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

CHERYL DELUCA,	:	APPEAL NOS.	C-250709 C-260068
Plaintiff-Appellee,	:	TRIAL NO.	DR-2201882
vs.	:		
WILLIAM DELUCA,	:	*JUDGMENT ENTRY*	
Defendant-Appellant.	:		

This cause was heard upon the appeals, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed.

Further, the court holds that there were reasonable grounds for these appeals, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 9/25/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer Hensley
Administrative Judge

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Plaintiff-Appellee,	:	TRIAL NO.	DR-2201882
vs.	:		
WILLIAM DELUCA,	:	*O P I N I O N*	
Defendant-Appellant.	:		

Appeals From: Hamilton County Court of Common Pleas, Domestic Relations Division

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 25, 2026

Legal Aid Society of Greater Cincinnati and *Ivory McGuire*, for Plaintiff-Appellee,

Ragonesi Law Firm, LLC, and *Christopher Ragonesi*, for Defendant-Appellant.

NESTOR, Judge.

{¶1} After 31 years of marriage, four children, and an Italian restaurant in Norwood, Cheryl DeLuca ("Wife") and William DeLuca ("Husband") divorced. The trial occurred nearly three years after Wife initially filed for divorce.

{¶2} Husband now appeals the final divorce decree, raising six assignments of error. Husband argues the trial court erred in its property valuations. He argues this for both the marital home and for a commercial property. This specific commercial property in Norwood received widely varying appraisals. Rather than accept one of the competing values, the trial court ordered the property sold, as specifically authorized by statute. Additionally, Husband argues the court erred by requiring him to make equalization payments, ordering him to pay spousal support, and finding him in contempt. After reviewing the record, we overrule all assignments of error and affirm the trial court's judgment.

I. Factual and Procedural History

{¶3} Wife and Husband were married in February of 1991. Wife filed her complaint for divorce on November 10, 2022. In June 2023, the magistrate issued the initial Civ.R. 75(N) Order[1] ("75(N) Order") that set the parameters for the parties during the pendency of the case. The matter proceeded to trial in September 2025, and the trial court issued the final decree of divorce in January 2026.

{¶4} The 75(N) Order required Husband "to pay all household expenses as was customary during the marriage. Additionally, [Husband] shall continue to pay [Wife's] American Express credit card in full each month. [Husband] shall not take any action to reduce the credit limit, which is presently $1,500." The order also stated

[1] Civ.R. 75(N) allows a trial court to enter a temporary order for spousal support, child support, and custody when requested by a party.

that Husband had recently sold a commercial building[2] and restaurant equipment, which provided him with $225,000. Based on that sale, the court ordered Husband to give Wife $10,000 as an advance property-equalization payment. The court also required Husband to maintain Wife's health insurance. Husband objected to the 75(N) Order, but the trial court enforced it.

{¶5} Husband filed a motion on August 12, 2024, to terminate the 75(N) Order. Husband stated that he had "expended all monies the parties had in savings to pay household expenses, personal expenses and debts of the parties and there are no savings left to pay any household bills, and the Defendant is unemployed." He did not provide any evidence to support the motion other than his own testimony. The court did not rule on this motion until the final decree of divorce where it denied Husband's request. The court believed Husband attempted to misrepresent his assets.

{¶6} The trial court found Husband in contempt for failing to maintain Wife's health insurance and for failing to pay her American Express credit card bill.

{¶7} Wife and Husband owned several properties that the trial court determined were marital properties. Relevant to this appeal is a commercial property in Norwood ("the commercial property") and the parties' marital home. The court appointed Steven Deardorff as the appraiser for both properties. Wife hired her own appraisers.

{¶8} Deardorff appraised the marital home at $270,000 while Wife's appraiser, Michael Viola, appraised the home at $390,000. The court wrote that both appraisers were qualified but ultimately assigned $390,000 as the home's value.

{¶9} Deardorff appraised the commercial property at $150,000. Wife's

[2] This is a different property than the commercial property the trial court ordered to be sold in the final divorce decree.

appraiser, Todd Schmutte, appraised the commercial property at $610,000. Schmutte could not access the building's interior. Husband was supposed to meet Schmutte at the property and allow him to access the interior, but Husband did not. The trial court did not assign a value to the commercial property but ordered Husband to sell the property and split the proceeds equally with Wife.

