DECISION: The Court of Appeals distinguished this case from the Blodgett case (9th District Case No 13547) because Blodgett predated R.C 3105. 171, and the non-compete payment in Blodgett had not been made at the time of the divorce and remained conditional on Husband's continued employment. In this case the Husband received the non-compete payment in 2011 and had fully completed the non-compete agreement by the time of the divorce.

Reversing the trial court, the Court of Appeals held that Blodgett did not hold that every sum received in exchange for a non-competition agreement is a party's separate property. Blodgett according to the Court of Appeals has been supplemented by the definitions of marital and separate property now found R.C 3105. 171.

.

15. **Pruitt v Pruitt**, 2nd District, Case No 29331 (June 2022)

FACTS: Trial Court issues a decision after hearing the evidence which requires the husband to pay the wife the sum of $ 2,200.00 as a property settlement. Trial Court orders the wife's attorney to prepare the divorce decree. Husband's attorney writes a letter to the wife's attorney indicating that husband delivered the money to his counsel and asked where the money should be sent. It is not clear whether the money was ever sent to the wife's attorney. Husband appeals the decision. On appeal the wife seeks to dismiss the husband's appeal on the basis of mootness. Court of Appeals denies the wife's motion.

DECISION: As a general rule the voluntary satisfaction of a judgment renders an appeal from that judgment moot. If the judgment is voluntarily paid such payment puts an end to the controversy and takes away the right of the party to appeal or prosecute the error or even to motion to vacate the judgment. The satisfaction of a judgement is not involuntary even which it is made due to collection efforts (i.e garnishment) the appellants financial circumstances or other economic considerations. However, a partial payment or the tender of payment during an appeal does not render the appeal moot.

16. **Picciano v Picciano** 5th District, Case No. 2021 CA 00050 (December 2021)

FACTS: During the marriage the Wife inherits $ 200,000.00. Wife then puts the money into a joint account. Parties then deposit money into the account and withdraw money from the account. Also, during the marriage, the Wife purchases two annuity contracts using funds from the joint account which contains the inherited funds. Husband then files for divorce. At trial the Wife testifies that although the annuities are jointly titled, that the annuity contracts are her separate property because they were purchased with her inherited funds. Trial Court finds the annuity contracts to be marital property and divides the contracts accordingly. Wife appeals. Affirmed.

DECISION: The Court of Appeals rejected the Wife's argument that traceability is the sole factor in determining whether a commingled asset is separate or marital. According to the Court of Appeals transmutation still remains valid given the language of R.C 3105.171(A)(6)(b). Transmutation is the act or acts of one party, original owner, converting separate property into marital property. The action of placing separate property into a joint or survivorship account and the facts substantiating a present intention to gift the property to the other can transmute the separate property to marital property.

The factors to consider in determining whether transmutation has occurred include:

1. expressed intent of the parties if it can be reliably ascertained

2. source of funds if any used to acquire the property
3. circumstances surround the acquisition of the property

.

4. dates of the marriage, acquisition of the, property, the claimed transmutation and the break up of the marriage
5. the inducement for and/or purpose of the transaction which gives rise to the claimed transmutation
6. the value of he property and it's significance to the parties

In this case the annuities were titled in the name of both parties. Wife acknowledged that marital funds were used to purchase the annuities and that jointly completed the application to purchase the annuities. Wife put the money to purchase the annuities in the joint account but kept her inherited funds in a separate account.

Wife also argued that there was no donative intent to create a gift of the money. In discussing donative intent the Court said that "donative intent is established if a transferor intends to transfer a present possessory interest in an asset. The donee spouse has the burden of proof to establish by clear and convincing evidence that the donor spouse made an inter vivos gift. The Court found that the there was evidence to establish that wife created an intervivos gift

17. **Lewis v Lewis** 3rd District, Case No. 5-21-32 (June 2022)

FACTS: Wife owns a dental practice. At trial the wife's expert values her dental practice at 2 million dollars but discounts the practice for lack of marketability by 20% for a value of 1.6 million dollars. Husband does not present an expert. Trial Court awards the practice to wife with a value of 1.6 million dollars. Husband appeals. Affirmed

DECISION: The valuation of property in a divorce case is a question of fact. If the parties to a divorce case submit evidence in support of conflicting valuations the court may believe all, part or none of the witness's testimony. Courts have permitted a discount for lack of marketability for closely held business even when no sale is contemplated . Unlike a reduction for the cost of sale the non marketability discount is a factor in determining the fair market value of a business. the applicability of the discount is not dependent on the intention or the likelihood of the business being sold.

18. **Hunt v Hunt** 9th District Case No 21 CA 011720(February 2022)

FACTS: Trial Court finds that there was a de facto termination of the parties marriage as of November 2017. At trial the husband introduced evidence of the value of the home parties home as the trial date. Neither party introduced any evidence that would have allowed the trial court to calculate the value of the marital home as of November 2017. Husband appeals the decision. Reversed.

DECISION: When evidence of a property's value that absence does not relieve the trial court of it's obligation to value assets of the parties. If valuation evidence is lacking the Court itself should instruct the parties to submit evidence on the matter. The Court may not rely on valuation evidence that postdates the date it has chosen as the termination date

.

of the parties marriage. If the marital share of a marital home cannot be calculated because there was insufficient evidence presented to the trial court then the matter must be remanded to the trial court for the purpose of taking evidence on the issue and recalculating the marital mortgage pay down and readjusting the property to allow for an equitable division of the marital property.

19. **Ohio Revised Code 3103.061 (A)**

Amended by Senate Bill 210 and effective March 22, 2023 Ohio Law now allows parties to enter into a post nuptial agreement provided that all of the following apply (3103. 061):

A. The agreement is in writing and signed by both parties
B. The agreement is entered into freely without fraud, duress, coercion, or over reaching.
C. There was a full disclosure or full knowledge and understanding of the nature,
D. The terms do not promote or encourage divorce or profiteering by divorce.

20. **Young v Young** Case No 19CA011573 (Lorain County) July 2022

FACTS: During the parties marriage the wife had several business which she operated and did not disclose to her husband and which were used by the wife to conceal " substantial" funds from her husband. In addition the Wife issued K-1's in the name of the husband which indicated that the husband received substantial distributions from the business. However, the evidence was that the husband did not receive the distributions identified in the K-1. The trial court finds that based upon this evidence that the wife engaged in financial misconduct and ordered the wife to pay the husband' legal fees in the amount of $ 483,842. 36. Wife appeals. Affirmed.

DECISION: In affirming the trial court's award of legal fees the Court of Appeals stated that financial misconduct implies wrongdoing such as the offending spouse's intentional interference with the other spouses property rights or the offending spouse profiting from the misconduct. Financial misconduct also requires some element of wrongful intent or scienter. Wrongful scienter may be established based on when the alleged financial misconduct occurred in relations to the filing and pendency of the divorce or period of separation. A trial court is afforded broad discretion to determine an award that is equitable and appropriate. There is no requirement that the trial court determine the amount of the damages in setting the amount of it's distributive award for financial misconduct. In awarding legal fees pursuant to R.C 3105.73 trial court can properly consider the entire spectrum of a party's actions so long as those actions impinge upon the course of the litigation. A trial court is under no obligation to engage in any examination balancing of the parties conduct and needs only to find that the award was equitable.

.

21. **Stapleton v Stapleton** Case No. C-2103 29 (Hamilton County) August 2022

FACTS: Parties operate a health club and related businesses. Testimony at trial was that the business had a net zero value. Trial Court awards business to the Husband. Wife appeals. Affirmed

DECISION: The Court of Appeals rejected the Wife's argument that pursuant to R.C 3105. 171 (C) (1) that unless an equal division of marital property would be inequitable that R.C 3105. 171 (C) (1) directs that the domestic relations court split each marital asset in half unless the court finds and explains that such a division would be inequitable. The trial court and the court appeals agreed with the Husband in finding that a trial court is to divide the value of the marital asset and that a marital asset need not be " literally split in half". According to the court of appeals, R. C 3105. 171 (C) (1) speaks to the overall division of the value of all assets not an equal division of each asset.

22. **In Re The Estate of George Taylor** Case No 4-23-02 Defiance County (June 2023)

FACTS: In 2000 the Parties will married signed a antenuptial agreement. After executing the antenuptial agreement the parties remained married until the Husband died. Following the death of the Husband the children of the Husband filed a complaint to declare the antenuptial agreement void. Trial Court finds the antenuptial agreement to be invalid because the parties were married at the time the agreement was executed. The Wife appeals, Affirmed.

DECISION: Generally post nuptial agreements were not valid until the enactment of R.C 3103.061. Prior to the enactment of R. C 3103. 061 prior Ohio Law R. C 3103. 06 held that post nuptial agreements were invalid. However there was an exception to the invalidity of post nuptial agreement. That exception was that a post nuptial agreement could be valid in limited circumstances such as when the agreement explicitly stated that it served to memorialize an oral antenuptial agreement. See In Re Estate of Weber 170 Ohio St 567. In this case there was no evidence to indicate that there was an oral antenuptial agreement and therefore the exception to prior R.C 3103. 06 did not apply.

23. **Mundy v Golightly** 8th District. Case No 220483 (January 2022)

FACTS: Parties live together but are not married. During the time that they were living together the Mundy buys a dog. The parties share the cost of caring for the dog. The parties separate and Golightly takes the dog with him and won't return the dog alleging that the dog was a gift to him. Mundy files a complaint for partition action for the return of the dog. The partition action is denied. Mundy appeals. Affirmed:

DECISION: In affirming the trial court's decision to dismiss the complaint for partition the Court of Appeals held that there is no statute in Ohio which governs a partition action for personal property although such a right does exist at common law. The right to partition personal property is limited because Ohio Law does not allow a plaintiff to bring a claim for partition of personal property where joint ownership of the property was acquired solely by

.

means of cohabitation. "Ohio law does not provide a means by which courts may simply divide property between unmarried, cohabitating individuals". A person seeking partition of personal property acquired during cohabitation may however maintain the action where the facts of joint ownership are based on something in addition to or other than cohabitation. An example according the Court of Appeal would be where there is a joint title to property or there is a partnership agreement. In affirming the trial court's decision to dismiss the partition action the Court of Appeals found that Mundy filed an action for partition of personal property that was acquired during cohabitation. Ohio Law precludes an action for partition of property acquired during cohabitation unless the joint ownership of the property can be established beyond the mere fact of cohabitation.

24. **Lepsey v Lepsey** 5th District Case No 2021 CA 00155 (December 2022)

FACTS: Parties enter into a Decree of Legal Separation. Several years later the parties file for divorce and incorporate into the decree of divorce the terms of their legal separation agreement. Divorce granted. Husband within 60 days of filing a divorce withdraws $ 650,000.00 from his business account and buys himself a home. Thereafter wife files 60B seeking to set aside the divorce and the terms of their legal separation. Wife also argues that the husband committed financial misconduct in withdrawing the funds and purchasing the home. Trial Court denies the 60B and also finds that the husband did not commit financial misconduct. Wife appeals. Affirmed.

DECISION: Wife on appeal argued several points. First that it was not proper to include passive growth in the division of the parties retirement accounts because the separation agreement didn't state that there was to be a calculation for passive growth. The trial court heard evidence from an expert witness who testified that you typically include a calculation for passive growth. In affirming the trial court's decision to include passive growth the Court of Appeals stated that if the parties did not want passive growth included in the calculation they should have expressly exclude passive growth from the language of the separation agreement.

As to the issue of financial misconduct the Court of Appeals stated that financial misconduct implies some type of wrongdoing. A court must look to the reasons behind the questioned activity or the results of the activity and determine whether the wrongdoer profited from the activity, intentionally dissipated, destroyed, concealed or fraudulently disposed of the other spouses activity. The wife argued that the husband committed financial misconduct because he withdrew $ 650,000 approximately 30 days before he filed for divorce. The Court found that the conduct of the parties was guided by the terms of the parties separation agreement. That agreement did not require the preservation of assets. In addition after the execution of the Decree of Legal Separation assets of each party were considered as the separate property of each spouse and there was nothing in the separation agreement which prohibited the husband from withdrawing funds from his business account to purchase a home.

.

25. **Carpenter v Carpenter** 7th District Case No 22 BE0027 (June 2023)

FACTS: Parties execute a separation agreement as a part of their dissolution of marriage. Pursuant to the terms of the separation agreement the Husband transfers his interest in the marital residence to the Wife and the Wife pays the Husband $ 85,000.00. Prior to the final hearing on the dissolution of marriage the Wife says that the separation agreement was signed under duress and is not fair and refuses to go forward with the dissolution of marriage. Husband converts the dissolution of marriage to a divorce. Trial Court finds the separation agreement to enforceable and grants the parties a divorce and incorporates the terms of the separation agreement. Wife appeals. Affirmed.

