

Divorce Appeals In Ohio

What To Know When The Judge Gets It Wrong



A White
Paper
Presented
By

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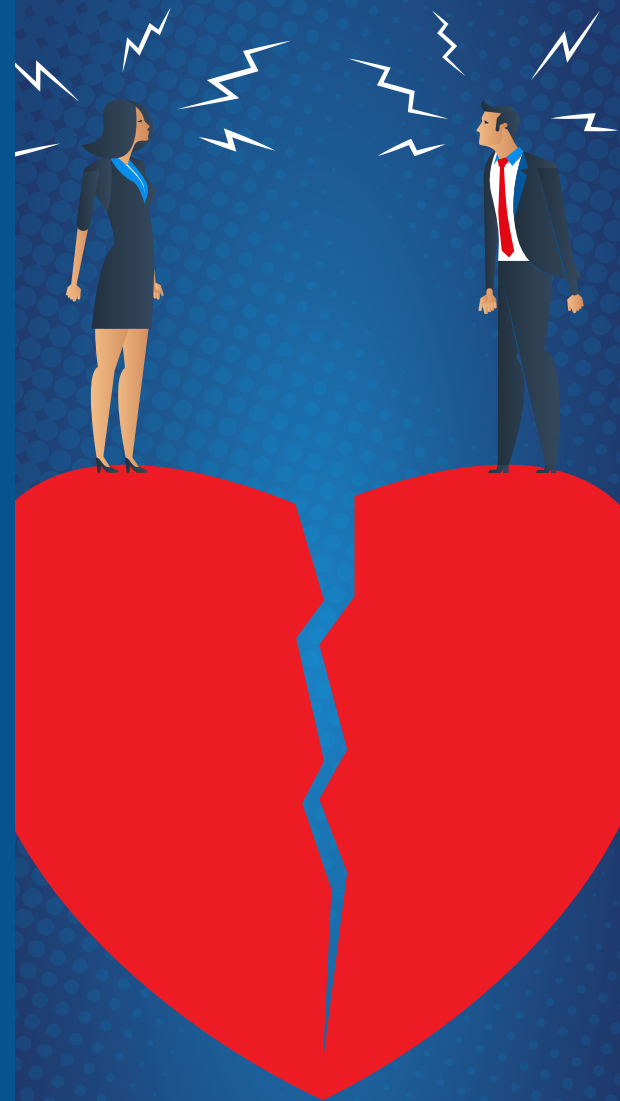
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Divorce is a major upheaval in every way. It comes with fundamental financial, legal and emotional shifts. The divorce process itself can be incredibly draining – especially in contested cases that involve lengthy trials.

An adverse outcome in a contested divorce case can have a long-term negative impact on your life. It can affect your relationships with your children, your property and business interests, and your financial stability. It can deprive you of the wealth you worked so hard to build.

Family court judges don't always get it right. While they have a wide margin of discretion in determining many aspects of divorce cases, they must stay within the parameters of the law. Mistakes, misinterpretations of the law, errors in evidentiary rulings and decisions that didn't have sufficient factual bases are all grounds for an appeal.

If you're facing a family law appeal or are considering pursuing one, then you are taking the right step by first informing yourself about the process.



In This Paper

- APPEALS OVERVIEW
- UNDERSTANDING THE APPELLATE PROCESS
- COMMON GROUNDS FOR DIVORCE APPEALS
- CHOOSING THE RIGHT APPELLATE LAWYER

Appeals Overview

An appeal is a request for a higher court to review the judge's decision in your divorce case. An appeal is not a redo. You won't be able to introduce new evidence or make your case all over again. The sole purpose of an appeal is to determine whether the judge committed what's called "reversible error" – that is, a mistake or misinterpretation of the law that warrants overturning their ruling or sending the case back to the trial court.

Save for exceptional circumstances, the appellate court's review will be limited to

the issues on appeal – that is, the arguments raised by the parties. Appellate courts won't conduct an in-depth review of all aspects of the trial judge's decision.

Appellate courts can only overturn the trial court's decision in limited circumstances. They must apply the appropriate lens for determining whether the judge committed an error. Those lenses – called "standards of review" – vary depending on the specific issues on appeal and whether they amount to factual issues and questions of law.