{¶10} Another separate property relevant to this appeal is yet another commercial property in Norwood that Husband inherited from his mother's estate with his siblings. This property is leased to a commercial entity ("the leased property"). The lease lists Husband's deceased mother as the landlord. Rent is $18,000 a month. During the pendency of the divorce, Husband and his siblings stopped collecting rent from the tenant. The tenant sent a letter to Husband and his siblings asking where it should send its payments and that it wished to continue to pay rent. Husband did not collect the money but could not offer an explanation as to why.

{¶11} After the trial court entered the final decree of divorce, Husband filed a notice of appeal in December of 2025. Husband and Wife then jointly moved for this court to remand the matter on January 15, 2026. We granted the motion so the trial court could amend the final divorce decree. Husband filed a notice of appeal on February 22, 2026. This court consolidated the appeals and Husband raised six assignments of error.

II. Analysis

{¶12} In his first assignment of error, Husband argues the trial court failed to assign a value to the commercial property the court ordered sold. In his second assignment of error, Husband asks us to assign a value to the commercial property ordered sold. In his third assignment of error, Husband argues the value assigned to the marital home is against the manifest weight of the evidence. In his fourth

assignment of error, Husband argues the trial court erred by failing to consider all relevant statutory factors and in ordering Husband to make equalization payments. In his fifth assignment of error, Husband argues the trial court erred in ordering him to pay spousal support. In his sixth assignment of error, Husband argues the trial court erred in finding him in contempt of the 75(N) Order.

A. First Assignment of Error

{¶13} First, Husband argues that the trial court did not follow the statutory directives in R.C. 3105.171 when it failed to assign a value to the disputed commercial property. Husband argues that failing to value the property was an error of law. He argues R.C. 3105.171 requires the court to make a value finding before awarding spousal support to ensure the division is equitable. "We review the trial court's adherence to R.C. 3105.171's statutory directives de novo." *Edje v. Holmes*, 2024-Ohio-1663, ¶ 14 (1st Dist.), citing *Stapleton v. Stapleton*, 2022-Ohio-3018, ¶ 23 (1st Dist.).

{¶14} R.C. 3105.171 states, "The court shall provide for an equitable division of marital property under this section prior to making any award of spousal support." But R.C. 3105.171 also provides, "The court may issue . . . [a]n order requiring the sale or encumbrancing of any real or personal property, with the proceeds from the sale and the funds from any loan secured by the encumbrance to be applied as determined by the court." Based on the plain text, it was not an error of law for the court to order a sale of the disputed commercial property.

{¶15} Husband points us to *Jackson v. Jackson*, 2024-Ohio-1755 (10th Dist.), to support his position that the trial court must value a property before dividing it. *Jackson* differs from the case before us. In *Jackson*, the trial court could not determine the fair market value of the marital residence and a commercial property.

Id. at ¶ 30. The trial court awarded the marital residence to wife and the commercial property to husband "with both parties bearing full responsibility for any accrued tax arrearages on the respective properties." *Id.* at ¶ 31. The Tenth District stated that nothing in the record suggested the properties were of equal value. *Id.* at ¶ 33. By awarding the properties without valuing them, there was no way to ensure an equitable division. *Id.* at ¶ 36.

{¶16} Unlike in *Jackson*, there is one disputed commercial property in this case. The trial court ordered the parties to sell it and split the proceeds equally. This is not the scenario in *Jackson* where the trial court awarded potentially unequal properties to each party. Husband and Wife will split the proceeds of the sale to ensure an equal outcome. The trial court determined that was equitable.

{¶17} In *Jackson*, the Tenth District observed, "'[C]ourts, including this court, have found some limitations to the general declaration that a trial court must value all marital property.' But those instances are rare and do not involve the valuation of 'major' assets like the commercial and residential properties at issue in this case." *Id.* at ¶ 32, quoting *Roberts v. Roberts*, 2008-Ohio-6121, ¶ 19 (10th Dist.). Unlike *Jackson*, only the commercial property here will be sold. It would be a different scenario if the trial court ordered one party to keep an unvalued property like in *Jackson*, but we cannot hold the trial court's decision is contrary to law when R.C. 3105.171 authorizes the sale of a property and the court orders an equal division of sale proceeds.