DECISION: In rejecting the wife's argument that she was under duress when she signed the separation agreement. The wife argued that she was coerced to sign by the threat that the husband would hire a team and engage in a public divorce claiming that such conduct would ruin her career. In rejecting that argument the Court stated that Duress involves the following elements:

1. one side involuntarily accepted the terms of another
2 circumstances permitted no other alternative
3. the circumstances were the result of the other party's coercive acts

To avoid a contract on the basis of duress a party must prove coercion by the other party to the contract. It is not enough to show that one assented merely because of difficult circumstances that are not the fault of the other party. Mere dissatisfaction with or general remorse about consenting to a settlement agreement does not constitute duress.

The Court of Appeals also affirmed the trial court's finding that the line of credit obtained by the wife was a marital debt because it was obtained while the parties were still married. The trial court found that the debt was incurred after the defacto termination of marriage date selected by the Court and in addition was not a debt created in furtherance of the marriage between the parties but rather was obtained to procure a dissolution of the parties marriage.

26. **Owens v Owens** 1st District Case NO. C-210488, (September 2022)

FACTS: The parties prior to their marriage purchase a home. Subsequently a divorce is filed and the trial court finds that the home is a marital asset. Trial Court establishes January 2020 as the date of the defacto termination of the parties marriage. As part of the evidence presented were two appraisals on the home (5/2020 and 7/2021). Trial Court awards the home to the Wife and uses the 7/2021 appraisal to establish the value of the home. Trial Court also orders husband to pay legal fees to the wife based upon the financial contributions to the husband's legal expenses by the husband's family. Husband appeals. Reversed.

DECISION: As a general rule a trial court should consistently apply the same set of dates when evaluating marital property that is subject to division. However if the circumstances of a given case dictate the use of a different date the trial court may chose a different date for valuation purposes so long as the court adequately explains it's reasons and it's decision to use a

.

different date is not an abuse of discretion. In this case the trial court abused it's discretion when it chose a date that occurs after the end of the marriage. This is so because the duration of the marriage is critical in distinguishing marital, separate and post separation assets and determining appropriate dates for valuation. The Court should have used 5/2020 valuation date because it was closer to the termination date and the trial court abused it's discretion when it used the 7/21 valuation date when there was a valuation date closer to the defacto termination of marriage date.

The trial court also awarded the wife $ 15,000.00 in legal fees based in part on the contribution to the husband's legal fees by his family without any indication that there would be repayment. In reversing this award the Court of Appeals held that while R. C 3105. 73(A) give the Court the discretion to award legal fees it does not give the trial court discretion to consider the income of a party's family members without additional testimony or evidence to indicate that such family members would be willing to provide the needed assistance. It was unreasonable for the trial court to assume that the husband would get assistance from his family based solely on the testimony that the husband had previously received two unrelated loans from his family particularly when the wife testified that she was receiving financial assistance from her family.

27. **Bozhenov v Pivovarova** 12th Distr, Case No 2022-11-080 (July 2023)

FACTS: Prior to marriage the Husband purchases a residence. After marriage the parties paint, and replace cabinets, landscape. Trial Court finds that there was appreciation in the home which the Court found to be marital in nature and awarded the wife $ 50,000.00 as her share of the appreciation. Husband appeals. Reversed.

DECISION: In reversing the decision of the trial court the Court of Appeals stated that there was no testimony or evidence that the various changes and improvements made to the house did in fact increase the value of the home. The improvements to the home were nothing more than general maintenance or the wife implementing cosmetic changes to the home after moving in. Citing the Cyrus case (9th district) the Court found that regular maintenance such as painting does not convert the appreciation in a home from separate to marital property. Routine maintenance such as painting, replacing carpet , and some carpentry work is not the type of labor which converts appreciation from separate to marital property.

28. **Casey v Casey** 2nd District Case No 2023 -CA-71 (May 2024)

FACTS: Husband is ordered a part of the divorce decree to refinance or sell the marital residence. Husband is unable to refinance in the time provided in the divorce decree. Wife files amotion to regain occupancy of the home and authority to sell the home. Motion granted. Husband appeals. Reversed.

DECISION; R.C 3105 3105.1717 (I) prevents a court from modifying a property division with out a reservation of jurisdiction or the agreement of the parties. In this case the divorce decree did not provide for a reservation of jurisdiction. Therefore, the trial court was without jurisdiction to modify the divorce decree to either order the sale of the residence or allow the wife to reoccupy the home.

.

29. **Williamson v Williamson** 12th District Case No CA 2023-08-058 (May 2024)

FACTS: Party's during the marriage purchase a home and by agreement the home is placed in the wife's trust. The Parties sold their first home and purchased a 2nd home. that home was also put into the wife's trust. Husband " signs off" on the transfer to the trust stating that he had no interest in the 2nd home. Wife files for divorce and claims that the 2nd home was her separate property because Husband " gifted her the home". Trial Court finds that the home was a marital asset and awards husband an interest in that home, Wife appeals. Affirmed.

DECISION: To establish an intervivo's gift, the party seeking to establish by clear and convincing evidence an intervivos gift has the burden of proof to establish the following essential elements:

1. An intent to make an immediate gift
2. Delivery of the property to the done
3. Acceptance of the gift by the done

In affirming the decision of the trial court the court of appeals noted that the wife's trust stated that the husband didn't have an interest in the 2nd home and therefore he couldn't make a gift of an interest which he didn't possesses. In addition, the husband testified that he didn't intend to " gift her that house" and there were no other circumstances which would indicate that the husband had gifted the wife his interest in the home.

30. **Zinsmeister v Zinsmeister** 10th District, Case No 22 AP -714 (March 2024)

FACTS: Pre final hearing the Wife files a motion to sell the marital residence. Wife had vacated the home and the husband could not pay the residence mortgage. Trial Court grants the motion and orders the marital residence sold and the proceeds placed in escrow until the final hearing when a final disposition of the marital estate would be made by the trial court. Husband appeals. Affirmed.

DECISION: Court of Appeals rejected the husband's argument that sale should not have ordered because the trial court could not determine whether the sale of the home was equitable. In rejecting that argument the Court of Appeals relied upon the Peronzeni case (8th District 2023-Oho 1140) wherein the 8th District found that a pre final hearing sale of the home was not an abuse of discretion because the proceeds could be placed in escrow. In affirming the trial court's decision to order the sale of the home the trial court found that the husband could not afford to pay the monthly payment, nor could he afford to purchase the wife's share of the home. In addition the court found that husband had been using marital funds from his retirement account to support his living expenses.

31. **Thompson v Thompson** 4th District, Case No. 22CA 21 (May 2024)

FACTS: Mother in law prior to her death transfer her home to the Wife because the husband (son) had tax problems. Mother in law dies, divorce filed. Wife takes the position that the home was a gift to her. At the trial Counsel for the Mother in Law testifies that that Mother in

.

Law wanted the house to go to her son. Mother in Law had gifted houses to other children. Trial Court awards the house to Husband. Wife appeals. Affirmed.

DECISION:

The trial court allowed the Mother in Law's Attorney to testify as to the " plan of the Mother in Law " as an exception to the hearsay rule. Evidence rule 803 (3) allows the admission of a statement of a declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain or bodily health).

32. **Moon v Moon** 10th District Case No 23 AP 553 (June 2024)

FACTS: Trial Court awards the marital residence to the Husband and orders the Husband to pay the wife her equity in equal payments with the final payment in March 2027 (6 years from the date of the decision). Wife appeals. Reversed

DECISION: Although it was in the trial court's discretion to award the marital residence to the Husband it was an abuse of discretion for the trial court without any justifying explanation to effectively require the Wife to her detriment to finance the Husband's retention of the marital residence.

33. **Rinehart v Rinehart** 10th District Case No 23 Ap 233 (March 2024)

FACTS: Parties purchased a home just prior to their marriage. Husband contributed from his separate pre marital account $ 39,000.00 of the down payment and the Wife contributed $ 1,300.00. However, Wife argued that she contributed more than $ 1,300.00 towards the down payment because the parties were living together prior to marriage and she contributed to the parties living expenses. Wife argued that she contributed to the down payment because she helped pay some of the parties living expenses Trial Court found that the martial residence was the parties separate property and ordered that the sale proceeds be divided evenly. Husband appeals. Reversed.

DECISION: Absent evidence that the Wife paid all or a disproportionate share of the parties living expenses prior to marriage the mere fact that the Wife helped the Husband meet the parties' living expenses does not prove that she contributed additional funds toward the down payment.

34. **Sykes v. Sykes** 10th District Case No 23 AP 295 (March 2024)

FACTS: Trial Court awards marital residence to Husband. Based upon Auditor's statement Husband says the home is worth $ 285,000.00. Wife had the home appraised and the appraiser valued the home at $ 550,000.00 Trial Court determines the value of the residence to be $ 440,000.00. No explanation is provided by the trial court as to how it arrived at the value of $ 440,000.00. Wife appeals, Reversed.

.

DECISION: In a divorce proceeding a trial court is required to determine what is marital and what is separate property. In allocating marital property the trial court must indicate it's basis for it's award in sufficient detail to enable an appellate court to determine whether the award is fair and equitable. A trial court must have a rational evidentiary basis for assigning value to marital property. Where expert testimony is admitted as to property values the court may believe all or part of the evidence . In this case, the Court of Appeals reversed the trial court decision regarding the value of the home because a " middle of the road estimation without some basis for such an adjustment from one extreme to the other was error because the value was not supported by the evidence.

35. **Bobie v Bobie** 12th District Case No CA 2022-12-119 (September 2023)

FACTS: Trial Court orders Husband as a part of the property settlement to pay an equalization payment to the Wife. Trial Court reserves jurisdiction to order the sale of the marital residence or make other orders as are necessary. Husband appeals. Reversed.

DECISION: Pursuant to R. C 3105.171 (1) once a trial court makes a division of property absent a reservation of jurisdiction or the agreement of the parties once a trial court divides the marital property and enters a final decree of divorce the judgment is final and the court no longer possesses jurisdiction over the division of marital assets. However, a trial court does retain full power to enforce the provisions of a divorce decree. In reversing the decision of the trial court the court of appeals held that while a trial court retains jurisdiction to administer the property division it abused its discretion by retaining jurisdiction to modify the property division. This reservation of jurisdiction is in conflict with the legislature's clear mandate that courts do not retain jurisdiction to modify a final property settlement.

.

.

E. RETIREMENT BENEFITS

1 **Taylor v Taylor** 10th District Case No. 17AP-763 (June 2018)

FACTS: Parties are divorced on June 29. 2016 and as a part of its decision the Court retained jurisdiction to sign a DOPO/QDRO to divide Husband's military pension. On October 2, 2107 the trial court signs a Military Retired Pay Division Order dividing the Husband's retirement and providing for survivor benefits to the wife. Husband appeals that order. Affirmed.

DECISION: Wife argued that the Husband had not timely filed his notice of appeal and therefore the Court of Appeals did not have subject matter jurisdiction to hear the appeal. In finding that the appeal had been filed timely the Court of Appeals find that since the divorce decree contemplated issuing a QDRO in the future it did not resolve the division of retirement accounts including the division of military benefits and therefore the divorce decree was not a final appealable order. The Military Retired Pay Division Order filed on October 2, 2017 is a final appeal order as it resolves the final issue of the division of retirement benefits. Therefore the Husband's notice of appeal if timely.

2. **Estate of Jon Parkins v Valerie Parkins** 3rd District, Case No. 1-18-50 (May 2019)

FACTS: Parties enter into divorce agreement wherein to equalize the marital estate. the Wife agrees to transfer to the Husband$ 87,000.00 by way of a " PLOP" (partial lump sum option payment) from the Wife's OPERS account upon her retirement from employment with the State of Ohio. A DOPO is prepared and sent to OPERS. OPERS rejects the DOPO because of errors in the drafting of the DOPO. 10 days after OPERS rejects the DOPO the Husband dies. Wife takes the position that pursuant to R.C 3105.86 the alternate payee's rights under an approved DOPO terminate on the death of the alternate payee. Estate of the Husband files a declaratory judgment against the Wife seeking payment of the $87,000.00. Trial Court grants the declaratory judgment and orders the Wife to pay the $ 87,000.00. Wife appeals that decision. Affirmed.