Factual Issues

In contested Ohio divorce cases, the judge plays the role of the jury. They are vested with the role of decision-maker regarding all factual issues in the case. Like a jury, they are entrusted with the responsibility of listening to testimony, reviewing the evidence and making determinations about the credibility of witnesses. Appellate courts won't second-guess a trial court's factual determinations – except when the judge has disregarded key evidence or made a decision that isn't based on the evidence. In those circumstances, the appellate panel can decide that the judge has committed “clear error” by failing to adequately weigh the evidence. Often, the case then gets sent back to the trial court to render another decision.

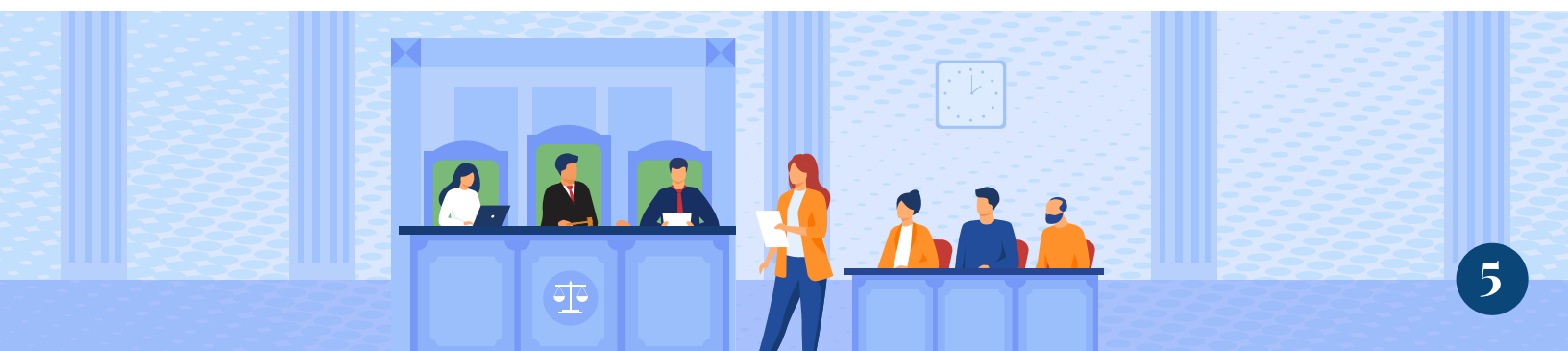


Questions Of Law

In addition to serving as fact finders, judges in divorce cases also play the vital role of interpreting and applying the law, which includes:

- **Ohio Statutes**, especially Chapters 3105 and 3109, pertaining to division of property/spousal support and parental rights and responsibilities, respectively
- **Ohio Rules of Civil Procedure**, which establish the procedural framework for divorce and family law cases in Ohio courts
- **Ohio Rules of Evidence**, which govern the types of evidence the court can consider
- **Case Law**, which is the body of binding reported opinions interpreting the law, published by the Ohio Court of Appeals or The Supreme Court of Ohio

Appellate courts apply a “*de novo*” standard of review when determining whether the judge correctly applied and interpreted the law. The term *de novo* means “anew” – that is, the appellate court takes a fresh look at the applicable law. It isn’t required to defer to the judge’s interpretation of the law. In fact, a key role of appellate courts is to interpret the law, especially when confronted with unsettled, unique or emerging issues.



Discretionary Issues

Appellate courts apply a different standard – called “abuse of discretion” – when reviewing rulings where judges have broad authority to exercise their judgment in making decisions.

Appellate courts won't second-guess those judgments. They will only overturn discretionary rulings for “plain error,” which means decisions that are arbitrary, unreasonable or clearly against the evidence.



Ohio State Court Structure: The Road Map Of An Appeal

There are three levels of courts in Ohio that are relevant to divorce cases:



Ohio Courts of Common Pleas: These are the trial courts. Judges in the domestic relations divisions handle family law cases.