{¶18} R.C. 3105.171 requires that the court make an equitable division. R.C. 3105.171 does not require the court to value a property that has been ordered to be sold. It makes sense that when property is being awarded, the trial court should assign a value to ensure an equitable division. But when the court orders a property to be

sold, which R.C. 3105.171(J)(2) explicitly allows, and the parties are to split the proceeds, the court achieves an equitable division of value based on a market sale.

{¶19} Accordingly, we overrule appellant's first assignment of error.

B. Second Assignment of Error

In his second assignment of error, Husband contends that the trial court erred when it declined to accept the court-appointed appraiser's estimate for the commercial property over Wife's appraiser's estimate. Deardorff, the court-appointed appraiser, estimated that the commercial property was worth $150,000. Schmutte, Wife's appraiser, estimated that the commercial property was worth $610,000. The trial court did not choose a value. Presumably because of the vastly different appraisals, it ordered the property sold to achieve a market determination of value. Husband essentially is asking this court to find that the Deardorff appraisal was credible, and his estimate was consistent with the manifest weight of the evidence. Since the trial court did not make a factual finding, there is not a value finding for us to review. As the trial court is the finder of fact, it is improper for us to make this determination. *See Jefferis Real Estate Oil & Gas Holdings, LLC v. Schaffner Law Offices, L.P.A.*, 2018-Ohio-3733, ¶ 43 (7th Dist.) ("[W]e refrain from deciding the claim for which the trial court did not issue a ruling.").

{¶20} In light of our determination that the sale of the property is authorized by the statute, we hold that this issue is moot. Accordingly, we overrule this assignment of error.

C. Third Assignment of Error

{¶21} In his third assignment of error, Husband argues that the trial court erred in appraising the marital home at $390,000 instead of $270,000.

{¶22} The value the trial court assigns to a marital property is a factual issue.

McKenna v. McKenna, 2019-Ohio-3807, ¶ 9 (1st Dist.), citing *Sieber v. Sieber*, 2015-Ohio-2315, ¶ 34 (12th Dist.). A party is able to challenge the trial court's judgment as relying on insufficient evidence or being against the manifest weight of the evidence. *Id.*, citing *In re A.B.*, 2015-Ohio-3247, ¶ 14 (1st Dist.). However, as Husband acknowledges, "the court had before it appraisals from two, competing experts." *Id.* at ¶ 10. So, Husband's challenge is to the weight of the evidence rather than the sufficiency. *Id.*

{¶23} In reviewing a weight of the evidence challenge, we "'weigh[] the evidence and all reasonable inferences, consider[] the credibility of the witnesses, and determine[] whether in resolving conflicts in the evidence, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered.'" *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 25, quoting *State v. Thompkins*, 1997-Ohio-52, ¶ 26.

{¶24} Husband did not explain why the trial court should have based its value on one appraiser over the other. He simply argues the trial court should have chosen the lower number. Viola, who appraised the home at $390,000, presented competent evidence to explain his appraisal. Though Deardorff also presented evidence for his $270,000 appraisal, the trial court, as the finder of fact, accepted Viola's appraisal as more persuasive. Because the trial court was in the best position to weigh both appraisals from both experts at trial, we cannot say the trial court clearly lost its way.

{¶25} We overrule appellant's third assignment of error.

D. Fourth Assignment of Error

{¶26} In his fourth assignment of error, Husband argues the trial court erred by failing to consider all factors listed in R.C. 3105.171(F) and in ordering Husband to make equalization payments to wife.