DECISION: Although the husband's death may have terminated the right to use a DOPO to collect money from Valeri the husband's death did not affect the viability of the underlying property settlement. A divorce decree is an actual order which divides property whereas a QDRO or DOPO is merely a tool used to execute the divorce decree. The denial of the implementation of a DOPO does not alter the provisions of a divorce decree and the reference to a PLOP or DOPO does not extinguish the underlying obligation. The Wife's underlying obligation to the Husband remains valid even if the vehicle for carrying out the division of property may have to be changed.

.

3. **Hoffman v Hoffman** 9th District, Case No. 28799/29104 (June 26, 2019)

FACTS: Trial Court finds that there is a de facto termination of marriage as of December 2001. Trial Court values Wife's pension as of January 2014. Trial Court in dividing the Wife's pension does not award to the Husband growth on his share of the Wife's pension. QDRO is filed and does not contain any language providing growth. Husband files 60(b) challenging the QDRO signed by the Court which doesn't contain a provision awarding growth on the Husband's share of the Wife's pension. Husband appeals. Affirmed

4. **Grisafo v Hollinshead** 8th District Case No. 107802 (September 2019)

FACTS: Parties obtain a dissolution of marriage in 2004. At the time of their dissolution of marriage the parties separation agreement provided that the Wife would receive 50% of the Husband's retirement benefits through Ohio Police and Firemen's Pension Fund (OPF). A DOPO was prepared and filed which awarded to the Wife 50% of Husband's age and service benefit as the benefit she would receive upon the Husband's retirement. No other benefit box was checked on the DOPO. Husband was eligible to retire under an age and service benefit in 2020. In 2017 Husband was granted total disability and commences to receive disability payments from OPF. Wife then files a 60(b) to amend DOPO so that she can begin to receive 50% of the Husband's disability payments. Wife argues that she was entitled to receive a portion of her former husband disability benefits because the Husband is receiving them in lieu of retirement benefits. Trial Court denies the motion. Wife Appeals. Affirmed.

DECISION: In affirming the trial court decision, the Court of Appeals held that generally disability payments do not constitute a marital asset because disability benefits " are a form of wage continuation designed to compensate the recipient for wages the he/she would other wise receive but for the disability. However disability benefits can be considered marital property when they are " taken in lieu of a service or retirement pension". The non participant spouse has the burden of proof to establish that the disability benefit was being received in lieu of retirement benefits or that the retirement benefits the participant spouse would otherwise be entitled to receive are being reduced by the receipt of disability benefit. On the date that the a spouse becomes eligible for retirement the disability benefits being received, though not marital property per se, begin to represent retirement benefits to the extent that they equal the retirement benefit the spouse would have received but for his disability. In this case, the Court of Appeals found that the Wife would not be entitled to receive any benefits unless and until the Husband begins to receive disability payments in lieu of his age and service retirement benefits which cannot occur until September 2020.

5. **Ouellette v Ouellette** 6th District Case No. E-19-017 (February 28, 2020)

FACTS: Parties agree that the Wife will by way of a DOPO transfer to the Husband the sum of $ 110,000.00 from her OPERS account. Subsequent to entering into their agreement to transfer retirement funds it was determined tat the Wife could not transfer the agreed upon funds. Husband files a 60(b) seeking to either modify or vacate the

.

Order. Trial Court grants the 60(B) and order that the $ 110,000.00 be distributed within 6 months. Wife appeals, Reversed in part.

DECISION: In reversing the trial court's decision the Court of Appeals relied upon Morris v Morris 148, Ohio State 3d 138 a decision issued by the Ohio Supreme Court. In Morris which dealt with the issue of spousal support the Supreme Court of Ohio held that 60b could not be used to modify a spousal support award where there was no reservation of jurisdiction. The Court of Appeals held that the same principle applied to the use of 60(b) to modify a property division where there is no reservation of jurisdiction. Because R.C 3105. 171 (I) does not permit modification absent the consent of both parties, Civ R. 60(B) cannot provide a workaround where there is no reservation of jurisdiction or consent to modify a property settlement.

6. **Tustin v Tustin** 9th District, Case No 28799/29104 (August 2019)

FACTS: The Trial Court finds a defacto termination of marriage occurred in December 2011. Trial Court then determines the value of the Wife's pension as of trial date which was December 2014 and awards the Husband 50% of the Wife's pension as of December 2011 but does not award to the Husband and growth on his share of the Wife's pension from 2011 (de facto date) to December 2014 (trial date). Wife's files a QDRO which does not contain any language awarding Husband growth/losses on his share of the Wife's pension. Trial Court signs QDRO. Husband files 60(B) seeking to set aside the QDRO. Trial Court denies the motion. Husband appeals. Affirmed.

DECISION: In affirming the decision of the trial court the Court of Appeals held that there is no legal authority which requires a trial court to allocate/award the appreciation or depreciation in a retirement account between the date of judgment (in this case the defacto date) and the date of the distribution of the benefit. The decision whether to award appreciation and/or depreciation is left to the discretion of the trial court.

7. **Boolchand v Boolchand** 1st District Case No. C-200111 (December 2020)

FACTS: Husband has a 401(K) which he started 7 ½ years before he married. Parties agreed that Husband had a pre marital portion to his retirement account but disagreed on how to calculate that interest. At trial, Husband used the coverature formula to determine his separate value in the retirement account.. Trial Court rejects Husband's argument and divides retirement account evenly. Husband appeals. Affirmed

DECISION: In affirming the decision of the trial court, the Court of Appeals found that the value of the Husband's retirement account depended upon how much was contributed and how well the investment preformed. The value of the retirement account was not based on a formula that took into consideration the years of service.

The Husband had argued that based on Hoyt v Hoyt the trial court required that the Court employ the coverature formula. The Court found that Hoyt did not impose a " bright

.

line" inflexible rule requiring the use of the coverature formula to value the marital and separate portions of a vested but unmatured retirement benefit.

Husband had the burden to prove by the preponderance of the evidence as to the amount of his marital and premarital portions of his retirement account. The Husband failed to present any evidence as to the value of his account at the time of the marriage. Therefore, the trial court was correct in finding that the husband's account was entirely marital and dividing the account evenly with the Wife.

8. **Ostanek v Ostanek** Ohio Supreme Court Case No 2021 Ohio 2319 (July 2021)

FACTS: In October 2001 the Parties were divorced. Pursuant to the terms of the divorce decree the Husband's retirement through FERS was to be divided evenly. In 2013 one month prior to Husband's retirement the Trial Court signs a COAP which divides the Husband's retirement but also awards to the Wife a survivor benefit. In April 2018 Husband files to vacate pursuant to Civil Rule 60(B) the COPA alleging that he hadn't received the COPA and that the Wife was receiving more in retirement than she was entitled to receive. Trial Court denies the motion. Husband's appeals to the Court of Appeals which affirms in part and reverses in part the trial court's decision. In it's decision the Court of Appeals held that the COAP had modified the divorce decree and was therefore void because the trial court lacked subject matter jurisdiction to modify the divorce decree's division of marital property. Husband appeals to the Ohio Supreme Court. The Supreme Court reverses the Court of Appeals.

DECISION: When a court has the constitutional or statutory power to adjudicate a particular class or type of case that court has subject matter jurisdiction. Although R. 3105. 171 (I) provides that a division or disbursement of property or a distributive award made under this section is not subject to future modification by a court except upon the express written consent or agreement to the modification by both spouses R.C 3105.171(I) does not contain any explicit statutory language divesting the domestic relations courts of subject matter jurisdiction over divorce action and the division of marital property. Therefore, R.C. 3105.171 (I) does not impose a jurisdictional bar denying domestic relations courts subject matter jurisdiction and any error by a such a court in modifying a divorce decree's division of marital property is an error in the exercise of jurisdiction. That error renders the order voidable and not void ab initio.

9. **Lelak v Lelak** 2nd District Case No 28872 (February 2021)

FACTS: Parties are divorced in 1983. The divorce decree awards to the Wife $ 10,363 from the Husband's retirement account. Because the Husband's pension was not vested, the Husband was ordered to pay $ 50.00 per week until the wife received her benefit. Also, the Husband was not allowed to withdraw any funds from his retirement account unless he gave the wife 10 days notice of his intent to withdraw funds. Husband then files bankruptcy and bankruptcy discharges the 50.00 obligation but not the underlying obligation. In 2016 Wife finds out that Husband withdrew all of the funds in his retirement account and didn't pay anything to the Wife. Wife files for contempt and

.

requests that she receive the $ 10,363 plus growth based on the stock market performance for a award of $ 90,000.00. Magistrate finds Husband in contempt, Trial Court over rules Magistrate decision and finds Husband not guilty of either civil or criminal contempt. Wife appeals, Reversed.

DECISION: Court of Appeals finds that the Wife is entitled to growth on her portion of the retirement account. At trial Wife's accountant testified that had the wife's share of the retirement benefit been' conservatively " invested in the stock market her $ 10,363 would have grown to $ 90,000.00. Court of Appeals finds that the Wife in the absence of decree language or a post decree order to the contrary the Wife's entitlement to growth on her share of the retirement benefits began on the date the Wife could have withdrawn from the retirement account without incurring a penalty.

While the Court agreed that the Wife was entitled to growth on her share of the retirement account, the Court of Appeals rejected the " conservative " investment approach. The Court of Appeals found that the appropriate method would be to award the wife statutory interest under R. C 1343.03 from the date the Wife could have withdrawn funds from the retirement account until the obligation is satisfied.

10. **E.O. W v L.M.**W 8th District, Case No 109713 (June 2021)

FACTS: On remand the Husband's attorney files a QDRO and the Wife's Counsel files an objection to the QDRO. Thereafter based on Counsel for the Wife's participation in another case involving a similar issue the Husband's Attorney files a motion for sanctions against the Wife's Attorney. Motion for sanctions was denied. Husband appeals. Affirmed.

DECISION: According to the Court a QDRO is not an independent judgment but rather is an enforcement mechanism. A QDRO implements the trial court's decision on how to divide a pension and it does not constitute a further adjudication on the merits. When a QDRO is inconsistent with the terms of the final divorce decree the QDRO is void. When a divorce decree is appealed and there is no stay of the judgment pending appeal, the trial court is not divested of jurisdiction to issue a QDRO consistent with the decree because the order merely executes orders previously specified in the divorce decree

11. **Wiseman v Wiseman** 12th District Case No CA 2022-03-004 (October 2022)

FACTS: In 2018 the Parties marriage is terminated by way of dissolution of marriage. The parties separation agreement states that each party is to receive their respective retirement assets including their pensions. It is later discovered that the Wife had a pension through UPS but never disclosed the pension on her property affidavit filed with the dissolution of marriage. Husband in 2020 finds out about the UPS pension and files a 60(B) (3) motion stating that the Wife engaged in fraud by failing to disclose her pension. Trial Court denies the motion. Husband appeals. Affirmed.

.

DECISION: 60(B)(3) provides that a court may grant a party relief from a final judgment based upon fraud(intrinsic or extrinsic), misrepresentation or misconduct of an adverse party. Fraud or material mistake can invalidate a separation agreement and entitle a part to relief from a dissolution decree under 60B(3). A dissolution of marriage is based upon the agreement of the parties and where there is a material e existence of consent or mutuality and then there is no true agreement on which to base a dissolution of marriage. In this case the Court did not believe the husband that he didn't know that the wife had a UPS pension but chose to believe that the wife's testimony that on at least 3 occasions the husband asked about her UPS pension. In affirming the trial court's decision to deny the 60 b the Court of Appeals held that despite the fact that the pension is not listed on the wife's affidavit does not mean that the wife didn't tell the husband about her UPS pension during their pre dissolution of marriage discussions and the trial court's finding that the husband knew about the pension is " eminently reasonable" .

12. **Earnest v Earnest** 5th District Case No 22CA 000022 (May 2023)

FACTS: Pursuant to the terms of the parties divorce decree the Wife was to receive 50% of the Husband's retirement. Husband prepares a QDRO without language awarding " gains and losses". Wife refuses to sign the QDRO. Husband files a motion to adopt the QDRO without gains and losses language. Trial Court grants the motion. Wife appeals. Affirmed.

DECISION: At trial the Wife argued that the because the divorce decree was silent as to whether there would be gains and losses attributable to her share of the Husband's retirement that the decree of divorce was ambiguous. In rejecting that argument the Court of Appeals held that mere silence on an issue or a failure to address an issued doses not create an ambiguity where non otherwise exists. In reviewing the terms of the divorce decree and applying the general rules of contract interpretation the Court of Appeals found that there was no ambiguity in the divorce decree. While the parties could have agreed that the wife's share of the husband's retirement was subject to " gains and losses" they did not include such language. Citing the Nowinski case 5th District 2011-Ohio-5410 where a decree is silent as to losses and gains the dollar amount should be awarded without gains and losses the court of appeals affirmed the decision of the trial court.