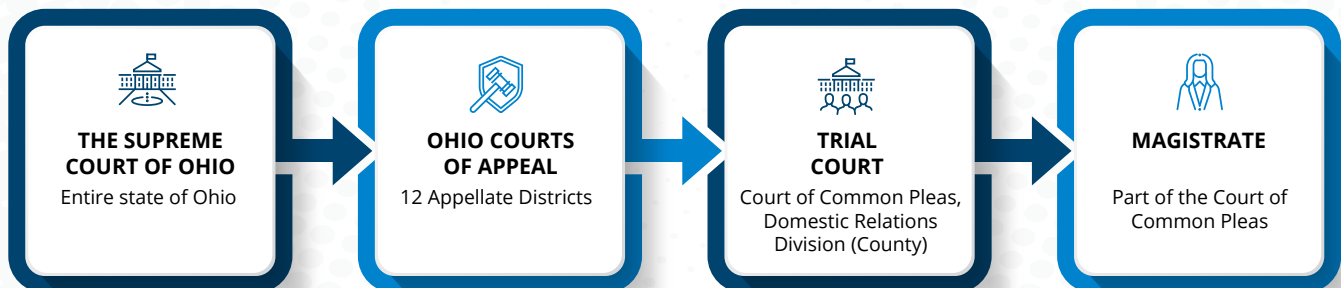
- **Magistrates** are officials appointed by judges within the court of common pleas. Magistrates hear cases and issue decisions that may then be reviewed by a judge.



Courts of Appeal: Ohio is divided into 12 appellate districts that hear appeals from the courts of common pleas within their respective districts. Each district covers certain counties.



The Supreme Court of Ohio: The highest court in the state, the Supreme Court hears appeals from the courts of appeals.



Appellate Terms

Legal language can be intimidating and confusing. Appellate work comes with its own set of terminology. Here are the key terms to be aware of:



The **appellant** is the party appealing the trial court decision.



The **appellee** is the party responding to their appeal.



A **cross-appeal** is an appellee's challenge to a trial court decision, which is typically based on different grounds than the appellant's challenge.



A **consolidated appeal** involves a joint appeal by two or more parties who have the same interests and position with regard to the trial court order under review. A consolidated appeal can also be the merger of an appeal and cross-appeal into a unified case number.



The **issues on appeal** are the arguments or legal questions raised by the parties that the appellate court will consider.



Briefs are written arguments, supported by citations to legal authorities such as statutes and case law, submitted by both parties to the court.



An **oral argument** is a hearing before a panel of appellate judges in which the attorneys for both sides expand upon the arguments in their briefs and respond to the judges' questions.



Clear error is a standard by which appellate courts will only overturn trial court decisions that are plainly wrong.



Abuse of discretion refers to a judge's decision or exercise of authority that is unreasonable, arbitrary or beyond the scope of their authority.



De novo is a standard by which appellate courts will review a judge's legal interpretations anew.

Possible Outcomes Of An Appeal



Affirmed: The appellate court upholds the trial court's decision.



Reversed: The appellate court determines that the trial court's decision was wrong.



Vacated: The appellate court sets aside the trial court's decision.



Remanded: The appellate court sends the case back to the trial court for further proceedings (often accompanied by a reversal or reversal in part).



Dismissed: The appellate court does not have authority to hear the appeal, often due to technical reasons such as failure to timely file a notice of appeal.



Reversed in part: The appellate court upholds part of the decision but reverses it on certain grounds. The case may also be remanded in part to give the trial court an opportunity to address certain issues.



Understanding The Appellate Process: From Final Order To Oral Argument

The appellate process is much different from the trial court proceedings. It starts with filing a notice of appeal in the appropriate district court of appeals. The opposing party may also file a cross-appeal.

Record On Appeal

The appeal is based on the trial court proceedings – called the “record on appeal.” That record may include trial court pleadings, hearing transcripts, evidence, motions and rulings relevant to the appeal. The appellant is responsible for obtaining those records and transmitting them to the appellate court in accordance with the rules.

Briefs

The bulk of the appeal is conducted through written arguments – called briefs – submitted by each side. The

appellant submits the first brief outlining the issues on appeal and arguing their position. The appellee then submits their brief opposing the appellant’s position. The appellant has an opportunity to submit a further brief, called a reply brief, to respond to the appellee’s arguments. Each district court of appeals has strict rules for briefs, including word count, format, content and legal citations.