1. R.C. 3105.171(F) Factors

{¶27} After a court determines what is marital property, the court must then equitably divide the property between spouses. *Devito v. Devito*, 2024-Ohio-2234, ¶ 13 (1st Dist.), citing R.C. 3105.171(B). "To determine what is equitable, the trial court must consider the factors listed in R.C. 3105.171(F)." *Id.* at ¶ 13, citing *Devito v. Devito*, 2022-Ohio-2563, ¶ 26 (1st Dist.). While the court is required to consider those factors, the trial court is not required to "'address each statutory factor in its written findings of fact.'" *Novello v. Novello*, 2011-Ohio-2973, ¶ 14 (7th Dist.), quoting *Hiscox v. Hiscox*, 2008-Ohio-5209, ¶ 65 (7th Dist.). "'In the absence of an affirmative showing . . . that the court failed to consider the factors, we presume that the trial court followed the statute.'" *Id.*, quoting *Hiscox* at ¶ 65.

{¶28} Husband argues "the record suggests the Trial Court ignored Will's desire to keep the commercial property intact, so the trial court abused its discretion."[3] However, in its final decree, the trial court listed its findings of fact before determining how the marital property should be divided. These findings show that the trial court considered the factors in R.C. 3105.171(F). While not every factor is listed, the court is not required to list every factor. *See id.* Husband has failed to affirmatively show that the trial court did not consider his interest in keeping the commercial property. Rather, the court concluded that the property was not subject to any agreement as to value and ordered it sold. Accordingly, the trial court did not abuse its discretion. *Id.* at ¶ 20.

[3] At oral arguments, Husband's counsel asserted that within this assignment of error was the issue of whether the trial court abused its discretion in ordering the sale of the commercial property. Husband's brief does not raise this as an error. Husband's brief explicitly states, "The Trial Court's failure to consider all the requisite factors under R.C. 3105.171(F) constitutes an abuse of discretion." This is the assignment this court will consider. *See Porter v. Hammond N. Condominium Assn.*, 2025-Ohio-2210, ¶ 70, fn. 10 (1st Dist.) ("[W]e need not address claims raised for the first time at argument, where such claims could have been raised in the briefs.").

2. Equalization Payments

{¶29} The "trial court may order a party to make an equalization payment to bring the distribution of assets into an equitable balance." *Young v. Young*, 2026-Ohio-883, ¶ 87 (3d Dist.), citing *Stewart v. Stewart*, 2025-Ohio-1635, ¶ 54-57 (1st Dist.). We review the trial court's award of an equalization payment for an abuse of discretion. *O'Rourke v. O'Rourke*, 2010-Ohio-1243, ¶ 24 (4th Dist.).

{¶30} Husband argues that it is "a manifest injustice" to make the equalization award to Wife. Husband argues that he has no income and is incapable of working. The trial court did not find this testimony persuasive. Husband cites *A.E. v. J.E.*, 2024-Ohio-2644 (8th Dist.), to argue it is impossible for him to make these payments. However, *A.E.* dealt with a distributive payment from separate property and is otherwise distinguishable as discussed below. *Id.* at ¶ 70.

{¶31} "It was within the trial court's discretion to award a lump sum equalization of the marital assets, even if it might cause some hardships." *Schwark v. Schwark*, 2012-Ohio-3902, ¶ 37 (3d Dist.). Though Husband argues it would be impossible to pay, the trial court found otherwise. The trial court considered all marital property including the property Husband sold during the pendency of the divorce when it ordered the equalization payment. We cannot hold that this was an abuse of discretion.

{¶32} We overrule Husband's fourth assignment of error.

E. Fifth Assignment of Error

{¶33} In his fifth assignment of error, Husband argues the trial court erred in ordering him to pay spousal support to Wife. "A trial court has broad discretion in determining whether an award of spousal support is appropriate and the proper amount of the award." *Reese v. Reese*, 2019-Ohio-2810, ¶ 11 (1st Dist.), citing *Doan v.*

Doan, 1997 Ohio App. LEXIS 3653, *6 (1st Dist. Aug. 15, 1997). We review a trial court's decision regarding spousal support for an abuse of discretion. *Id.*, citing *Doan* at *6. The trial court looks to R.C. 3105.18(C)(1) to determine if spousal support is appropriate. This allows the trial court "to determine whether spousal support is reasonable and appropriate considering all the statutory factors." *Stapleton*, 2022-Ohio-3018 at ¶ 40 (1st Dist.), citing *Valentine v. Valentine*, 2012-Ohio-4202, ¶ 4-5 (9th Dist.).