13. **Jardim v Jardim** 6th District Case No L-23-1039 (December 2023)

FACTS: Wife per the divorce decree is awarded one half of the Husband's unvested RSU when the RSU's vest. Husband leave job before the RSU's vest. Value of the unvested RSU was approximately one million dollars. Wife files to get one half of the value of the unvested RSU's. Husband's expert testified that the RSI had no present value because the RSU's were conditioned on continued future employment. Trial court denies the wife's motion but does extend the wife's spousal support to allow wife to recover the lost value of the unvested RSU's. Wife appeals, Affirmed:

DECISION The Court of Appeals citing the Daniels case (139 Ohio State 3 275) recognized that there are two approaches to the division of retirement benefits. One is the

.

present cash value method which requires the Court to place a value on the retirement benefit at the time of divorce. The method is the " deferred distribution method in which he court devises a formula for dividing the monthly benefit at the time of the decree but defers distribution until the benefit becomes payable. The Court also recognized that although it may be difficult to ascertain the value of benefits that have not yet vested and may never vest, it does not follow that those future benefit have no value.

In affirming the trial court's decision denying the wife's motion the Court of Appeals found that while the Wife was correct that the unvested RSU's had some value as marital property at the time of the divorce she was only entitled to receive value from those RSU's " at the time of their vesting". In this case the RSU's did not vest and were cancelled and therefore they no longer had any value.

F. PARENTAL RIGHTS

1. **Nemitz v Nemitz** 2nd District, Case No 28040 (February 2019)

FACTS: Pursuant to the parties divorce they had shared parenting of their children. In February 2017 Wife files to terminate the shared parenting plan. A GAL is appointed and following the GAL investigation the GAL makes a recommendation regarding the pending motion. The GAL recommends that the shared parenting plan remain but be modified so that the Husband would have parenting time on alternate weekends from Friday to Tuesday. The parties generally agree to the recommendation of the GAL. Trial Court after hearing the evidence doesn't terminate the shared parenting plan but modifies the shared parenting plan and awards to the Husband parenting time on alternate weeks from Thursday to Tuesday. Husband appeals, Affirmed

DECISION; Husband argued that under R.C 3109.04 (E) (1)(a) a shared parenting plan to be modified requires a threshold finding that a change of circumstance has occurred. However, according to the Court of Appeals a shared parenting plan can also be modified pursuant to the provisions of R. C 3109.04 (E)(1)(b), R.C 3109.04(E)(2)(a) and R. C 3109.04 (E)(2)(b). R.C 3109.04 (E)(2)(b) allows a trial court to make a modification of a shared parenting plan if the court determines that the modification is in the children's best interest. A modification under R. C 3109.04(E)(2)(a) does not require that the Court find that there has been a change of circumstance only that the modification is in the children's best interest.

2. **In Re G.B:** 2nd District, Case No 27992 (January 2019)

FACTS: Post decree the wife files a contempt against her husband for not allowing visitation. Husband files a motion to modify child support. Trial Court in lieu of a hearing directs that each party file memoranda in support of their respective motions (and responses to the other party's motion). Each party files a memoranda regarding the pending issues. Trial Court without a hearing denies the Wife's motion for contempt and orders wife to pay child support. Wife appeals. Reversed.

DECISION: It is within the trial court's decision whether to provide a litigant seeking a contempt finding an evidentiary hearing. A court abuses its discretion when a judgement is unreasonable, arbitrary or unconscionable. Most often a trial court's judgement constitutes an abuse of discretion because it is unreasonable with an unreasonable judgement being one where there is " no reasoning process supporting the judgement. A trial court assuming factual issues exist, abuses its discretion by denying a contempt motion without conducting an evidentiary hearing. Conversely a trial court does not abuse its discretion by overruling a contempt motion without conducting an evidentiary hearing when the record, in the absence of a hearing allows such a determination. Based upon the circumstances of this case, over ruling the Wife's contempt motion was over

.

ruling and was an abuse of discretion because the judgement does not articulate the court's rationale in denying the motions.

3. **Gregory v Gregory** 1st District Case No. C-180444 (December 2019)

FACTS: Court appoints a parenting coordinator to address parenting issues. Parenting Coordinator issues a decision on parenting issues. Pursuant to the local rule a parenting coordinator decision becomes immediately effective upon filing. Husband files objection to the decision of the parenting coordinator. Trial Court denies Husband's objection. Husband appeals. Reversed.

DECISION: In reversing the trial court's decision denying the Husband's objection the Court of Appeals held that the local rule making the parenting coordinator's decision effective upon filing was a denial of the Husband's right of due process. Due process requires a meaningful and independent judicial review of a parenting coordinator's decision. The lack of an independent review of the parenting coordinator's factual findings and the fact that the parenting coordinator's decision was immediately effective and not stayed by the filing of the Husband's objection combined to deprive the Husband of a meaningful and independent judicial review.

4. **In Re K.C.M** 5th District Case No. 2019 CA 0008 (December 2019)

FACTS: Parties not married have a child together. Mother's maiden name is listed on the child's birth certificate. Mother marries a person other the child's father. Mother then seeks to change the child's last name to be the same of the mother's married name. Probate Court grants the name change. Father appeals. Affirmed.
DECISION: R.C 2717.01 grants to the Probate Court to make name changes on behalf of the minor child. The standard for deciding whether to permit a name change is proof that the facts set forth in the name change application show reasonable and proper cause for changing the child's name. In determining whether a reasonable and proper cause for a name change has been established a court must consider the best interest of the child.

In determining the best interest of the child the trial court should consider the following factors:

1. The effect of the name change on the preservation and development of the child's relationship with each parent
2. The identification of the child as a part of the family unit
3. The length of time that the child has been using the surname
4. The preference of the child if the child is of sufficient maturity to express a meaningful preference
5. Whether the child's surname is different from the surname of the child's residential parent
6. The embarrassment, discomfort that may result when a child bears a surname different from the residential parent
7. Parental failure to maintain contact or support the child
8. Any other relevant factor

.

5. **Staver v Staver** 5th District Case No. 2019 CA 00057 (October 2019)

FACTS: In 2014 Mother is named as the residential parent for the parties children. At the time of the termination of the parties marriage the parties lived 150 miles apart. In order to maintain a relationship between the Father and the children the Father has parenting time every weekend. Pursuant to the provisions of the shared parenting plan the parents meet half way to exchange the children.

Post decree the children are enrolled by the Mother in an extracurricular activity (dance). Due to the distance Father doesn't take the children to all of the extracurricular activities held on Father's weekend. Mother files a motion to modify the shared parenting so as to limit Father's parenting time so that the children can attend their extracurricular activity on Father's weekend.

GAL is appointed and after his/her investigation recommends that there be no change in the parenting plan schedule. GAL finds that the children are adjusted to the schedule and lie the schedule which allows them to see father every weekend. Trial Court denies Mother's motion. Mother appeals, Affirmed.

DECISION: In determining whether to modify a parenting schedule the trial court must determine whether the proposed modification is in in the children's best interests utilizing the factors set forth in R.C 3109.051(D). In this case the Court found that the children liked the schedule and they didn't want the schedule to change. The Court in denying the Mother's motion to modify adopted the GAL's finding that it was not an appropriate use of Father's parenting time to require the children to trave 6-7 hours in a car in order to attend an extracurricular activity.

6. **Bruns v Green Ohio**: Supreme Court 163 Ohio State 3rd 43 (December 2020)

FACTS: Father and Mother both file to terminate their shared parenting plan and both seek to be named the child's residential parent. Trial Court terminates the shared parenting plan and finds that it is in the child's best interest to designate Mother as the child's residential parent without a finding of a change of circumstance. Father appeals to the Court of Appeals. Affirmed. Father appeals to Ohio Supreme Court -Affirmed

DECISION: Under the plain language of R. C 3109.04 a trial court is not required to find a change of circumstances in addition to considering the best interest of a child before terminating a shared parenting plan and decree and designating one parent as the residential parent and legal custodian of the parties children.

In a separate concurring opinion Judge Kennedy took the opportunity to point out that the prior Supreme Court case of Fisher v Hasenjager 116 Ohio State 3rd 53 was decided incorrectly but because the Supreme Court did not over rule Fisher the court now has two different holdings regarding the same fact pattern.

.

7. **Schoor v Schoor:** 10th District, Case No. 19AP 630 (December 2020)

FACTS: Parties had shared parenting. On December 2015 Father files to terminate the parties shared parenting plan or in the alternative seeks to modify the plan pursuant to the recommendation of the Guardian Ad litem. Trial Court declines to terminate the plan but does modify the plan based upon the recommendation of the Guardian. Mother appeals. Affirmed.

DECISION: In affirming the decision of the trial court the Court of Appeals cited the case of Bruns v Green 163 Ohio State 3rd 43) the Court of Appeals held that R. C 3109.04(E)(2)(c) authorizes a trial court to terminate a shared parenting plan upon the request of one or both of the parties or whenever the Court finds that shared parenting is not in the children's best interest.

8. **Hill v French:** 6th District, Case No L-20-1077 (January 2021)

FACTS: Parties are involved in a post decree custody matter. Child is interviewed by the Court pursuant to a motion filed by Mother in July 2018 pursuant to R. C 3109.04(B). Mother files a second request for the Court to interview the children. Trial Court declines to interview the children citing as a " special circumstance" in declining the interview that the children had been negatively influenced by Mother, had alienated the children, and has influenced the children's wishes. Trial Court terminates the shared parenting plan and designates Father as the children's custodian. Mother appeals. Affirmed.

DECISION: Citing the Saleh case (8th District, 108689) a trial court is statutorily mandated to conduct an in camera interview when requested by a party. The Court of Appeals in affirming the decision of the trial court not to conduct a 2nd interview did acknowledge that multiple interviews of a child are not prohibited but that a 2nd interview is not mandated when requested by a party. R.C 3109.04 does not impose upon an unlimited duty on the trial court to perform successive interviews of the same child in a single proceeding to modify parental rights even when requested by a party.

9. Rule 91 of the Ohio Rules of Superintendence.

Effective Sept. 1, 2022, The Ohio Supreme Court has approved a new rule that provides guidelines and standards for courts and mental health professionals who evaluate child custody cases. Rule 91 in the Rules of Superintendence for Ohio establishes requirements for custody evaluators, According to the new rule a custody evaluator is an objective, impartial, qualified mental health professional appointed by the court to perform a child custody evaluation.

Specifics of Rule 91 address how custody evaluations should be conducted and what is to be expected of an evaluator. The standardization of these experts includes necessities,

.

such as education and licensure requirements, initial training and continuing education, evaluation components, and evaluator responsibilities and ethical considerations.

Guidelines for an initial education program and continuing education in conjunction with the rule have also been developed. An education program must include how to perform custody evaluations, the intersection of mental health and the legal system, core competencies, and other specialized subject areas.

The Advisory Committee will also develop a toolkit with a sample local rule and sample order of appointment to assist local courts' implementation.

10. **Dobie v Dobie** 3rd District, Case No 2-21-09 (January 2022)

FACTS: Trial Court advised parties that it was Court Policy to no allow cross examination of Guardian Ad Litem except in cases involving abuse, neglect, dependency cases. This was a case involved where the children would attend school. Neither Counsel for Mother or Father object to Court not allowing GAL to be cross examined. Trial Court determines that children shall attend school in Father's school district. Mother appeals, Affirmed

DECISION: While a GAL's report is not considered as evidence but is merely submitted as additional information for the court's consideration, the language of 3109.04(C) and Rule 75(D) implicity gives the trial court the authority to admit the custody investigation as evidence. Due process requires that the trial court permit each party the right to cross exam a court appointed investigator whose report the trial court considers as evidence. However although the trial court's statement that it would not allow cross examination of the GAL would seem to conflict with 3109.04 (C) in this case Mother did not object to the admission of the GAL report once Mother was informed that she would not be allowed to question the GAL. The failure of the trial court to allow cross examination of the GAL did not rise to the level of " plain error" the Court of Appeals affirmed the trial court decision.

11. **Babcock v Babcock** 5th District, Case No 2020 CA 0011 (March 2021)

FACTS: Husband ordered to provide all transportation for children during parenting time. Husband did not deliver the children to mother for her parenting time alleging that his car broke down and he could get the children to mother's house. Mother files contempt. Husband as a defense argues that he was prevented from returning the children on time because his car broke down. Trial Court finds Husband in contempt. Husband appeals, affirmed.

