

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

SANDRA EAST,	:	APPEAL NOS. C-190158
		C-190179
Plaintiff-Appellant/Cross-Appellee,	:	TRIAL NO. DR-1600382
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
CHARLES EAST,	:	
	:	
Defendant-Appellee/Cross-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant/cross-appellee Sandra East (“Wife”) and defendant-appellee/cross-appellant Charles East (“Husband”) appeal from a decree of divorce.

In Wife’s first assignment of error, she argues that the trial court erred in classifying and dividing Wife’s Charles Schwab and Morgan Stanley investment accounts. Wife argues that the trial court should have found Wife’s personal-injury settlement, gifts from her father, and the growth from her premarital property were her separate property. As to Wife’s personal-injury settlement, Wife admitted that the settlement had included claims for wage loss and medical expenses, and that her complaint had claimed \$49,000 in wage loss, \$109,000 in medical expenses, and

\$2,000 for out-of-pocket costs. Therefore, the trial court's determination that it could not ascertain which portion of the \$119,465 settlement was for Wife's personal injuries was not against the manifest weight of the evidence. *See* R.C. 3105.171(A)(6)(a)(vi); *Bennett v. Bennett*, 2d Dist. Clark No. 2012 CA 36, 2012-Ohio-5788, ¶ 20.

As to the monetary gifts from Wife's father, Husband presented evidence that he had maintained a close relationship with Wife's father during and after the marriage, and that the monetary gifts had been spent on marital expenses. Despite Wife's brother's testimony that he had received the same monetary gifts from his father, the trial court's determination that Wife failed to provide clear and convincing evidence that her father had given the checks to her, to the exclusion of Husband, was not against the manifest weight of the evidence. *See* R.C. 3105.171(A)(6)(a)(vii).

As to the earnings on Wife's premarital property, Wife presented no evidence to allow the court to separately trace the growth of the \$127,143 of her separate property; therefore, the trial court's decision to classify any earnings as marital property was not against the manifest weight of the evidence. *See* R.C. 3105.171(A)(4); R.C. 3105.171(A)(6)(b). We overrule Wife's first assignment of error.

In Wife's second assignment of error, she argues that the trial court erred in dividing the parties' retirement accounts and tax debt. Wife argues that the trial court erred in equally dividing the marital portion of the parties' retirement accounts and Husband's income tax liability, because Husband had engaged in financial misconduct. The evidence shows that Husband absorbed most of the costs of the marital lifestyle, which allowed Wife's retirement accounts to flourish, and that Husband depleted three retirement accounts to pay for marital debts. We determine that the trial court did not abuse its discretion in refusing to find that Husband

engaged in financial misconduct. *See* R.C. 3105.171(E)(4); *Best v. Best*, 10th Dist. Franklin No. 11AP-239, 2011-Ohio-6668, ¶ 25. We overrule Wife's second assignment of error.

In Husband's first assignment of error, he argues that the trial court erred in choosing May 31, 2018, as the termination date of marriage, instead of July 18, 2018. Husband argues that the parties restructured their joint account on July 18 to prepare for their separate lives. The trial court determined that the parties had exchanged all of their financial information on May 31, signifying an end to any marital trust, and that the parties had used May 31 to value some of their financial assets in preparation for divorce, such as Wife's Morgan Stanley IRA and their home. We determine that the trial court did not abuse its discretion in selecting an end date of the marriage. *See* R.C. 3105.171(G); *Lemarr v. Lemarr*, 1st Dist. Hamilton No. C-100706, 2011-Ohio-3682, ¶ 4. We overrule Husband's first assignment of error.

In his second assignment of error, Husband argues that the trial court erred in awarding Wife \$127,143 as her separate property. The evidence shows that Wife's Charles Schwab investment account had a premarital balance of \$77,567.56, and that Wife had received \$49,576.89 shortly after the marriage from the sale of her condominium. Therefore, the trial court's decision to award Wife \$127,143 as her separate property was not against the manifest weight of the evidence. We overrule Husband's second assignment of error.

We affirm the judgment of the trial court.

A certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., CROUSE and WINKLER, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on March 4, 2020

per order of the court _____.
Presiding Judge