{¶34} Husband argues that the trial court abused its discretion in making its award because Wife did not prove her need for support. Husband takes issue with the trial court's factual findings. Specifically, he points to R.C. 3105.18(C)(1)(a), (b), (c), and (d).

1. R.C. 3105.18(C)(1)(a) and (b)

{¶35} First, Husband argues the trial court abused its discretion in imputing Husband's income because Husband is incapable of working. Husband argues the trial court should have imputed Wife's income because she is capable of working more. Under R.C. 3105.18(C)(1), (a) concerns the income of the parties and (b) is the relative earning abilities of the parties.

{¶36} Because the trial court found that Husband was not collecting rental payments from his inherited commercial property, it imputed rental payments from the leased property to his income. The only amount the trial court imputed was $4,500 a month from the uncollected rental payments.

{¶37} Additionally, the imputed income only comes from the failure to collect rent. The trial court said, "Why [Husband] and his siblings are not either enforcing the contract with [tenant] or finding a new lessee is unknown. [Husband] gave no credible explanation for his failure to secure the potential cash flow available from this

source." This is why the trial court imputed $4,500 to Husband. Though the trial court acknowledged that Wife "offered no testimony that she was unable to work 40 hours per week," the trial court also acknowledged Husband was not working and did not offer a credible explanation as to why.

{¶38} Husband argues he cannot work because of serious medical problems. However, the trial court did not find his testimony credible. The trial court found Husband "did not explain why his physical ailments would prevent him from earning income as a realtor" since Husband has his realtor's license. The trial court also noted that Husband did not present evidence from a medical professional that he could not work or that he applied for Social Security Disability. While Husband is correct that he is not required to introduce such evidence, it is within the trial court's discretion to determine whether his claimed inability to work was credible.

{¶39} It was not an abuse of discretion for the trial court to impute the rental income to Husband and not impute employment income to Wife.

2. R.C. 3105.18(C)(1)(c)

{¶40} R.C. 3105.18(C)(1)(c) concerns "[t]he ages and the physical, mental, and emotional conditions of the parties." Husband argues the trial court abused its discretion in finding that Husband "did not present any evidence from a medical professional that he is incapable of working." However, as Husband states in his brief, he did not present evidence from a medical professional that he is incapable of working.

{¶41} We do not hold that the trial court abused its discretion in merely stating Husband "did not present any evidence from a medical professional that he is incapable of working," when Husband did not present such evidence. Further, it is not an abuse of discretion for the trial court to make a factual finding based on trial

testimony. The court did not find Husband's testimony credible. In particular, the court concluded that Husband did not prove he was incapable of working.

3. R.C. 3105.18(C)(1)(d)

{¶42} Husband points out that the court erred when it found that neither party had retirement benefits under R.C. 3105.18(C)(1)(d). Wife testified that when she began working at HomeGoods in 2024 there was a period when she was working full-time. While she was full-time, she opened a 401(k) account. By the time of trial in September 2025, Wife was only working part-time at HomeGoods. Wife made $14.50 an hour.

{¶43} During trial, Wife testified about her 401(k) account. During testimony, Husband's counsel stated, "Your Honor, just for the purposes of the record, if - if it's from Home Goods and it was incurred after the date of the separation, she can have it." This statement ended the questioning. We hold that by conceding Wife would retain ownership of her 401(k) account, Husband foreclosed any error in failing to distribute the 401(k). *See Humphrey v. Humphrey*, 2025-Ohio-5378, ¶ 52-54 (5th Dist.) (wife invited error at the child-support hearing by stating that husband did not need to present "any additional evidence.").