Motions

Parties may also file motions, but they are much more limited than motion practice at the trial level. Examples of motions on appeal include:

- A request to stay (suspend) the trial court order while the appeal is pending, which can only be granted in limited cases
- A motion for bond attendant to a motion for stay, which is a request to require a party to post bond (called a supersedeas bond) while the order in question is stayed

(continued from page 10)

- Procedural issues, such as a request for an extension of time to obtain the trial court record
- Permission to file an amicus curiae brief, which is a brief written by a third party
- A request to consolidate an appeal
- A request to dismiss the appeal if the underlying issues were resolved
- A motion for reconsideration or the reopening of the appellate court's decision after its entry of judgment

Scheduling Orders

Some appellate courts hold prehearing conferences and settlement conferences to encourage resolution of the issues and streamline any remaining unresolved issues. The court also requires mediation in nearly all cases.

Oral Arguments

Oral arguments are a part of many, though not all, divorce appeals. During oral arguments, both sides (through their attorneys, if they're

represented) appear before a panel of three appellate judges. Each side has 15 minutes to make their case.

Oral arguments are not for raising new issues or submitting evidence. Rather, they allow each party to emphasize their most important arguments. Judges often use oral arguments to raise questions and clarify issues.

Written Decision

After oral arguments, the judges will take the case under advisement and eventually issue a written decision. In most cases, they will issue an "unpublished" or "unreported" decision – meaning that the case doesn't raise any new issues of unsettled law and therefore isn't a precedent-setting decision. Only "published" or "reported" decisions – those that set out or clarify new interpretations of the law – become "case law," meaning that they apply to other Ohio court cases addressing the same issues.

Appeals To The Supreme Court Of Ohio: The Last Stand

The Supreme Court of Ohio is a court of “last resort.” It’s the highest court in the state, so you can’t pursue further appeals.¹

The appeals process for the Supreme Court is similar to the district appellate court process. However, the Supreme Court has “discretionary jurisdiction,” which means that it isn’t obligated to hear your appeal. The Supreme Court only accepts divorce appeals if they involve important constitutional questions or if they’re necessary to resolve conflicting decisions between appellate districts on issues of law.

If the Supreme Court denies your request for an appeal, then the decision of the appellate court will be final. Likewise, if either party declines to appeal the appellate court’s decision, then it will be final.



When Is An Order Appealable?

You can't appeal just any order. It must be a final order that resolves either the entire divorce case or disposes of a concrete part of it.

Determining what amounts to an "appealable order" is a threshold question in the appellate process. Examples of appealable orders include:

- A final divorce decree
- A final order resolving a motion to modify spousal support, child support or child custody
- An order that substantially affects the rights of a party, such as their parental rights

Notably, a trial court's divorce decree may still be final and appealable even if the parties are still awaiting issuance of a qualified domestic relations order (QDRO).

How Long Do You Have To Appeal A Divorce Decision In Ohio?

You typically only have 30 days from the judge's entry of the final order or judgment to file a notice of appeal.² Cross-appeals may be filed within 10 days after the other party's notice of appeal.

How Long Does An Appeal Take?

The appeals process typically takes six months to a year or more, depending on how many delays arise.



Appealing A Magistrate's Decision

In many counties, magistrates hear divorce cases and issue decisions. Those decisions are recommendations for the trial court judge. They don't go into effect until a judge adopts them.

Both parties have an opportunity to file an appeal, called a "written objection", to the magistrate's decision. They have 14 days after the decision to do so.³ The decision generally won't go into effect until the objections are resolved.

What Is A Motion To Set Aside A Magistrate's Order?

Magistrates also have the power to issue orders such as interim (temporary) child support and spousal support orders. These orders typically

go into effect immediately, without prior judicial approval. You can challenge the order by filing a motion to set it aside, which must be done within 10 days of the order.⁴ The existing order will generally remain in effect.

What Is A Motion For Relief From A Divorce Judgment?