DECISION: In affirming the trial court's decision the Court of Appeals found that in a civil contempt proceeding the moving party bears the initial burden of demonstrating by clear and convincing evidence that the other party has violated an order of the court. Once the movant has met his/her burden the burden shifts to the other party to either rebut the showing of contempt or demonstrate and affirmative defense by a preponderance of the evidence. Impossibility is a defense to a contempt of court order

and it is incumbent upon the party to raise impossibility of compliance to provide the defense by a preponderance of the evidence.

12. C.S v R.S 5th District Case No 2021 CA 00008 (October 2021)

FACTS: Parties were divorced in 2014. Court reserved jurisdiction over the matter of child support beyond the age of majority due to the child's disability. In 2018 Father files for change of custody. At the time of the filing of the motion the child was over the age of 18. Mother's files to dismiss the motion arguing that the trial court lacked jurisdiction to order /change custody because the child at the time the motion was filed was over the age of 18. Trial Court grants the motion. Father's appeals. Reversed in part.

DECISION: In overruling the Trial Court's reliance on the decision in Geygan v Geygan (10th District Court of Appeals) the Court of Appeals rejected the reasoning of the Geygan decision which restricted a trial court's ability to award child support after a disabled child turned 18. In reversing the trial court's decision the Court of Appeals found that the holding in Castle v Castle and similar cases is " reflective of the notation that mental or physically disabled children should be excepted from a strictly age based emancipation rule. Although the trial court only reserved jurisdiction over the issue of child support the Court of Appeals found that the trial court had jurisdiction to determine custody in the child in question if the child is under a legal disability. Court of Appeals remanded the case to the trial court to determine whether the child was under a legal disability.

13. **In Re JH and JG** 10th District Case No 19AP 517 (March 2021)

FACTS: Trial Court in juvenile case awards permanent custody to Children's Services. Child's Mother appeals alleging that the trial court committed error when the trial court did not appoint an attorney when there was a conflict between the recommendation of the GAL and the child' wishes. Affirmed.

DECISION: In this case the court of appeals found that Mother did not have standing to raise the issue of right to counsel for her son because the child did not express a " strong desire " to live with mother that was different than the recommendation of the GAL. Although Mother lacked standing to raise the issue of counsel for her son the Court went on to consider the issue of the appointment of independent counsel

14. **Steele v Steele** 2nd District Case No 29141 (October)
FACTS: Parties are divorced and are awarded shared parenting. 4 years later Wife files to terminate shared parenting which is granted. Wife is designated as residential parent. Husband is granted standard visitation. In 2018 Father files for custody alleging that Mother repeatedly interfered with his visitation. Trial court grants the motion. Wife appeals. Affirmed.

.

DECISION: R.C 3109.04 does not define what is a " change of circumstances. Ohio Court's have held that the phase " change of circumstances" refers to an event, occcurrence, or situation which has a material and adverse effect upon the child. The change must be one of substance and not a slight or in consequential change. If a custodial parent repeatedly interferes with the noncustodial parents visitation this may amount to a change of circumstance under R.C 3109.04 since it affects the best interest of the child. Where the trial court repeatedly warns a custodial parent not to interfere with visitation such repeated interference can also be a change circumstance to warrant a change of custody.

15. **Golan v. Saada**, 596 U.S. ____(2022)

FACTS: Golan, a U.S. citizen, married Saada, an Italian citizen, in Italy, where, in 2016, they had a son. In 2018, Golan flew to the United States to attend a wedding and, instead of returning, moved into a domestic violence shelter with child. Saada sought an order returning child to Italy under the Hague Convention on the Civil Aspects of International Child Abduction, which requires that a child be returned to the child's country of habitual residence upon a finding that the child has been wrongfully removed to or retained unless the authority finds that return would expose the child to a "grave risk" of "physical or psychological harm or otherwise place the child in an intolerable situation." The district court concluded that child would face a grave risk of harm if returned to Italy, given evidence that Saada had abused Golan but ordered son returned to Italy, applying Second Circuit precedent obligating it to "examine the full range of options that might make possible the safe return of a child" and concluding that ameliorative measures could reduce the risk to B. Following a remand, the Second Circuit affirmed. The Supreme Court vacated.

DECISION: A court is not categorically required to examine all possible ameliorative measures before denying a Hague Convention petition for the return of a child to a foreign country once the court has found that return would expose the child to a grave risk of harm. The Second Circuit's rule, imposing an atextual, categorical requirement that courts consider all possible ameliorative measures in exercising discretion under the Convention, improperly elevated return above the Convention's other objectives. A court reasonably may decline to consider ameliorative measures that have not been raised by the parties, are unworkable, draw the court into determinations properly resolved in custodial proceedings, or risk overly prolonging return proceedings.

16. **Hart v Hart** 5th District Case No, 22CA 011 (July 2023)

FACTS: Parties have shared parenting with equal time. Father post decree files to modify the shared parenting plan. After the Father files his motion to modify shared parenting the Mother relocates 1 ½ hours away. Trial Court based in part of Mother's relocation modifies the shared parenting plan and awards Father most of the school year parenting time. Mother appeals. Affirmed.

DECISION: Mother argued that because she moved after Father filed his motion to modify the shared parenting plan that her move should not be considered as a change of

circumstances. In rejecting this argument the Court of Appeals held in that in general trial courts review motions to modify order based upon the circumstances as they existed at the time of the filing of the motion. However, this Court has held that if necessary in determining a change of circumstances a court may consider developments that occurred after the motion was filed.

Court of Appeals defined a " change of circumstance" as an event, occurrence or situation which has a martial and adverse effect upon a child. The change must be of substance and not slight or inconsequential but the change doesn't have to be substantial. Relocation alone is not sufficient to constitute change in circumstance but may be a factor in such a determination.

17. **Veach v Veach** 1st District Case No C-220072 November 2022

FACTS: Wife has custody of the parties child. Post decree Wife files motion to restrict Husband's parenting time. Trial Court grants the motion. In the Court's decision trial court states that the child shall be forced to visit with his father. Trial Court also stated in it's decision that it won't entertain contempt motions for the refusal to visit when the child "vehemently refuses to visit. Husband appeals. Affirmed

DECISION: A trial court has the discretion to limit or restrict visitation. This includes the power to restrict the time and place of the visitation and to determine the conditions under which the visitation will take place. In this regard Courts have upheld a trial court's decision to allow parenting time to be at a child's discretion where the trial court's determination that such discretion was in the best interest of a child. In this case the trial court left the participation in parenting time within the discretion of each child only to the extent that no child would be forced to attend parenting time.

18. **Suever v Schmidt** 3rd District, Case No 1-22-14 (December 2022)

FACTS: Party's had shared parenting. Wife then files terminate the shared parenting plan. Trial Court terminates the shared parenting plan and designates Husband as the residential parent. Wife Appeals. Affirmed.

DECISION: In **Bruns v Green** 163 Ohio State 3d the Court addressed and distinguished the analysis required to modifying shared parenting plan and terminating shared parenting. A trial court is not required to find a change of circumstance in addition to considering the best interest of the child before terminating a shared parenting plan and designating one parent as the residential parent. Once the trial court terminates the shared parenting plan it is not required to find a change in circumstances.

19. **Wallace v Wallace** 12th District Case No CA 2023-03-030 (December 2023)

FACTS: Parent # 1 wants to relocate with the parties minor child from Warren County to Pickaway County. Parent # 2 objects to the relocation. Trial Court denies the motion to relocate. Parent # 1 appeals. Affirmed.

.

DECISION: When a notice of intent to relocate is filed the trial court must first determine whether there is a court order which would limit the ability of a parent to relocate. If there are no court orders limiting the ability to relocate the court may proceed with a hearing to revise the visitation schedule pursuant to R. C 3108. 051(G)(1). However, if there are restrictions on relocation R.C 3108. 051(G)(1) does not apply and under these circumstances the court may prevent the parent from relocating and changing the child's school district when relocation is not in the child's best interest.

The burden of proof in a relocation case rests with the party seeking to relocate to establish that the relocation and change of school districts is in the child's best interest. The court is permitted to look at the best interests factors set forth in R.C 3109.04 (F)(1) to determine whether to allow relocation.

20. **Wagoner II v Wagoner** 12th District Case No CA 2023-11-101 (March 2024)

FACTS: Parties have shared parenting with equal division of parenting time. Mother files a contempt against Father for denying Mother her parenting time. Father argues that the child was depressed, and did not return to Mother's home. Mother had resorted to using the Police to force the child to go with Mother. Trial Court denies Mother's motion for contempt. Mother appeals. Affirmed.

DECISION: Absent proof showing that the visitation with the non custodial parent would cause physical or mental harm to the child or a showing of some justification for preventing visitation the custodial parent must do more than merely encourage the minor child to visit the non custodial parent. In affirming the trial court's decision the Court of Appeals approved the trial court's finding that while the Court did not condone Father not abiding by the Court order, " based upon the facts of this case, Father had reasonable cause to believe that the child seeing Mother according to the terms of the shared parenting plan is not in the child's best interest and would cause the child's mental health to deteriorate. Father should seek immediate relief form the Court as opposed to not abiding by a Court Order

.

G. SPOUSAL SUPPORT

1. **Hague v Estate of Hague** 11th District Case No. 2018-A-0060 (2019)

FACTS: Pursuant to the Parties Separation Agreement the Husband agreed effective June 2016 to pay spousal support until the Wife dies, remarriage of the Wife or Wife cohabitates. In January 2018 Husband dies. Wife files a claim against Husband's estate alleging that the Husband's estate is liable for the payment of spousal support. Estate rejects the claim. Wife files an action against the estate arguing that the termination events only apply to her death, remarriage or cohabitation. Wife argues that because there was no express language that provided for the termination of spousal support on the Husband's death that the provisions of 3115. 18(B) (and which holds that spousal support terminates upon the death of either party unless the order expressly provides to the together. Trial Court rules that the Husband's obligation to pay spousal support ended upon the Husband's death and the Husband's estate is not liable for the payment of on going spousal support. Wife appeals the decision. Affirmed.

DECISION: In affirming the trial court's decision the Court of Appeals acknowledged that there is a split of decision on this issue. In the Forbes case (6th District) WD-04-056 where the divorce decree did not include the husband's death as a terminating factor " the court clearly expressed it's intent for spousal support to continue after the Husband's death".

However, other Courts are in conflict with Forbes such as Woodrome (12th District) and Budd (9th Distr). In finding the decision in Forbes to be " unpersuasive" the Court of Appeals for the 11th District held that the provisions of 3115. 18(B) (and which holds that spousal support terminates upon the death of either party unless the order expressly provides to the to contrary) can only be avoided when the terms of the decree expressly state that the payment is to extend beyond the payor's death. In the absence of express language, the duty to pay spousal support ends when the payor dies. In affirming the decision of the trial court, the Court found that the language of the divorce decree does not expressly provide that the husband's obligation to pay spousal support continues after his death.

2. **Fuller v Fuller**: 9th District Case No. 28891 (December 2018)

FACTS: Parties executed a separation agreement wherein the Husband agreed to pay spousal support of $ 8,500.00 per month. The agreement further provided that the Court retained jurisdiction to modify the support order based upon a change of circumstance of either party or terminate the support obligation upon the occurrence to the wife's death, husband's death, wife's remarriage). In December 2016 shortly before Husband's 69th birthday husband files to terminate his spousal support obligation due to a substantial change of circumstance. Trial Court doesn't terminate but reduces husband's spousal support to zero dollars. Wife' appeals that decision. Reversed.

.

DECISION: In affirming the decision of the trial court the Court of Appeals recognized that there is a distinction between the termination of support based upon a change of circumstance of the parties (and to which a R.C 3105. 18(E) would apply) and those cases based upon the occurrence of a specific condition subsequent.

In reversing the trial court's decision, the Court of Appeals noted that the divorce decree under review set out distinct provisions regarding the modification and termination of spousal support. The divorce decree expressly retained jurisdiction to modify the amount of spousal support, based upon a change of circumstances. The divorce decree sets forth only 3 conditions subsequent as grounds for a termination of the award (death husband, death of wife or wife's remarriage).

In this case, the trial court issued a hybrid order which purportedly granted the husband's motion to terminate spousal support by reducing the obligation to zero dollars. Accordingly, the trial court's judgment effectively ordered a modification rather than a termination of support. Husband did not seek a modification of his support obligation but rather sought a termination of his support. Because the trial court ordered a modification it exceeded the scope of the relief sought by the Husband.

3. **Friedenberg v Friedenberg** 11th District, Case No. 2017-L-149

FACTS: Plaintiff filed a divorce action wherein Wife sought both child support and spousal support. Husband through his counsel issued a subpoena to the wife's mental health professionals relating to the treatment of the Wife. Wife files to quash the subpoena and a protective order alleging that her medical records were protected by the physician patient privilege. Trial court ordered that the records of the wife be released to Counsel for the husband pursuant to a protective order. Wife appeals the decision. Affirmed.