{¶44} Although Husband is correct in noting a trial court is required to consider retirement benefits in its spousal support determination, neither party provided testimony about the Wife's 401(k) account balance. "It is axiomatic that 'each party has the burden of producing evidence as to any of the R.C. 3105.18(C)(1) factors it wants considered, and must provide facts tending to prove its version of the manner in which such factors should be applied.'" *Iranpour-Borojeni v. Emami*, 2024-Ohio-2546, ¶ 125 (1st Dist.), citing *Morrison v. Walters*, 2022-Ohio-1740, ¶ 8 (1st Dist.), quoting *Hunley v. Hunley*, 2020-Ohio-5053, ¶ 27 (12th Dist.). Although

Wife bore the burden of establishing facts supporting an award of spousal support, "Husband also had an obligation to present the court with any evidence he wanted the court to consider that was relevant to his argument that spousal support should not be awarded." *Hunley* at ¶ 27. A party cannot complain that the trial court failed to consider an enumerated spousal support factor "on which neither party offered any evidence." *Rees v. Rees*, 2012-Ohio-2129, ¶ 11 (3d Dist.), citing *Stetler v. Stetler*, 6 Ohio App.3d 29, 29 (3d Dist. 1982). Accordingly, Husband cannot now complain that the trial court failed to consider Wife's 401(k) account in its analysis.

{¶45} Even if Husband did not waive this issue, the trial court's misstatement that neither party had retirement benefits amounted to harmless error because the court was unable to ascertain the balance of such an account without pertinent evidence. *See Cagle v. Cagle*, 2022-Ohio-671, ¶ 11 (1st Dist.), quoting *Brooks v. Bell*, 1998 Ohio App. LEXIS 1476, *9 (1st Dist. April 10, 1988) ("In a civil case, a harmless error is one that does not affect the substantial rights of the parties."). Moreover, Wife's 401(k) proceeds from one year of hourly employment would likely be de minimus. In any event, the court did not hear evidence regarding the account.

{¶46} We overrule the fifth assignment of error.

F. Sixth Assignment of Error

{¶47} In his last assignment of error, Husband argues the trial court erred in finding him in contempt for violating the 75(N) Order. Husband argues on appeal that the trial court's decision was unconscionable because he was incapable of paying. He does not argue that Wife failed to present clear and convincing evidence that he failed to pay. He did not submit evidence showing his inability to pay other than his own testimony.

{¶48} We review a trial court's contempt finding for an abuse of discretion.

Kell v. Verderber, 2013-Ohio-4223, ¶ 23 (1st Dist.). A trial court abuses its discretion when its actions were "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶49} Husband points to *A.E.*, 2024-Ohio-2644 (8th Dist.), to support his argument that the trial court's decision was unconscionable. In *A.E.*, the trial court had ordered the husband to pay wife over $14,000 a month in spousal and child support in a temporary pretrial order. *Id.* at ¶ 5. The husband received a base salary, but the bulk of his income came from bonuses. *Id.* at ¶ 4. After ordering the husband to pay $14,000 a month to the wife, the trial court restrained the husband's employer from disbursing any money other than his base salary to him. *Id.* at ¶ 6. The court required the husband's employer to put all bonuses in a separate account. *Id.* As a result, the husband did not have enough income to pay his living expenses and the wife's support. *Id.* at ¶ 8. On appeal, the Eighth District held that the husband could not be in contempt of failing to comply with the order because it was "impossible for him to comply." *Id.* at ¶ 70.

{¶50} Husband argues that, like the husband in *A.E.*, he was unable to pay. However, Husband did not present evidence to the court to demonstrate his inability to pay. He claimed that he had no income and that he had depleted the joint savings account, but the trial court specifically noted that it did not find his testimony credible. The husband in *A.E.* was required to pay the wife more than his base salary after taxes so "he would have nothing with which to support himself and the child who was living with him." *Id.* Here, Husband did not present any evidence showing the same complete lack of resources. We cannot hold that the trial court abused its discretion in finding Husband in contempt.

{¶51} We overrule his last assignment of error.

III. Conclusion

{¶52} "Marriage is a partnership, and those who enter the relationship must accept the uncertainties which their mutual endeavors bring to the marriage." *McGuire v. McGuire*, 1985 Ohio App. LEXIS 9609, *7 (2d Dist. Dec. 5, 1985). In this case those mutual endeavors included a commercial property that the trial court ordered sold. Ohio law authorizes that sale. We overrule the assignments of error and affirm the trial court's judgment.

Judgment affirmed.

KINSLEY, P.J., and **CROUSE, J.,** concur.