In rare cases, it may be appropriate to file a motion for relief from a divorce judgment or order.⁵ You can request that part or all of it be set aside due to reasons such as:

- A mistake in the ruling or evidence
- New evidence, in limited circumstances
- Fraud or misrepresentation
- Misconduct of another party
- Satisfaction of the judgment
- Reversal or release of a prior judgment that is the basis of the order

Common Grounds For Divorce Appeals

Any aspect of the divorce decree may be challenged on appeal – child custody, child support, spousal support or property division, to name a few. Many appeals involve property division and spousal support.

Preservation of issues for appeal is an important threshold question in determining whether you can appeal certain aspects of a trial court decision. Put simply, you can't appeal an issue that you didn't raise with the trial court. You can't raise new arguments on appeal that should have been made at trial. And, generally speaking, your lawyer must have objected to the trial court's decision regarding issues such as admission of evidence.

For a successful appeal, you must also have strong grounds for overturning the trial court's decision. Common grounds for appeal in these cases include:

- **Legal errors** such as misinterpretations or misapplication of the law
- **Factual errors** such as findings that aren't supported by the evidence or failure to consider certain evidence

There may be multiple grounds for appealing the decision, but it's usually most effective to focus on the major ones. Narrowing down the appeal to the strongest issues is a sound strategy to avoid diluting your arguments with questionable positions.



Property Division Appeals

Trial courts must follow Ohio law when making decisions about property division in divorce. Ohio law sets an “equitable distribution” standard for property division in divorce,⁶ which means that the judge must decide what is fair in each situation. Equal division – that is, a 50/50 split of the marital property – is the starting point for that determination.⁷

In dividing property, judges are required by law to consider factors such as:

- How long the parties were married
- Each party’s assets and debts
- The liquidity of each asset
- The terms of any separation agreement between the parties
- Retirement benefits for each party
- Tax consequences of the division

If a judge failed to consider the appropriate factors – for example, by disregarding the tax consequences the division – that would be grounds for an appeal as a misapplication of the law.

The judge must also follow the law in determining which property is “marital property,” subject to division, and which is “separate property.” Separate property must typically be awarded to the spouse who owns the property. The law defines marital versus separate property. Failure to correctly apply that law can be grounds for an appeal.



Valuation Errors

As part of the property division process, the judge must often make determinations about the value of assets such as:

- Business interests
- Pension plans
- Real estate

When the judge determines the fair market value of these assets, they must take into account relevant evidence, such as appraisals and expert testimony. Failure to consider that evidence – or failure to properly interpret evidence like appraisals – can be grounds for appeal. Another potential ground is failure to make specific findings about the value of relevant assets.

Valuation Date

The judge must also set a “valuation date” for the assets. For assets like real estate,

investment accounts and retirement plans, that date is critical. Market fluctuations can lead to drastically different valuations within the span of a few months if the date isn’t set in stone.

The judge often sets the valuation date as the date of the divorce filing, but they are allowed to choose another date. However, using different dates for different assets would be unfair to the parties and would constitute an “abuse of discretion” that could be overturned on appeal.⁸



Spousal Support Appeals

Like property division, spousal support is a complex and nuanced decision that must be based on evidence pertaining to statutory factors.⁹ In determining whether to award spousal support – and in what amount – judges must consider factors such as:

- Income
- Age
- Medical conditions
- Education
- Earning potential
- Length of the marriage
- Standard of living during the marriage
- Tax consequences

As with property division determinations, judges must make written findings detailing the grounds for their decisions. Their failure to do so, or failure to take into account the statutory factors, can be grounds for reversals on appeal.

Income Issues

Issues often arise about what counts as income, which becomes particularly relevant when parties have multiple sources of income, such as:

- Investment income
- Business income
- Stock options
- Restricted stock units
- Performance stock units

Failure to take into account all of the parties' income can be grounds for appeal.



Modifications Of Spousal Support

Ohio law allows parties to seek a modification of an existing spousal support order in limited circumstances. The trial court doesn't have the ability to modify the prior order unless the divorce decree or separation agreement specifically authorizes the court to do so.¹⁰ Because this authority is a jurisdictional issue, it's subject to *de novo* review on appeal.