DECISION: Generally a person's medical records are privileged and not subject to discovery. However when parents seek custody of their children they waive the physician patient privilege with respect to their medical records. That waiver applies to a personal mental health records. The Court of Appeals found that the same waiver applies to person seeking spousal support. R. C 3105.18(C) requires that a court consider the mental condition of the parties in determining whether spousal support is appropriate and reasonable. Raising a claim for spousal support warranted, at the very least the disclosure of the Wife's medical records to the court for a review.

UPDATE: The Supreme Court of Ohio in a decision issued on June 18, 2020 (slip opinion 2018-0416 affirmed the decision of the Court of Appeals decision. The Supreme Court held that although communications between a physician and patient are generally privileged under R.C 2317.02(B)(1) the wife's filing a divorce action, with claims for child support and spousal support, triggered the exception found in R.C 2317.02(B)(1)(a)(iii) which provides for an exception to the privilege for communications that relate causally or historically to physical or mental injuries relevant to issues in the divorce action. By statute, the wife's mental and physical conditions are mandatory considerations for the trial court's determination of her claims for custody and

spousal support. The trial court appropriately examined in camera the submitted mental health records to determine their relevance before ordering their release, subject to a protective order

4. **Stafford v Stafford** 10th District Case No 19AP-50 (September 2019)

FACTS: Parties are married for 23 years at the time that the Wife for divorce. At trial the Court finds that the wife during the marriage mis spent money and during the divorce did follow court orders regarding the payment of credit card debts. At the time of the divorce the Husband earned $ 74,000.00 per year while the Wife earns $ 35,000.00 per year. Trial Court orders the Husband to pay $ 800.00 per month for 8 years. Wife appeals. Affirmed.

DECISION: In affirming the trial court's decision the Court of Appeals rejected the Wife's argument that due to the length of the parties marriage that she was entitled to an award of indefinite spousal support. In commenting on the Wife's argument that she was entitled to indefinite support the Court stated that the Supreme Court in the Kunkle case does not mandate that spousal support be for an indefinite period of time simply because a marriage has been lengthy.

The Court of Appeals also found that the Trial Court did not abuse it's discretion when it awarded spousal support of $ 800.00 per month. The Court of Appeals commented on the fact that the trial court was not willing to accommodate the Wife's budgeting for expenditures for restaurants, entertainment, and hobbies. While spousal support was appropriate in this case the amount must be commensurate with the actual need. The Court also noted that it would be inequitable to assign to a party an amount of spousal support that prohibits them from maintaining the same standard of living as the recipient of the payment.

5. **Murphy v Murphy** 5th District, Case No 2018 CA 00161 (August 2019)

FACTS: Husband per divorce decree on 2/2017 is ordered to pay $ 4,000.00 per month. In January 2018 Husband files to modify his spousal support alleging that his income has declined. Matter is set for a hearing on 4/2018. Case is continued to August 2018 due to Husband's failure to provide discovery. Hearing is conducted and decision is issued October 2018. Trial Court in it's decision reduces the Husband's spousal support to $ 2,400.00 per month effective October 2018 and not retroactive to April 2018 (and which was the first court date). Husband appeals. Affirmed.

DECISION: Absent some special circumstances an order of a trial court terminating spousal support should generally be retroactive to the date such modification was first request. This ability to make an order retroactive is to address the delay that it takes for a trial court to dispose of motions to modify. However, a trial court has the discretion to make the modification of its order effective on a date other than the date the motion was filed. In setting the effective date a trial court must be careful in making a reduction of spousal support retroactive and abuses its discretion when it fails to consider the retroactive reduction of spousal support and the recipient's reliance upon or expectation

.

of receiving support. In this case the delay in hearing the case was due to the Husband's failure to provide documents which caused the case to be continued.

6. **Pekarik v Otto** 9th District, Case No 18CA 0068-M (March 2020)

FACTS: Husband files to terminate his spousal support obligation on the basis that his former wife was cohabitating with an unrelated adult male. The evidence at the hearing on the motion was that the former wife and the unrelated adult male was that they had lived together for approximately 18 months, and that during that period of time the unrelated adult male occasionally gave the former wife money and that they shared some living expenses. Trial Court denies the motion. Husband appeals. Affirmed

DECISION: Cohabitation is defined as a condition for the termination of spousal support is designed to preclude an ex spouse from eluding termination of spousal support as a consequence of remarriage, while obtaining the financial benefits thereof by refusing to sanctify a meretricious relationship through a marriage ceremony. When considering the issue of cohabitation, the trial court should look to 3 principal factors: 1) an actual living together 2) of a sustained duration and 3) with shared expenses with respect to financing of day to day incidental expenses. Without a showing of financial support, merely living with an unrelated member of the opposite sex is insufficient in and of its self to require the termination of spousal support. A finding of cohabitation requires more than evidence that the former spouse is living with another person with whom she has sexual relations.

In this case there was no dispute that the former wife lived with another person for a period in excess of 18 months. The issue was whether the former wife had shared expenses with her " friend". In affirming the trial court's decision the Court of Appeals found that the Husband had failed to show that the former wife had " shared expenses" with respect to financing and day to day incident expenses. The husband further had failed to prove that the " friend" had assumed the obligations equivalent to those arising from ceremonial marriage. Simply because the " friend" had occasionally given the former wife money for her expenses does not mean that there is a finding of cohabitation.

7. **Manley v Manley** 7th District, Case No. 19CO 0023 (March 2020)

FACTS: Husband ordered to pay spousal support. Husband files 2 times to modify his spousal support and on each occasion trial court denies the motion. Husband files the 3rd time to modify spousal support. In his 3rd effort to terminate spousal support the Husband argues that he has reached retirement age and that he was receiving social security benefits and therefore his spousal support should be terminated. Trial Court denies the motion. Husband appeals. Affirmed.

DECISION: Early retirement can be considered an involuntary decrease income/ salary if the payor demonstrates that it was economically sound, but if he retires with the intent to defeat a spousal support obligation then the retirement can be a considered voluntary underemployment and the payor's pre-retirement income can be attributed to him.

.

In this case the trial court rejected the husband's argument that age 64 was the Husband's full retirement age and imposed a finding that age 66 was full retirement age. In affirming the trial court's decision, the Court of Appeals noted that that there was division in how Courts have addressed this issue. Some cases have considered the age at which unreduced benefits can be claimed under social security in determining the normal retirement age. Other cases have disregarded the age that at which an obligor attains an age where the obligor can receive full social security benefits because that age is not a statutory factor for spousal support. In affirming the trial court's decision, the Court of Appeals stated that a trial court should not be prohibited from using a social security retirement date depending on the circumstances of the case. The issue is one to be determined on a case by case basis.

8. **Copley v Copley**, 4th District, Case No. 19CA901 (December 2020)

FACTS: Trial Court awards both temporary and permanent spousal support. Husband appeals. Court of Appeals affirms award of temporary spousal support but reverses on award of indefinite support.

DECISION: In affirming the award of temporary spousal support the Court of Appeals held that R.C 3105. 18(C)(1) governs the award of spousal support but not temporary spousal support. Temporary spousal support need not be based upon the factors in R.C 3105.18 but only needs to be an amount that is reasonable.

In awarding spousal support the court has broad discretion what is reasonable and appropriate. It must consider the statutory factors and indicate the basis for the award in sufficient detail so that a reviewing court can determine if the award complies with the law. In this case the court considered the parties living expenses which is not one of the statutory factors but the consideration of a parties living expenses is discretionary and may be considered if the court finds such expenses to be relevant. The trial court committed error when it disregarded many of the husband's expenses but did not indicate in it's decision why it had not considered certain expenses.

9. **Hoy v Hoy** ,4th District, Case No 19CA 717 (May 2021)

FACTS: During the parties marriage wife operates a business which the Husband asserts generated income to the Wife of $ 250,000.00 per year. Shortly after trial court orders wife to pay temporary spousal support to the Husband the wife alleges she has a " mini stroke' and can no longer operate the business and has to retire and therefore can not pay spousal support. Husband at trial testifies that the wife continues to operate the business but does so under the son's guidance. Trial Court declines to impute income to the wife and does not order spousal support. Husband appeals, reversed.

DECISION: The Court of Appeals in reversing the trial court decision not to impute income to wife acknowledged that none of the factors set forth in R. C 3105.18 (C) (1) require a court to impute income to unemployed or under employed spouses. However, a trial court may in it's discretion impute income when considering the R. C 3105. 18(C)

.

(1) (a) and (b) factors which require a court to examine the parties income and relative earning abilities.

In this case the Court of Appeals reversed the decision of the trial court and remanded the matter because the Court of Appeals could not determine from the record whether the Wife's medical condition necessitated her retirement from the family business or from any work at all.

10. **Hunley v Hunley** 12th District, Case No CA2019-12-101 (October 2020)

FACTS: Trial Court used Fin Plan in determining an award of spousal support. Based upon the consideration of the factors in R. C 3105.18 (C) and Fin Plan the trial court orders Husband to pay spousal support. Husband appeals. Affirmed

DECISION: Husband argued before the Court of Appeals that the trial court committed error when it used Fin Plan to calculate spousal support since Fin Plan had not been approved by the Legislature and was used by the trial court as a substitute for the factors set forth in R. C 3105. 18 (C).

In affirming the trial court's use of Fin Plan, the Court of Appeals found that with regard to the use of Fin Plan software that " while there is no mathematical formula for determining an amount of spousal support to be order that does not mean that the court cannot use mathematical formulas as an aid.

In this case the Court in its decision indicated that the Fin Plan analysis was considered and was an aid in determining an amount but was not the controlling factor in determining spousal support. The Court of Appeals found no error in the trial court's decision regarding the amount of spousal support because the Court used the Fin Plan analysis in conjunction with a thorough application of the statutory factors when determining the amount of spousal support to be paid by the Husband to the Wife

11. **Gaffney v Gaffney** 12th District, Case No. CA2019-10-172 (October 2020)

FACTS: The trial court in its decision ordered the Husband to pay spousal support of $ 4,500.00 per month plus 35% of all future bonuses which the husband received during the term of support. The term of support was for 9 years. Husband appeals. Affirmed.

DECISION: On appeal the Husband argued that the spousal support award was double dipping. The Court of Appeals dismissed this argument because the Husband had not raised this argument before the trial Court issued it's decision. The Court of Appeals went on to say that in reviewing the record it concluded that the trial court did not " double dip". A double dip according to the Court of Appeals occurs when the trial court double counts a marital asset once in the property division and again in the spousal support award.

In this case the trial court first divided the parties' assets including stocks and stop options. Then the Court in calculating spousal support awarded spousal support based upon the Husband's base salary and then also awarded the wife 35% of future bonus,

.

commissions, or incentive pay. In affirming the trial court's decision the Court relied upon the Ghanayem case (12th District, Case CA2018-12-138) wherein the Court found that a husband's future bonuses are an appropriate consideration in the calculation of support obligations.

12. **Schneider v Schneider** 2nd District Case No 28675 (September 2020)

FACTS: Husband agrees to pay spousal support to wife so that wife's gross income per month would be $ 3,600.00 per month. Post decree Wife enters into reverse mortgage with her son whereby Wife receives $ 500.00 per month. Husband files a motion seeking to modify his spousal support obligation on the theory that the $ 500.00 per month was income and therefore his support obligation should be reduced. Trial Court denies the motion. Husband appeals, Affirmed.

DECISION: Trial Court found that income for tax purposes is generally understood to be an "accession to wealth". Loan proceeds do not actually increase one's wealth because the receipt of the loan is offset by the obligation to repay the loan. Reverse mortgages are a special type of loan that allows a home owner to convert a portion of the equity into cash so " reverse mortgages are considered loan advances and not income. The reverse mortgage payments that the Wife received did not increase her wealth. That money was an asset she already owned (the equity in her home).

13. **Bailey v Bailey;** 6th District Case No. 20CAS 14 (September 2020)

FACTS: Parties were married at the time of their divorce for 35 years. Both parties were in their mid 50's. Trial Court orders Husband to pay spousal support of $ 1,200.00 per month for a term of 8 years without a reservation of jurisdiction. Husband appeals. Reversed.

DECISION: R.C 3105. 18 (E)(1) requires a domestic relations court to reserve jurisdiction to subsequently modify a spousal support award. However, a decision by the trial court to not retain jurisdiction will not be reversed absent an abuse of that discretion. In this case, the trial court acted unreasonably in failing to retain jurisdiction given the age of the parties, and the uncertain economic times. A trial court abuses it's discretion in not retaining jurisdiction when it orders spousal support for a definite period of time which is of a relatively long duration. An award of support of 8 years is a relatively long period of time.

