

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

CARL E. LAWRENCE-SLATER,	:	APPEAL NO. C-080508
	:	TRIAL NO. DR-0500475
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
B. JOY LAWRENCE-SLATER,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Carl Lawrence-Slater filed for divorce from Joy Lawrence-Slater in 2005. (Because the parties share a last name, we use first names.) Joy did not attend a hearing to settle property issues. The magistrate awarded assets and child support based on Carl’s testimony. Joy objected to the magistrate’s decision and requested a new trial. The trial court adopted the magistrate’s decision and ordered judgment accordingly. Joy again moved for a new trial. The trial court denied her motion based on res judicata. We affirm the trial court’s denial of the motion.

I. Divorce and Court Proceedings

Joy and Carl married in 1984. Carl worked for General Electric. Joy had been an attorney for most of the marriage. In 2002, Joy underwent surgery. She alleged that she had suffered a permanent brain injury during the surgery. After several client

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

complaints, Joy's license was placed on inactive status in 2005. Since then, Joy claimed, she was incapable of working due to her brain injury. Joy was ordered by the trial court in March 2006 to get a vocational evaluation to determine what, if any, employment she was capable of performing. Joy did not get the evaluation.

Carl filed for divorce in 2005. Carl was originally ordered to pay Joy \$5,000 per month in spousal support. This was later reduced to \$4,000 per month. The spousal support was, in large part, to make payments on the mortgage for the marital residence.

Joy stayed in the marital residence, and Carl moved to an apartment building that the couple owned together. Carl made several mortgage payments on the marital residence after he had moved out, but stopped when he could no longer afford the payments. From October 2005 through July 2006, Joy made only one mortgage payment. In July 2006, the lender foreclosed and the house was sold. Joy had also fallen behind on the tax and utility payments.

The hearing to settle property issues was scheduled in April for mid-August. Joy's attorney moved to withdraw at the end of June—the trial court granted the motion about two weeks before the property hearing was scheduled. Joy moved both to continue the hearing and to have an attorney appointed for her. The trial court denied both motions.

Joy did not attend the property hearing. She did not have an attorney at that time to represent her. Joy's mother, Ann Short, had gone to Joy's residence to take her to court and had found her in a fetal position on the bed, disheveled and dirty. Short attempted to get Joy to go to court, but Joy would not go. Short testified that Joy had been in this condition for "many" days before the hearing date.

Short went to court, arriving after the property hearing had already started. She brought a letter from Joy's doctor that explained that Joy was too ill to attend the hearing, that she was suffering from severe post traumatic stress disorder, and that she

was not deliberately missing the hearing. The magistrate refused to continue the hearing.

Carl testified that Joy was capable of working as a paralegal. Based on this uncontroverted testimony, as well as testimony about the mortgage payments and other financial matters, the magistrate terminated Carl's spousal support, imputed to Joy a salary of \$50,000 per year, ordered Joy to pay \$450 per month in child support, and divided the remainder of the assets and debts.

Joy filed objections to the magistrate's decision and "post-trial consolidated motions." One of the consolidated motions was for a new trial. After a hearing where an expert testified about Joy's mental condition, the magistrate denied her motion for a new trial. The trial court overruled Joy's objections and adopted the magistrate's decision.

Joy again filed a motion for a new trial. The magistrate and the trial court denied her second motion on the basis of res judicata.

II. Assignments of Error

Joy now appeals, asserting four assignments of error: the trial court erred by (1) denying Joy's motion for a new trial; (2) ruling that Joy's motion for a new trial was barred by res judicata; (3) failing to fully consider the statutory factors; and (4) failing to continue the property hearing until Joy was well enough to attend.

Joy argues in her first assignment of error that the trial court erred by refusing to grant a new trial because it had failed to consider the statutory factors outlined in R.C. 3105.171 and 3105.18. She also argues in her third assignment of error that the court did not fully consider the statutory factors.

The decision whether to grant a new trial is generally within the trial court's discretion and will only be reversed if the trial court abused its discretion.²

Specifically, Joy argues that the court failed to consider her earning abilities and mental, emotional, and physical condition. Joy had been ordered by the trial court to get both a vocational and a psychological evaluation. She did neither. If she had fulfilled this obligation, the trial court would have had the chance to evaluate these factors even in her absence. She cannot now say that the trial court erred because of her negligence. The first and third assignments of error are overruled.

Joy argues that the trial court should have granted her a continuance because she had produced a letter from her doctor confirming that she was too ill to attend the property hearing. To succeed on this issue, Joy would have to show that the trial court abused its discretion by demonstrating an arbitrary, unreasonable, or unconscionable attitude.³ But the court was within its discretion to proceed with the trial. It had been scheduled for months. According to Joy's mother, Joy had been in the same condition for "many" days—she should have informed the court earlier that she needed to postpone for medical reasons. Furthermore, the letter was dated two days before the trial date. To wait to deliver it until after the trial had commenced was disrespectful to the court and to the other party.

Joy is correct that *res judicata* did not apply to this case. Her first motion for a new trial was a nullity because it was filed before the final judgment was entered.⁴

But the trial court's mischaracterization was immaterial. The court had already held a hearing on the same issues that Joy presented in her valid motion for a new trial. It had already decided against granting her a new trial. It would be fruitless for this

² *State v. Filiaggi*, 86 Ohio St.3d 230, 237, 1999-Ohio-99, 714 N.E.2d 867.

³ *State v. Unger* (1981), 67 Ohio St.2d 65, 67, 423 N.E.2d 1078; *Stricker v. Stricker*, 1st Dist. No. C-060435, 2007-Ohio-3309, at ¶6.

⁴ *Grava v. Parkman*, 73 Ohio St.3d 379, 381-382, 1995-Ohio-331, 653 N.E.2d 226.

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court to remand this case to the trial court. The result would be the same—no new evidence has been presented, so the trial court would come to the same conclusion. Therefore, we affirm the trial court’s judgment.

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

HILDEBRANDT, P.J., PAINTER and SUNDERMANN, JJ.

To the Clerk:

Enter upon the Journal of the Court on February 25, 2009
per order of the Court. _____

Presiding Judge