Evidentiary Errors

The judge's decision in a divorce case must be based on the evidence. In determining what evidence to consider, the judge must follow the Ohio Rules of Evidence. Misinterpretation of those rules can result in:

- Consideration of evidence that shouldn't have been considered
- Exclusion of evidence that should have been considered

Evidentiary errors are strong grounds for overturning the decision on appeal.



Choosing The Right Appellate Lawyer: The Key To A Successful Outcome

As you can see, divorce appeals are nuanced and complicated. They are much different than trial proceedings. Many family law attorneys focus on the trial court level and either don't handle appeals or don't handle them regularly.

You don't have to use the same lawyer on appeal who represented you in the trial court proceedings. In fact, it's to your benefit to enlist a family law attorney with skill and experience handling divorce appeals. They will have the advantage of being able to review your case from a fresh perspective.

Here are some things to look for in a divorce appellate lawyer:

- Experience handling Ohio divorce appeals, including appeals involving issues similar to those that you are facing
- A thorough understanding of all relevant law and procedural rules, including the Ohio Rules of Appellate Procedure, the Ohio Rules of Civil Procedure, Ohio family law statutes, Ohio case law and the local rules for each court of appeals
- Legal research and writing skills, which are essential for finding supporting case law and writing persuasive briefs
- In-depth knowledge of family law in Ohio, including statutes and case law governing all aspects of divorce

As with selecting an lawyer, you should also feel comfortable with your appellate attorney. They should be attentive to your needs and concerns, and they should keep you informed throughout the process.

The Benefit Of Hiring A Certified Family Law Relations Specialist

The Ohio State Bar Association offers attorney certification in specific areas of law, including family law.¹¹ These certifications demonstrate a high level of expertise and education in specialty areas. Obtaining a certification is a rigorous process that involves:

- Demonstrating substantial involvement in the family law field
- Obtaining peer recommendations
- Completing a written examination

Only a small number of lawyers in Ohio – less than 150 out of more than 35,000 – are certified family law relations specialists.¹²

By hiring a certified family law relations specialist, you can have peace of mind knowing that your attorney has gone above and beyond the level of training most attorneys have attained in order to uphold a high standard of excellence in the family law field.



Ohio Bar[®]

Certified Specialist



About Attorney Zachary D. Smith

FOUNDING PARTNER - ZACHARY D. SMITH, LLC
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Zachary Smith is the founder of Zachary D. Smith, LLC, a family law firm based in Cincinnati. A certified family relations law specialist, he has been selected for inclusion in Ohio Rising Stars and Ohio Super Lawyers for nearly 10 straight years. He is also a family law mediator and fellow of the American Academy of Matrimonial Lawyers, a prestigious distinction that further demonstrates expertise in family law.

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Footnotes

- ¹ There are rare exceptions for family law cases involving constitutional issues under the U.S. Constitution, which could be heard by the Supreme Court of the United States.
- ² Ohio Rules of Appellate Procedure, Rule 4(A)
- ³ Ohio Rules of Civil Procedure, Rule 53(D)(3)(b), <https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/civil/CivilProcedure.pdf>
- ⁴ Id., Rule 53(D)(2)(b)
- ⁵ Id., Rule 60
- ⁶ Ohio Revised Code Section 3105.171, <https://codes.ohio.gov/ohio-revised-code/section-3105.171>
- ⁷ Valuation of assets, 10 Ohio Jur. Pl. & Pr. Forms § 101:74 (2022 ed.)
- ⁸ 46 Ohio Jur. 3d Family Law § 436
- ⁹ Ohio Rev. Code Section 3105.18(C)(1)(a)
- ¹⁰ Ohio Rev. Code Section 3105.18(E), (F)(2)
- ¹¹ <https://www.ohiobar.org/cle-certification/certification/Attorney-Certification/family-relations-law/>
- ¹² 2023 Ohio Bar Certified Specialists – Family Relations Law, https://www.ohiobar.org/globalassets/cle-and-certification/certification/march-2023/2023-ohio-bar-certified-specialists---family-law_rev.pdf; Ohio Bar, 2022 Profile of the Legal Profession, <https://www.ohiobar.org/public-resources/about-attorneys/2022-profile-legal-profession/>

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