An award of indefinite spousal support is proper only where " under reasonable circumstances a divorce spouse does not have the resources, ability or potential to become self supporting (citing Kunkle at page 69). Even in marriages of long duration, " if the payee spouse has the ability to work outside the home and be self supporting a spousal support award should include termination date (citing the Lepowsky case -7th District)

.

14. **Simon v Simon**, 9th District , Case No 29615 (April 2021)

FACTS: In 2008 the parties were divorced and the Husband was ordered to pay spousal support. Spousal support to continue until the wife's remarriage or death. Court did reserve jurisdiction. In November 2017 Husband files to terminate spousal support arguing that there had been a change of circumstances in that there was a decrease in his income and the wife was cohabitating. Trial grants the motion. Wife appeals. Affirmed:

DECISION: The Wife argued that the trial court committed error in terminating her spousal support because there was no language in the divorce decree which provided that spousal support based upon cohabitation. The Court of Appeals agreed that cohabitation was not listed as a factor for the termination of spousal support. Cohabitation is a factor for the court to consider in determining if a change of circumstances has occurred and is so whether a modification to the support is warranted based on the change. The Court of Appeals found that the trial court did not abuse its discretion in determining that there the relations between the former wife and her significant other amounted to cohabitation and as result it was not unreasonable for the trial court to find that there had been a change of circumstance such that to maintain the existing awarded was no longer reasonable and appropriate.

15. **Kirkpatrick v Kirpatrick** 11th District Case No 2020-T-0078 (December 2021)

FACTS: Court finds that because the wife committed financial misconduct (withdrew Husband's retirement funds, forged husband's name to mortgage, took money out of a Health Savings Account) and the Husband incurred significant debt due to the wife taking out loans in the Husband's name. Trial Court awards Husband spousal support but in making it's award of spousal support the trial court takes into consideration the wife's financial misconduct. Husband appeals, Affirmed.

DECISION: A trial court may consider the financial misconduct of a spouse in making an award of spousal support because 3105.18(C) allows the court to consider any other factor which the court finds to be relevant and equitable citing both the Kennedy and the Bostik case which held that a party's financial misconduct during a marriage can be considered as a reason to " raise or lower support although not deny it entirely. .

16. **Vernell v Vernell** 4th District Case No. 21 CA2 (May 2022)

FACTS: Husband retires and upon retirement files a motion seeking to modify and reduce his spousal support obligation. After hearing the testimony was that the husband's income had declined from $ 115,000.00 to $ 62,000.00. Both parties provided to the Court their monthly expenses. After reviewing the testimony and exhibits the trial court reduces the support to $ 2,800.00 per month. Husband appeals, Reversed.

DECISION: A trial court is not required to consider the parties living expenses since it is not one of the enumerated factors in R.C 3105. 18 (c) (1). However, the trial court has the discretions to consider the expenses of a party if it finds the expenses to be relevant. But once a trial court considers the expenses of the parties it acts unreasonably when it

.

then disregards the parties expenses without an explanation. In the case before the trial court the trial court considered the parties expenses and liabilities as opposed to any other factor in R.C 3105. 18 (C) (1) but failed to explain in sufficient detail why it did not consider all of the expenses submitted.

18. **Nichols v Nichols** 3rd District, Case No 14-21-13 (February 2022)

FACTS: Parties are married for 12 ½ years. Trial Court orders Husband to pay spousal support of $ 2,400.00 per month for 72 months. Husband appeals the decision. That decision is reversed and remanded by the Court of Appeals. On Remand the Trial Court orders Husband to pay spousal support of $ 2,000.00 per month for 14 years. Husband appeals reversed.

Decision: In considering an award of spousal support there must be a correlation between the length of the award of spousal support and the duration of the marriage. Citing the Barrientos case the Court of Appeals in the Barrientos case held that there must be a correlation to the length of the marriage and the other statutory factors. In reversing the trial court in Barrientos the Court of Appeals commented that it could not find one case where the length of the spousal support for a definite period exceeded the length of the marriage. In reversing the Trial Court's award of a spousal support award of 14 years on a 12 ½ year marriage the Court of Appeals in a foot note stated that the purpose of spousal support is not to penalize either party citing Kunkle. A review of the major increase in the duration and total amount of support raises a question of it's punitive nature.

18. **Spillane v Spillane** 12th District Case No. CA2019-12-206 (October 2020)

FACTS: At trial the Court found that the Husband earned $ 135,000.00 per year and the Wife worked part time and earned $ 20,000.00 per year. Trial Court ordered Husband to pay spousal support of $ 3,100.00 per month. Husband appeals arguing that the trial court committed error in not imputing income to the wife of $ 54,000.00 per year. At one point in time during the parties marriage the Wife discussed with a friend about taking on a job as a Nanny which paid $ 54,000.00 but never actually took the job as a Nanny. Affirmed.

DECISION: R.C 05.18 does not require that a trial court impute income to a spouse who is voluntarily unemployed or underemployed. Nevertheless R.C 3105.18 C (1)(b) does provide that a court in consider an award of spousal support consider the earning ability of the parties as opposed to their actual earnings. Thus in fashioning a spousal support award a trial court may impute income to a party who is voluntarily underemployed or voluntarily underemployed or otherwise not working up to his or her full earning potential.

FACTS: Parties enter into a separation agreement which is then incorporated into a decree of divorce. In the separation agreement there are 2 contradictory paragraphs regarding the matter of spousal support. One paragraph says that the Husband shall pay spousal support of $ 1,200.00 per month for 10 years. The other paragraph says that

neither party shall pay spousal support to the other party. Post divorce Husband pays spousal support for 11 months. He then files a motion to terminate his spousal support obligation based upon the no spousal support language in the separation agreement. Trial court hears the evidence and determines that the paragraph which stated there was no spousal support to be paid by either party was a " clerical error " and files a nunc pro tunc entry pursuant to 60(A) removing the no spousal support paragraph.. Husband appeals. Affirmed.

DECISION: Civil Rule 60(A) permits a trial court in it's discretion to correct clerical mistakes which are apparent on the record but 60(A) does not authorize a court to make substantive changes in judgments. The difference between a clerical mistake and a substantive mistake is that a clerical mistake is a "blunder in execution" while a substantive mistake is where the court changes it's mind or on a second thought has decided to exercise it's original discretion in a different manner. In affirming the trial court's modification of the divorce decree and removing the inconsistent spousal support paragraph, the Court of Appeals held that in matters involving spousal support a trial court has to retain jurisdiction to modify a substantive error but the court is free to correct clerical errors pursuant to 60(A) even in cases where the court has not retained jurisdiction to modify or terminate spousal support.

19. **Momotaz v Sattar** 8th District Case No 111034 (August 2022)

FACTS: Parties are married in a ceremony conducted telephonically over a speaker phone Husband was in the United States and the Wife was in Bangladesh. The marriage was solemnized by the assistant marriage registrar who was in Bangladesh along with the 2 witnesses. The marriage was solemnized according to Sharia Law. The Wife moves to the United States and the parties live together for 12 years. Wife files for divorce. Husband in his answer raises the defense that the marriage was invalid because it was not properly registered under the Muslim Marriage and Divorce Registration Act. Trial Court rejects that argument and finds there was a valid marriage. Trial Court ordered Husband to pay spousal support for a term of 64 months and did not give the Husband credit for the months that he had paid spousal support following the parties separation Husband appeals. Affirmed

DECISION: In rejecting the husband's argument that he should be given credit for the spousal support paid after the parties separated the Court of Appeals found that the " goal of spousal support is to reach an equitable result.' There is nothing in Ohio Law which requires Courts to order the commencement of spousal support as of the date of the defacto termination of the parties marriage. Nothing in R.C 3105. 18 requires the court to use a defacto termination date in determining spousal support.

20. **Folberth v Folberth** 12th District Case No CA2021-05-047/049 (September 2022)

FACTS: Parties file for divorce. The parties enter into a stipulation that the funds in the Husband's investment account are the husband's separate property. The parties had executed a pre marital agreement which stated that neither party could take the other spouses pre marital assets in a division of property or for spousal support The evidence

.

was that the Husband's investment account generates approximately $ 28,000.00 per year. The trial court awards the Wife spousal support and in determining the Husband's income includes the income generated by the Husband's separate property. Husband appeals. Affirmed.

DECISION: The Court of Appeals in affirming the trial court's decision to consider the income generated from the Husband's separate property when awarding spousal support stated that the language of the parties pre marital agreement did not exclude the court from considering income for the husband's separate assets. According to the Court if the parties had intended to limit the award of spousal support by excluding from consideration the husband's separate property the parties could have specified as much. Instead according to the Court the pre marital agreement contemplated an award of spousal support without any limitation. Citing the Cole case out of the 8th district 2004-Ohio 6638)and other similar cases the Court of Appeals stated that these cases recognize that there is a distinction between property distributed to a spouse and the consideration of income produced by the property for support purposes.

21. **Vallette v Vallette** 10th District Case No 21 AP 288 (October 2022)

FACTS : Pursuant to the parties divorce the husband was ordered to pay spousal support and the language of the decree states that that the Court would not retain/reserve jurisdiction. 6 years later husband files to set aside the support order alleging that the trial court made a clerical error in that the decree should have stated that the Court retain jurisdiction and not the language that the court did not retain jurisdiction. In addition the Husband alleged that the wife had not disclosed all of her assets. At the hearing on the the court sua sponte vacates the divorce decree as to property and support but doesn't vacate the portion of the decree awarding the parties a divorce. Wife appeals. Reversed.

DECISION: In reversing the trial court's decision the Court of Appeals held that a trial court does not have jurisdiction to modify a support order if there is no reservation of jurisdiction. The Court went on to say that pursuant to the Morris case 148 Ohio St 3d that when a trial court vacates a support order it is a modification and in order to modify a support order there has to be a reservation of jurisdiction which was lacking in this case.

The Court of Appeals also found that the trial court committed error when it sua sponte vacated the property and spousal support provisions of the divorce decree where there was no motion pursuant to 60b pending before the court. Pursuant to the plan language of 60(B) a court may grant relief under Civil Rule 60(B) only on a party's motion. A court has no authority to sua sponte vacate a judgment under 60B. At best Husband sought relief under 60(B) on the basis of a mutual mistake regarding the modification of spousal support. At most the trial court could have granted relief only as to the matter of spousal support and not the property division. Thus the trial court exceeded it's authority to grant relief.

.

22. **Poe v Poe** 10th District Case No. 22 AP 657 (December 2023)

FACTS: Trial court orders Husband to pay spousal support of $ 1,200.00 per month on a 25 year marriage. Husband's income is $ 106,000 per year and Wife's income is $ 63,000.00. Husband Appeals. Affirmed

DECISION: A trial court must consider all of the factors in R. C 3105.18 and it can not base it's decision on any one factor in isolation. However, in making an award of spousal support the trial court is not required to comment on each of the 3105.18 factors rather the record only need to demonstrate that the court considered the factors in making it's award. However, there must sufficient detail in the Court's decision to allow the Court of Appeals to determine whether the award is fair, equitable and in accordance with R. C 3105. 18

23. **Miller v Miller** 10th District Case No. 23 AP 319(March 2024)

FACTS: On remand the trial court orders the Husband to pay spousal support of $ 5,500.00 per month for 48 months- non modifiable. Husband appeals, reversed

DECISION: A trial court abuses it's discretion in failing to reserve jurisdiction where there is a substantial likelihood that the economic conditions of either or both parties may change significantly with the period of the award. However, where the evidence demonstrates that in the years prior to the divorce the parties income " remained relatively stable" the trial court may refuse to reserve jurisdiction to modify spousal support. Because the Husband's income decreased by over $ 200,000 in the year prior to the trial the trial court erred by failing to at least explain why the decrease in the Husband's income would not impact his ability to comply with the support order.

24. **Sawyer v Raney:** 12th District Case No CA 2023-07-078 (February 2024)

FACTS: Parties as a part of their dissolution of marriage in their separation agreement that Husband pay spousal support to the Wife and the court would not retain jurisdiction over the issue of spousal support. Post final hearing and a few months later the parties submitted an amended separation agreement which provides for the payment of spousal support reaffirming the support for 10 years. However, the trial court amended the parties separation agreement to include a " general reservation of jurisdiction over spousal support. However, the language of the reservation of jurisdiction did not affirmatively state whether the reservation was over the amount or term of support. 2 years later Husband files to terminate on the basis that the Wife remarried. Trial Court dismissed the motion. Husband appeals. Affirmed

DECISION: The amended separation agreement does not meet the statutory requirements set forth in R. C 3105. 18(E)(2) for the domestic relations court to possess continuing jurisdiction to modify spousal support (i.e language reserving jurisdiction over either/or the term or amount). The Court further found that based upon the record that it was the intent of the parties that Husband would pay spousal support for 10 years irrespective of any change in circumstances that may occur including the Wife's remarriage.

.

25. **Loewe v Loewe:** 9th District Case No 30326 (January 2024)

FACTS: Husband retires at age 63 and files motion to modify/terminate his spousal support. Trial Court finds that Husband retired to avoid paying spousal support and denies the motion. Husband appeals, Affirmed

DECISION: Retirement whether voluntary or involuntary may constitute a substantial change in circumstances unless it was undertaken early with the intention of circumventing a party's spousal support obligation. If a party retires with the intent of defeating the spousal support award the retirement is considered "voluntary underemployment" and the spouse's pre-retirement income is attributed to him

To determine whether a party retired early in order to defeat a spousal support award the Court may consider multiple factors including age at time of retirement, age at the time of divorce, the time between the award of support and retirement, medical reasons for retirement, the economic justifications for retiring, the validity of concerns over continued employment and the assets of the parties from which spousal support could continue.

In this case, in affirming the decision of the trial court the Court of Appeals found that Husband had no health issues which affected his ability to pay spousal support. His concern about his future income was speculative and Husband had resources to pay spousal support

26. Jardim v Jardim 6th District Case No L-23-1039 (December 2023)

FACTS: Wife per the divorce decree is awarded one half of the Husband's unvested RSU when the RSU's vest. Husband leave job before the RSU's vest. Value of the unvested RSU was approximately one million dollars. Wife files to get one half of the value of the unvested RSU's. Husband's expert testified that the RSI had no present value because the RSU's were conditioned on continued future employment. Trial court denies the wife's motion but does extend the wife's spousal support to allow wife to recover the lost value of the unvested RSU's. Wife appeals, Affirmed:

DECISION The Court of Appeals citing the Daniels case (139 Ohio State 3 275) recognized that there are two approaches to the division of retirement benefits. One is the present cash value method which requires the Court to place a value on the retirement benefit at the time of divorce. The method is the " deferred distribution method in which he court devises a formula for dividing the monthly benefit at the time of the decree but defers distribution until the benefit becomes payable. The Court also recognized that although it may be difficult to ascertain the value of benefits that have not yet vested and may never vest, it does not follow that those future benefit have no value.

In affirming the trial court's decision denying the wife's motion the Court of Appeals found that while the Wife was correct that the unvested RSU's had some value as marital property at the time of the divorce she was only entitled to receive value from those RSU's " at the time of their vesting". In this case the RSU's did not vest and were cancelled and therefore they no longer had any value.

.

H. **MISCELLANEOUS**

1. **Tatsing v Tatsing:** 10th District Case No. 16AP-827 (November 2017) .

FACTS: In January 2002 the Parties ostensibly married in Cameroon. At the time of the marriage the Husband lived in Ohio and the Wife lived in the Ivory Coast. They then moved to the United States. Wife files for divorce in Ohio in January 2015. While the case is pending in Ohio the wife in November 2015 Wife files in Cameroon High Court to nullify the marriage. The High Court granted the request to nullify the marriage based on the failure of the parties to comply with Cameroon Law. The High Court found that because neither party was born in or lived in Cameroon at the time of the marriage ceremony.

Husband moves to dismiss on the basis of jurisdiction. Trial Court grants motion because evidence was presented by the Husband to establish that the High Court of Cameroon had found the marriage to be invalid. The Court found that because the High Court of Cameroon had found the marriage to be invalid the marriage in Ohio was also invalid and therefore the Court lacked subject matter jurisdiction over the matter. Wife appeals. Affirmed.

DECISION: A trial court lacks subject matter jurisdiction over a divorce proceeding if the marriage between the parties was invalid. Subject matter jurisdiction cannot be waived and can be raised at any time. The failure of a party to raise subject matter jurisdiction cannot be used in effect to bestow jurisdiction on a court where there is no subject matter jurisdiction.

Citing as authority for it's decision the Lee case out of the 11th District (2006-T-0098) the Court of Appeals for the 10th District stated that the validity of the marriage is determined by the law of the country/state where the marriage is conducted (lex loci contractus). Because as in both Lee and the present case the parties had failed to comply with the law of country where the marriage was performed (Lee-South Korea Tatsing – Cameroon) that the marriage was invalid under both Korean/Cameroon and Ohio law and the trial court had no jurisdiction over the matter.

4. **State of Ohio v Caslin** 10th District Case No 17AP 613(December 2018)

FACTS: Defendant is charged with rape. Analyst from the Columbus Police Department took screen shot of face book posts linking Defendant to the crime. State introduces face book posts linking the Defendant to the crime. Defendant objects to the introduction of the face book posts. Trial Court allows the face book posts. Defendant is convicted of rape. Defendant appeals, Affirmed.

DECISION: In affirming the trial court's decision to allow the screen shots of the posts, the Court of Appeals stated that Evidence Rule 901(B)(1) provides that authentication of a document can be satisfied by the testimony of a witness with

knowledge that the matter is what it is claimed to be. In the absence of evidence of evidence or contemporaneous objections that would support an inference that the screen shot photographs were contrived or altered the evidence presented was admissible and sufficient testimony by the criminal analyst was presented that the witness had knowledge that the screenshot of the Facebook page was what it purported to be.

5. **Kilbarger v Kilberger** 4th District Case No 18CA 14 (January 2019)

FACTS: Parties were divorced on May 7, 2018. Husband filed for a new trial which was denied on August 6, 2018. On September 5, 2018 the Husband fax files his notice of appeal. September 5, 2018 was the deadline for filing a notice of appeal. Clerk of Courts accepts the notice of appeal and time stamps the notice of appeal as being received on September 5, 201. Wife files to dismiss the Husband's appeal on the grounds that a notice of appeal could not be fax filed and therefore the notice of appeal was not timely. Husband argues that the rules of court allow for a fax filing. Motion granted and appeal dismissed as not being filed timely.

DECISION: The Court of Appeals in dismissing the Husband's appeal acknowledged that Hocking County Local Rule 37 allows pleadings and other papers may be filed with the Clerk of Court by fax. However, the Supreme Court of Ohio has held that unless a local rule of the appellate court expressly permits the filing of a notice of appeal by electronic means a party appealing a trial court order must file a paper copy of the notice of appeal with the clerk of the trial court pursuant to App.R. 3. The 4th Appellate District had not adopted a local rule allowing for electronic filing of a notice of appeal.

The Court of Appeals also rejected the Husband's argument that because the Clerk of Courts had accepted the notice of appeal and filed stamped the notice that the notice of appeal was filed. The Court of Appeals held that an appeal is not filed if it is presented to the clerk of courts electronically rather than manually with a paper copy unless authorized by local appellate rules.

6. **Bey v Rasawehr** Ohio Supreme Court Case No. 2020-Ohio-3301 (June 2020)

FACTS: Appellant posts on social medial that sister law contributed to death of Appellant's brother. Sisterlaw seeks a Civil Protection Order prohibiting the Appellant from posting on social media statements accusing sister in law of contributing to the death of the brother. Trial Court issues a Civil Protection Order and as a part of the order prohibits the Appellant from posts on social media. Appeals Court affirms decision of trial court. Appellant appeals to the Ohio Supreme Court. Reversed.

DECISION: In reversing the decision of the Court of Appeals and Trial Court the Supreme Court held that the Order of the Court prohibiting postings on social

media imposes an unconstitutional prior restraint on protected speech in violation of the First Amendment to the United States Constitution.

7. **Hussain v Hussain,** 12th District, Case No. CA2019-01-024 (February 2020)

FACTS: Husband takes a voluntary separation from employment. Husband receives a one time severance bonus. Husband files to reduce child support. CSEA reduces child support. Wife objects to the decision. At the time that the wife files the objection the Husband was living in India. Wife serves the objection via regular mail on Husband in India. Trial Court sustains wife's objection and reimposes child support. Husband appeals in part of grounds that the Wife did not comply with the provisions of the Hague Convention on Service. Affirmed.

DECISION: Court of Appeals finds that the service of motions, objections and judicial decision upon a person in a foreign country is governed by Civ R 5 and not Civil R 4.5. Civil Rule 4.5 sets for the rules for service of an individual in a foreign country. If the foreign county is a signatory to the Hague Convention on Service C.R 4.5 requires that service be made in compliance with the Convention. C.R 4.5 only applies to service of the summons and complaint. The Hague Convention on Service only applies to the initial service of process, namely the summons and original complaint. Following service of the summons and complaint the parties must serve future pleadings and papers including motions and objections under the less stringent standards of Civ. R. 5.

The Court of Appeals also observed that C.R 5 allows service of pleadings and other papers subsequent to the original complaint by mailing the document to the persons last know address by U.S Mail and by " sending it by electronic means to a facsimile number or email address provide by the party to be served (C.R 5(B)(2)(c)(f)

8. **Moore v Moore** 8th District, Case No. 10999 (November 2021)

FACTS: Wife files for divorce. Husband is served but does not file an answer. Case is set for an uncontested divorce and there is a notation on the public docket that notice of the final hearing was sent. Husband does not appear at the hearing, divorce granted and a division of property is ordered. Husband appeals, Reversed.

DECISION: Civil Rule 75 (L) requires that a court must provide notice to a pro se party via regular mail. When a trial court enters judgment without first providing proper service the court commits reversible error. In this case the certified record of the clerk's office did not contain such a notice. Absent evidence that the Husband' was notified by regular mail of the hearing, the trial court committed reversible error.

9. **Soliman v Nawar** 10th District Case No 22 AP 633 (May 2023)

FACTS: Wife files for divorce in Ohio against Husband. During the pendency of the Ohio divorce the Husband files and obtains a divorce from his wife in Egypt. Husband argues that the Ohio Court should extend comity and recognize the Egyptian Divorce. The Trial Court rejected the husband's comity argument and granted the wife a divorce. Husband appeals. Affirmed:

DECISION: Ohio Courts recognizes divorces granted by foreign countries to citizens of the United States where the parties were domiciliaries of the foreign country at the time the divorce was granted in accordance with the law of that country. Ohio Courts also has jurisdiction to grant divorces to or against citizens of foreign countries who are domiciliaries of this state.

Comity is a principle in accordance with which Ohio Courts recognize a foreign decree. However, comity is a matter of courtesy and not a right. An Ohio Court is not bound to enforce a foreign judgment when it is repugnant to the laws of the United States and Ohio or violates Ohio public policy. In electing not to extend comity to the Egyptian divorce where the divorce was granted to a single person and the other spouse had no awareness of the proceeding or where the foreign proceeding was not commenced until after the local trial court had commenced proceedings the court found that the Egyptian divorce as obtained violated basic principles of due process.

10. **Pelton v Pelton** 7th District Case No 22CO 0043 (June 2023)

FACTS: Husband files for a legal separation. Wife files a counterclaim for divorce on the grounds that the parties had lived separate and apart without cohabitation for a period in excess of 1 year. Husband argues that the separation was not voluntary because of the seriousness of his mental illness. Trial Court grants the wife a divorce. Husband appeals. Affirmed.

DECISION: In affirming the trial court's decision to grant a divorce the court of appeals referred to a case where the wife had suffered a stroke and was admitted to nursing home. At the time the husband's divorce filing the wife had been in a nursing home for 2 years. In finding that the Husband was not entitled to a divorce the court of appeals in the Bennington case found that although the parties were living apart for more than one year there was no evidence that the marriage " had broken apart". While the parties were living apart in a limited sense they were not living separately in a marital sense.

11. Goddard v Goddard 11th District Case No 2021-G-0015 (September 2022)
FACTS: Plaintiff files for Civil Stalking Protection Order (CSPO) against Defendant. Plaintiff alleged that the Defendant over a number of years sent emails to Plaintiff's attorney. Defendant files a motion to dismiss on the basis

that the trial court lacked personal jurisdiction over the Defendant. Defendant does not live in Ohio. Trial Court grants the motion. Plaintiff appeals. Reversed.

DECISION: In reversing the trial court's dismissal of the CSPO THE Court of Appeals found that the CSPO arose from the Defendant's purposeful actions of emailing the Plaintiff's attorneys in Ohio with the alleged intent to cause harmful consequences to the Plaintiff who resides in Ohio. The Court found that the email communications constituted sufficient minimum contacts with Ohio. According to the Court it was foreseeable to one who makes threating communications that he may be haled into the jurisdiction to answer a petition seeking protection against him.

.